

Collector of Customs Vs. India Polyfibres Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Sep-16-1988

Reported in : (1988)(18)ECC132

Appellant : Collector of Customs

Respondent : India Polyfibres Ltd.

Judgement :

1. Landing charges are levied by the respective port authority on goods imported into India. Such charges normally work out, on an average, to around 1 % of the C.I.F. price of the goods. As a part of the cost of delivery of the goods at the place of importation, these charges form a component of the assessable value of the goods for levy of customs duty.

2. The customs duties have to be assessed and paid before the goods could be cleared from the port premises. Since the amount of actual landing charges that would be levied on the consignment at the time of its clearance is not known at the earlier stage of assessment and payment of customs duties, it has been an established practice in the Customs Houses to adopt an average rate, worked out on the basis of the total landing charges collected and the total C.I.F. value of the goods imported in the previous year(s). The average rate of landing charges so determined is revised periodically on the basis of actuals of the preceding year(s) at the respective port.

3. The same practice was followed in the case of present respondents and landing charges at the average rate of 1% were added to their C.I.F. price. However, in the present case, the Ld. Collector (Appeals) accepted the claim of the respondents that the actual amount of landing charges alone should be added for arriving at the assessable value. The department, perturbed by the implications of this order, is now in appeal before us.

4. We cannot support the Ld. Appellate Collector's order for the simple reason that it would make the working of the assessment procedures almost impractical. We have already stated in the preceding paragraph that the actuals are not known in advance when duties are assessed and paid. If the respondents' point were to be accepted, lakhs of assessments all over the country would have to be made on provisional basis. The statutory provisional assessment procedure itself involves complicated formalities, including execution of a bond and giving of bank guarantee/security etc. After the actuals become available, such lakhs of assessments would have to be re-opened, resulting in refunds or recoveries. Rare cases apart, the amounts involved in each individual case would be very small. This is so because the landing charges themselves form only a fraction of the import price and the difference between the average amount and the actual amount would further be a fraction of that fraction. A Division Bench of the Hon'ble Gujarat High Court [1982 ELT 203 (GUJ.)] *Prabhat Cotton & Silk Mills Ltd. v. Union of India*, had an occasion to comment adversely on the litigation involved in numerous challenges to validity of inclusion of landing charges in the customs assessable value. The considerations which had weighed with the Hon'ble High Court, inter alia, were enormous number of cases on the one hand (running into hundreds of thousands) and pettiness of the amounts involved in individual cases on the other. We observe that while the amounts, by way of a fraction of the landing charges themselves, would, by and large, be still more tiny in individual cases, the number of consignments imported over the years has grown. We hear almost every day the trade and industry clamouring for simplification of procedures in our country. And yet in the present case the respondents ask us to support undoing of a simplification which, by a practice accepted since over a century, has become an established part of the customs assessment. We see nothing wrong or illegal in averaging of the landing charges. The interpretation of law has to be a

practical one. Taken as a whole, neither the Government nor the importers stand to lose or gain. We see no reason, therefore, to upset the existing procedure and thereby add enormous amount of infructuous work for the custom houses as well as for lakhs of importers.

5. In the result, we set aside the impugned order-in-appeal and restore the Assistant Collector's Order-in-Original. The appeal of the department is, accordingly, allowed.

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