Super Duper T.V. Vs. Cc

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Tamil Nadu

Decided On : Jul-09-2007

Reported in : (2007)(121)ECC352

Judge : P Chacko, K T P.

Appellant : Super Duper T.V.

Respondent : Cc

Judgement :

1. The appellants had filed a Bill of Entry dated 10.4.95 for clearance of video equipments of declared value Singapore Dollar 44,040. The Bill of Entry was accompanied by invoice dated 5.4.95 of M/s. Tai Yeng Electroniks, Singapore. From certain documents received from the Enforcement Directorate, it appeared to the Customs authorities that the appellants had undervalued the goods. The said documents included (a) quotation dated 14.2.96 received from Consulate-General of India in Dubai, which indicated prices in dirhams for similar goods (b) pricelist dt. 31.8.94 issued by Sony Rimsat Ltd. (Asia office) and (c) statements of one Shri S. Manickam and one Shri Anandavelu, recorded at Singapore by the Enforcement Directorate officers. Accordingly, a case of 'wilful misstatement and suppression of facts with intent to evade payment of Customs duty' was booked against the appellant by the department. Show-cause notice dated 11.12.98 was issued by the Commissioner of Customs (Airport) proposing to (a) reject the declared value and determine the assessable value of the goods at Rs. 24,99,858/- under Rule 8 of the Customs Valuation (Determination of Price of

Imported Goods) Rules 1988 (b) demand differential duty of Rs. 12,32,479/- by invoking the larger period of limitation under Section 28(1) of the Customs Act (c) confiscate the goods (already seized) under Section 111 (m) of the Act and (d) impose penalty under Section 112(a)/114A of the Act. This notice also proposed to appropriate an earlier payment of Rs. 12 lakhs of the noticee towards the above demand of duty. The proposals were contested. In adjudication of the dispute, ld.Commissioner confirmed the assessable value at Rs. 24,99,858/- and demanded differential duty on that basis, ordered confiscation of the goods with option for redemption against payment of a fine Rs. 5 lakhs and imposed a penalty of Rs. 12,32,479/- on the party. The Commissioner appropriated the payment of Rs. 12 lakhs towards the demand of duty.

The present appeal is directed against the Commissioner's order.

2. After examining the records and hearing both sides, we summarize the case of the appellants as follows: (a) The SCN was issued under Section 124 of the Customs Act and, therefore, the larger period of limitation was not invocable for demanding duty from the appellants; (b) The entire case is based on evidence gathered by the officials of the Enforcement Directorate from a foreign country illegally and the legality of their proceedings is presently under scrutiny by the Hon'ble High Court in Criminal R.C.No. 173/2007; (c) The Hon'ble High Court has stayed the proceedings of the court of Additional Chief Metropolitan Magistrate (Economic offence), Egmore initiated by the Enforcement Directorate and, therefore, the evidentiary materials collected from the Enforcement Directorate by the Customs authorities have no legal validity as of now; (d) The declared value of the goods has been rejected without any valid reason; (e) Enhancement of the value on the basis of a mere quotation is not sustainable under Section 14 of the Customs Act: (f) Even otherwise, any enhancement of value on the basis of price of goods imported into India from countries different from the country of origin mentioned in the subject Bill of Entry cannot be sustained under Section 14.

3. We have heard ld.SDR also, who reiterates the findings of the Commissioner. It is pointed out that the appellants had not made any payment for the goods to Singapore party named in the invoice. The appellants' case is that they obtained

the goods as a gift from Sri Manickam but the latter retracted his earlier statement which was to the effect that he had made such gift to the former. In the absence of evidence of sale proceeds of the goods having been received by the Singapore party mentioned in the invoiced, the value indicated in that document cannot be accepted as transaction value. It is also submitted that the document titled "List of Instruments", which indicated higher prices for similar goods, was recovered from the appellants' own premises and they are estopped from the questioning evidentiary value of this document. Answering the preliminary objection raised by counsel, ld.SDR submits that SCN, in a case of this nature, was required to be issued within 6 months from the date of seizure (19.6.98) and, therefore, the SCN was issued under Section 124 of the Customs Act. However, it is pointed out, the notice alleged the requisite facts for a demand under Section 28(1) of the Act and it demanded differential duty specifically under that provision by legitimately invoking the larger period of limitation on the ground of wilful misstatement and suppression of facts. With reference to ld.counsel's objections relating to penalty, ld.SDR submits that the Commissioner has not imposed any penalty on the party under Section 114A of the Act. Ld.Commissioner has rightly imposed penalty under Section 112 (a), which was in force at the time of commission of the offence.

4. After giving careful consideration to the submissions, we have not found convincing reason for sustaining the Commissioner's order. The import was made on 10.4.95 and the Bill of Entry was finally assessed by the proper officer of Customs who accepted the declarations of the party. Later on, a few quotations came to the notice of the Customs authorities, one relating to goods with Hong Kong as its country of origin and the other relating to goods with Dubai as its country of origin. One of these quotations was dated 14.2.96 and the other was dated 31.8.94. Neither of these quotations, if assumed to be otherwise admissible evidence, is contemporaneous vis-a-vis the subject import.

It is settled law that assessable value of any imported goods cannot be determined on the basis of a mere quotation, though it could be determined on the basis of contemporaneous import specifically covered by Bills of Entry duly assessed by the department. Such data relating to contemporaneous imports are not available in this case. The adjudicating authority chose to enhance the value of the goods on the basis of the aforesaid quotations. Whether the statements recorded abroad by officers of the Enforcement Directorate under certain provisions of the Foreign Exchange Regulation Act without the requisite sanction from the competent authority have any evidentiary value for Customs purposes is yet another question, which we do not propose to address at this juncture as the Hon'ble High Court is seized of that question. For the present purpose, it would suffice to say that the decision of ld.Commissioner to reject the declared value without stating valid reason cannot be sustained in law. The respondent has not placed on record any alternative evidence stated in the SCN, to support the enhancement of value done by the Commissioner.

5. The impugned order also contains a finding that the appellants are liable to be penalized under Section 114A of the Customs Act, though no such penalty has been imposed on him. The finding cannot be upheld for the simple reason that Section 114A was not in force when the alleged offence was committed by the appellant.

6. In the result, while rejecting the counsel's objection that the SCN was issued under Section 124 and hence the demand of duty contained therein is not sustainable in law, we hold that the order of the Commissioner is also unsustainable in law and we set aside the same.

The appeal stands allowed with consequential relief to the appellants.