

Cc Vs. Venus Enterprises

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Dec-27-2007

Reported in : (2008)(127)ECC164

Judge : J Balasundaram, Vice-

Appellant : Cc

Respondent : Venus Enterprises

Judgement :

1. In this case, 100 pcs. of old and used photocopier machines-low duty, medium duty and heavy duty were confiscated by the authorities below on the ground of mis-declaration of value - the value has been enhanced from Rs. 9,13,934/-, as declared, to Rs. 14,25,110/- on the basis of market inquiry. The adjudicating authority imposed a redemption fine of Rs. 7,60,000/- and penalty of Rs. 50,000/-, which was reduced by the Commissioner (Appeals) to Rs. 1,00,000/- and Rs. 20,000/- respectively. Aggrieved by this reduction in the quantum of fine and penalty, the Revenue has filed this appeal.

2. I have heard the learned DR and perused the record. None appears for the respondents in spite of notice.

3. In arriving at the finding that the quantum of fine is required to be reduced, the lower appellate authority has relied upon VAT paid sale bills/invoices of same items in which the market value of low duty photocopier machine was shown as

Rs. 10,000/- per piece, the market value of medium duty photocopier machine was shown as Rs. 15,000/- per piece, and the market value of heavy duty photocopier machine was shown as Rs. 26,500/- per piece. I see merit in the submission of the Revenue that since the goods are old and used, namely, second hand items, their value cannot be equated with those shown in VAT paid sale bills/invoices, for obviously, not the same items, but similar items.

In the case of old and used goods, there can never be any identical goods for the reason that the wear and tear of each item will depend upon their age and other factors. Once the Commissioner upheld the enhancement of value of the goods, the only factor that he could have kept in view, for the purpose of reduction in quantum of fine, is the demurrage/detention charges incurred by the importers. (He kept this factor also in mind.) Since the Commissioner (Appeals) has erred in accepting the value as shown in same VAT paid sale bills/invoices of some other items, when there is no material on record to show that those items are even similar to those imported by the importer herein, the reduction to the extent, as in the impugned order, cannot be sustained. However, the prayer of the Revenue for enhancement to the same level of fine, as imposed by the adjudicating authority, also cannot be accepted as detention/demurrage charges have to be kept in view, while arriving at the quantum of fine to be imposed in such a case.

4. Keeping in view all the relevant factors, I hold that a fine of Rs. 4,00,000/- (rupees four lacs only) will be sufficient to meet the ends of justice. Accordingly, the fine imposed by the lower appellate authority is set-aside and it is enhanced to Rs. 4,00,000/-.

5. As regards penalty, I do not find any reason to interfere with the quantum thereof as the reduction is only from Rs. 50,000/- to Rs. 20,000/-.

In the result, the appeal is partly allowed by enhancement in the quantum of fine to be imposed upon the importers.

(Dictated and pronounced in the open Court on the 27th day of December, 2007)