

Gaitri Exports and ors. Vs. Cc

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Aug-14-2007

Reported in : (2007)(123)ECC50

Judge : S Kang, Vice, N T C.N.B.

Appellant : Gaitri Exports and ors.

Respondent : Cc

Judgement :

1. Common issue is involved in these appeals, therefore, are being taken up together. The appellant filed appeals against the impugned orders passed by the Commissioner of Customs. The appellant made import of PC sheets and declared as were manufactured out of recycled poly carbonate resin/waste. The appellant declared the value of the goods @ US \$ 600 PMT to \$ 640 PMT. 2. The Revenue increased the value to US \$ 1040 MTs on the basis that another importer of M/s Sidhartha Polymers Ltd. who imported the same goods by declaring the value @ US \$ 1040 MTs. The appellant accepted this enhanced value and goods were cleared on payment of appropriate duty. Thereafter show-cause notices were issued to the present appellant, as well as to M/s Sidhartha Polymers Ltd. on the ground that the goods in question were not manufactured out of recycled poly carbonate resin and in fact the goods were of prime quality and made from virgin polymer. The Revenue collected evidence by way of a sample from Dubai and got compared the impugned goods with the sample obtained from Dubai to show that the goods are of prima quality and not made from recycled polycarbonate and

Revenue also obtained the information regarding the value of prime goods from the exporting country and come to the conclusion that appellants misdeclared the value of imported goods the enhanced value of goods to US \$ 3580 PMT. The adjudicating authority confiscated the goods on the ground of mis-declaration and also enhanced the assessable value as proposed in the show-cause notices.

3. The contention of the appellant is that samples from the consignments in question were taken by the Custom authorities and were sent to CRCL and after that the value was enhanced to US \$ 1040 PMT which is accepted by the appellant. The contention is that the second time enhancement of the value already enhanced is not permissible. It is also submitted that the samples taken from the consignments were got compared with a sample obtained from Dubai. The contention is that the sample obtained from Dubai cannot be considered as sample of the prime quality as there is no evidence in support of this. The contention is that the test report relied upon by the Revenue are only to the extent that samples of the consignments in question are similar to the sample obtained from Dubai. The contention is that the appellant enquired from the foreign supplier i.e. M/s Sehwa Polytech and the foreign supplier stated that they had not supplied any such material to the Dubai firm from whom the samples were obtained by the Revenue and the Dubai firm is not their dealer. The contention is also that Revenue obtained a certificate about the material obtained from Dubai and the foreign supplier denied the issuance of such certificate. The foreign supplier even informed that there was no export Director by the name who signed the certificate.

4. The appellant also submitted that the sealed samples were got tested by the appellant to Central Institute of Plastic Engg. & Technology, Amritsar and Ahmedabad and the report of samples is very specific that samples are regenerated material.

5. In respect of valuation, the appellant's contention is that as the goods in question are not of prime quality, therefore, the same cannot be assessed at the value of the prime quality goods. The appellants also submitted that information supplied by the Consulate General of India, Hong Kong regarding value of prime quality goods was not specific. The information of value is in respect of plates,

sheets, films, foils, strip of poly carbonate classifiable under Tariff Heading 39206100. As this information is in respect of plates, sheets etc.

therefore, the assessment of imported goods on the basis of this data is not sustainable. The appellant also pointed out that the description of goods in the document is as under : Export from Korea to India of the goods under Heading No. 39206100. As the Tariff Heading 39206100 covers many items such as sheets, films, plates foils etc, therefore, it cannot be said that this information is regarding sheets only.

6. The appellant also emphasized that on the same evidence, the Revenue enhanced the value of goods imported by M/s Siddhartha Polymers Ltd. and on appeal filed by M/s Siddhartha Polymers Ltd. the Tribunal vide Final Order No. 334-335/07 dated 19.6.07 set aside the adjudication order.

7. The contention of the Revenue is that the appellant mis-declared the goods in respect of description as the goods are of prime quality, therefore, liable to be assessed at the rate applicable to the prime quality goods. The Id. SDR while arguing the case heavily relied upon the findings of the adjudicating authority.

8. In this case, the appellants are not contesting the first enhancement in respect of value of goods. The Revenue wants to further enhance the value of the goods on the ground that the goods are of prime quality and are not of recycled poly carbonate resin. For this, Revenue relying upon the samples obtained from Dubai. The appellant made import of the goods from Korea and Taiwan, the case of the Revenue is that the samples obtained from the Dubai is of prime quality sheets.

The Revenue also obtained certificate from Dubai alleged to be issued by the foreign supplier i.e. M/s Sehwa Polytech to the effect that the sample is of prime quality sheets. Enquiries were made and on verification with the foreign supplier disclosed that such material was supplied to Dubai firm and the certificate was not issued by the supplier and even informed that there was no Director with the name who signed the certificate. The Revenue sent the samples obtained from Dubai and the samples from the consignments in question for testing and the test report only shows that the seized samples are similar and comparable in nature, the

standard sample obtained by the Revenue.

There is no test report to the effect that the samples obtained from seized consignments are of prime quality sheets. We find merit in the contention of the appellant that there is no evidence to show that the goods imported by the appellant are of prime quality sheets made of virgin polymer.

9. In respect of valuation, we find that the Revenue obtained certain information from the Consulate General of India, Hong Kong which is in respect of goods classifiable under Tariff Heading 39206100 which covers sheets, films, plates, foils, strips of poly carbonate resin. As the material collected by the Revenue was not specific in respect of the goods in question, therefore, cannot be made basis for enhancement of value.

10. As we find that the Revenue failed to prove that the goods in question are not from recycled material, therefore, the value enhanced on the basis of goods manufactured from virgin polymers is also not sustainable. We also note that on the same evidence, the Revenue enhanced the value of the goods imported by M/s Sidhartha Polymer Ltd. and after considering the chemical report which is regarding imported goods and sample obtained from Dubai and the information collected from Korea regarding value of goods set aside the finding in respect of mis-declaration of the same goods and set aside the demands and penalties. In view of above discussion, the impugned orders are set aside, the appeals are allowed.

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