

Prem Kumar Vs. Collector of Customs

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jan-06-1989

Reported in : (1989)(21)LC242Tri(Delhi)

Appellant : Prem Kumar

Respondent : Collector of Customs

Judgement :

1. The appellant imported a new Toyota Starlet Car of 1982 Model. The dispute in this appeal relates to valuation of the said car for the purpose of assessment of customs duty.
2. The appellant produced the manufacturer's invoice. He claimed 15% discount on the invoice price. The Assistant Collector accepted the invoice price without giving the benefit of 15% discount. He held that the invoice already represented the discounted price. The first appeal filed by the appellant before the Collector (Appeals) on this ground as well as on some others filed. In the second appeal filed before this Tribunal, the appellant pressed for the following 5 reliefs at the time of the hearing before us. We shall deal with them item-wise.
3. The appellant contended before us that the invoice price was not a discounted price. The learned representative of the department maintained, on the basis of his experience in the customs department, that the invoice price to the export passengers (like the present appellant) was a discounted price. He, therefore, opposed the grant of any further discount to the appellant. However, he had no

objection to the car being assessed at the manufacturer's net price to whole-sale dealers in the course of international trade. But there could be no further 15% discount on the already net wholesale price. 15% discount was given on the retailers' list price.

We have had the benefit of experience of dealing with a large number of cases of valuation and assessment of imported cars. It is well within our knowledge that the general practice of the customs department is to base the valuation on the World Car Catalogue Price and give 15% discount thereon. The idea is to get at the price at which the like goods are ordinarily sold in whole-sale in the course of international trade, as required by Section 14(1)(a) of the Customs Act, 1962. Resort is had to the individual invoice prices of the passengers only if the World Car Catalogue Price of the model is not available. We order that the same basis should be followed in the case of the present appellant also and his car re-assessed on the basis of the World Car Catalogue Price of the same model less 15% discount. On our asking, the appellant was not in a position to show us the World Car Catalogue Price but he maintained that the said price was available with the Custom House. In case the World Car Catalogue Price is not available with the Custom House, the customs may ascertain the manufacturer's net price to whole-sale dealers in the course of international trade in any other manner. If this course is also not feasible, the assessment may be maintained at the appellant's invoice price. There is no question of granting the 15% discount on the individual export passenger's invoice price.

4. The appellant pleaded that freight, insurance and landing charges should not be added to the basic price of the car to arrive at the assessable value under Section 14. He gave two reasons in support of this plea. First, he said no such addition was made when excisable goods manufactured in India were valued under Section 4 of the Central Excises & Salt Act, 1944, for the purpose of charge of Central Excise duty. Second, he maintained that since the appellant had purchased the car in Japan and had become its owner in that country, freight insurance and landing charges could not be added for valuing his car.

The appellant's plea is not acceptable. Section 14 of the Customs Act, 1962 requires that valuation should be done on the basis of the price for delivery of the goods at the place of importation. The imported goods have to be valued according to this provision. Seeking analogy of a different enactment which deals with locally manufactured goods is a totally mis-conceived exercise. No imported goods can be delivered at the port of importation in India without incurring the ocean freight, marine insurance and landing charges. These charges have, therefore, been correctly added to the basic price of the car. Section 14 makes no distinction between an importer who becomes owner of the goods abroad and another who becomes owner on negotiating the import documents in India.

5. The appellant claimed depreciation for running of the car from the factory of manufacture to the port of loading in Japan. Depreciation is given if the car is possessed and used abroad. Here, the appellant purchased a brand new car and loaded it for shipment to India. He did not use the car abroad. No depreciation as asked for is permissible.

6. The appellant pleaded that since no additional customs duty was leviable under the Central Excises & Salt Act, the said additional duty could not be included in the excise duty equivalent and charged as additional customs duty on the imported car.

We observed that the appellant appears to be labouring under some misconception. Excise duty is charged on the goods manufactured or produced in India. Customs duty is charged on the goods imported into, or exported from India. There is no question of charging additional customs duty on the goods produced or manufactured in India. However, in the case of imported goods, the charging section is Section 12 of the Customs Act, 1962. Section 12 authorises charging of customs duty at the rates as may be specified under the Customs Tariff Act, 1975.

Section 3 of the Customs Tariff Act, 1975 separately specifies the rates for basic customs duty and additional customs duty both of which are to be charged on the imported goods. The additional customs duty is also very much a duty of customs. Just because its rate generally happens to be equivalent to the excise duty chargeable on the like goods manufactured in India, it does not cease to be a

customs duty [1985 (20) ELT 222 (S.C.) - Khandelwal Metal & Engineering Works and Anr. etc. v. Union of India and Ors.]. The additional customs duty on the car imported by the appellant has been correctly charged and there is, therefore, no refund due to the appellant on this count.

7. Finally, the appellant pleaded that the air-conditioner fitted in his car should not be assessed separately, since the invoice furnished by him showed a composite price for the car and air-conditioner.

This plea is also not acceptable. An air-conditioner is not an essential component of the car. It is not even a standard part of the car. It is an optional accessory and is supplied to only those purchasers of cars who asked for it. The department has, therefore, correctly assessed the air-conditioner separately under Heading 84.12 of the Tariff.

8. In the result, the appeal is allowed partly in terms of paragraph 3 above only and is otherwise rejected. Consequential relief, if any due, on re-assessment of the basic price of the car, should be allowed to the appellant.

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