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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Apr-17-1990

Reported in : (1990)LC534Tri(Delhi)

Appellant : Honesty Traders

Respondent : Collector of Customs

Judgement :

1. This appeal arises out of and is directed against the Order-in-Original No. 830/10/90 Ap. Cus. dated 1-2-1990 passed by the Collector of Customs, Cochin.
2. The appellants M/s. Honesty Traders imported 17 packages containing 2,40,000 pcs. (20,000 dozen) YKK Zip fasteners 8 inches made in Taiwan from Singapore. A bill of entry bearing No. 167 of 11-12-1989 was filed in the appraising Department (Imports), Customs House, Cochin. The Unit price of the goods as per invoice from the suppliers was S \$ 0.73 per dozen, i.e. Rs. 6.25 per dozen or Rs. 52/- for 100 pcs. On examination by the Department the goods were found to be tallied with the description as per Bill of Entry but the value shown thereon at Rs. 52/- for 100 pcs. was very low and goods were undervalued. According to Department there has been contemporaneous import of identical goods from Singapore at the price of J Y 1159 per 100 (Rs. 136.75) and at that rate the total of price of the goods worked out to Rs. 3,28,212/- against Rs. 1,25,027/- declared and release advice produced for the clearance did not cover the full value of the goods. Accordingly, a Show Cause notice dated 19-1-1990 was issued to the importers calling upon them to explain as to why the goods should not be

confiscated and penal action taken against them for the charges (i) imported goods were not covered by the valid licence and the importation of goods was in contravention of ITC Order No. 17/55 dated 17-12-1955, constituting an offence rendering the goods liable to confiscation Under Section 111(d) of the Customs Act read with Section 32 of Import and Export Control Act, 1947 and (ii) for undervaluing the goods which constitutes an offence rendering them liable for confiscation under Section 111(m) of the Customs Act.

The show cause notice was duly answered by the appellants questioning the validity of issue of show cause notice dated 19-1-1990 as the goods have already been assessed by enhancing the price S \$ 0.73 to S \$ 0.80 per dozen by the Assistant Collector, the same order cannot be reviewed, much less it could be reopened. On merits, they replied that the price quoted was the contracted price between the importer and the supplier. They also produced some invoices from Bombay Custom House at the rate of S \$ 70 and 66 as unit price for identical goods to show that enhanced price of the goods at S \$ 0.80 in the B/E in question compared well with the price of identical goods noticed at Bombay.

Further it was contended by them that contemporaneous invoice relied upon by the Department did not show the country of origin of the goods and quantity shown therein is only 7400 pcs. as against 2,40,000 in the consignment under dispute. It was also explained by them that products of Taiwan are cheaper than the Japanese.

3. The Collector of Customs, Cochin who adjudicated the proceedings negated all the contentions raised by the appellants and confirmed the charges holding that the goods have been undervalued based on the invoice dated 24-5-1989 of YKK Zippers(S) Pvt. Ltd., Singapore for Zip fasteners at J Y 1159 for 100 pcs. noticed in Bombay. Accordingly, the Japanese Y 1159 for 100 pcs. as unit price was fixed as assessable value of the goods in question and ordered for confiscation of the goods under Section 111(m) of the Customs Act read with Section 3(2) of the Import and Export (Control) Act, 1947, but, however, option was given to redeem the goods on payment of fine of Rs. 75,000/- and personal penalty of Rs. 10,000 was imposed. Aggrieved by the said order the appellants have come before us by

way of this appeal.

4. We have heard Shri Sukumar Patt Joshi, learned Advocate, for the appellants and Shri L.P. Asthana, learned S.D.R. for the respondent.

5. Shri Sukumar Patt Joshi, learned counsel, appearing for the appellants submitted that impugned order suffers for want of jurisdiction as the order was passed based on the Show Cause notice issued by the Assistant Collector who has originally assessed the goods on the Bill of Entry, which virtually amounts to power of review and that review power is not vested in him under the Statute. On merits, he contended that alleged contemporaneous invoice relied upon by the Department did not show the country of origin of the goods and quantity shown is very meagre of 7400 pcs. as against 2,40,000 pcs. of Taiwan goods in the present dispute. The invoice relied upon by the Department as held by the Collector pertains to goods produced in Japan and quantity of goods produced in Taiwan is inferior to those produced in Japan and the prices of these goods cannot be compared with that of Japan. He said that Collector erred in making remarks that invoices produced by the appellants omit important details like brand name and country of origin whereas the invoice clearly speaks brand as YKK Zipper Fasteners and country of origin is of Taiwan. He argued that burden squarely lies on the Department to prove the undervaluation of the imported goods by bringing contemporaneous imports on the record with identical goods of same quality, quantity and with that of the same origin of country at the relevant time of importation. But in the present case it failed in discharging the burden and contemporaneous import brought on the record is neither a country of same origin nor tallies in quality and sample. He said that on the other hand the appellants themselves have produced sufficient evidence to show that price shown in the invoice was reasonable by adducing invoices of similar imports in Bombay, Madras and Delhi and other places. Copy of the order passed by the Collector of Customs (Madras) on similar issue in the case of Prakash Trading Company, Bombay wherein it was held in favour of the party on similar evidence, was also produced before the Adjudicating authority. These material evidences were not considered by the Collector while determining the assessable value. He submitted that the transaction between the importer and the supplier is at arm's length which

is not disputed in the present case and the burden lies on the Department to prove the charge of misdeclaration by acceptable evidence and contemporaneous import should be the products of the country of the same origin. In support of his contention he relied upon the following decisions :-Janatha Traders, Bombay v. Collector of Customs, Bombay - 1988 (34) ELT-65.Automotive Enterprises v. Collector of Customs, Bombay -1985 (22) ELT-283.Walia Enterprises, Amritsar v. Collector of Customs & Excise, Chandigarh 6. Shri L.P. Asthana, learned SDR, for the revenue while countering the arguments submitted that making entries in the Bill of Entry by the Assistant Collector at the original instance was not an order which was appealable and the original order is passed by the Collector of Customs as an adjudicating authority which is the subject matter of the present appeal. Alternatively he argued that assuming that it was an order even then the order passed by the Collector is in order as the review power vests with him to review the order passed by the authorities below. On merits, he argued that products of contemporaneous invoice tallies with the imported products in brand as it is same brand 'YKK' and specification LFC 8 inches'. He said that there cannot be a huge price difference between the imports and the contemporaneous invoice on similar goods as rightly held by the Collector and justified the order passed by the Collector while determining the assessable value of the goods based on contemporaneous invoice of Japanese goods.

7. We have considered the arguments advanced on both sides and perused the records. On point of issue of jurisdiction we feel that mere change of entries made by the Assistant Collector in B. of Entry cannot be construed as an order. Neither it is a speaking order nor effective unless some reasons are recorded for such order. The order-in-original passed by the Collector of Customs as an adjudicating authority is within his jurisdiction and in conformity with the provisions of the Statute. The contention raised by the appellants on the point of jurisdiction is not sustainable in the eye of law and accordingly they fail on this issue.

8. As regards valuation we have to consider whether material relied upon by the Department is sufficient to prove charge of misdeclaration and to determine the assessable value based on such material.

9. The Collector of Customs has proceeded to determine the assessable value by taking into consideration that price shown by the appellants is very low as compared to the contemporaneous import of YKK Zip fasteners noticed at Bombay. According to the provisions of Section 14(1)(a) of the Customs Act, 1962, the value of the goods for the purpose of charging customs duty at ad valorem rate shall be deemed to be the price at which such or like goods are ordinarily sold or offered for sale for delivery at the time and place of the importation or exportation, as the case may be, in the course of International Trade where the seller and the buyer have no interest in the business of each other and price is the sole consideration for sale or offer for sale.

Accordingly for comparison of the value the goods should be same in respect of physical characteristic, quality, reputation, country of origin, timing of import. In the present case he has compared price of Zippers of Japan origin against Taiwan origin and that too quantity of 7400 pcs. as against 2,40,000 pcs. The material evidence that he has gathered, may be sufficient for suspecting the value shown in the invoice. But that itself is not sufficient to hold for misdeclaration or undervaluation and to enhance the value in the absence of corroborated evidence. The burden lies more on Department in discharging the charge of undervaluation. Undervaluation must be proved with the corroborated evidence. There is nothing on record to show that dealings between the importer and supplier are not at arm's length or that the price charged by the supplier is not fully commercial one.

Assessable value cannot be determined on the basis of mere assumption and presumption. Suspicion, however, grave but it will not substitute for positive proof of evidence. In *Automotive Enterprises v. Collector of Customs, Bombay*, reported in 1985 (22) ELT-283, this Tribunal has held that under Section 14(1) (a) of the Customs Act, 1962, the value for the purpose of assessment of duty would be the deemed value as provided for under the said Section even if the invoice price is proved to be true price as agreed between the parties, for it is the International market price which is the "value" for the purpose of customs duty. Similar view was held by this Tribunal in the case of *Consolidated Coffee Ltd., Pollibetta v. Collector of Customs, Bombay*, reported in 1986 (24) ELT-249. We fully concur with this view.

Accordingly, in the present case, based on available material and evidence adduced by the appellants in respect of product in question it seems comparable quantities of the same product of the country of the same origin have been imported at relevant point of time in the main Centres of Bombay, Madras & Delhi for S \$ 0.82 per dozen. It seems that even at first instance the Assistant Collector has made up his mind to pass orders for clearing the goods by taking this price as the basis to determine the assessable value. On facts and circumstances of this case, we feel that this is the price to be taken as basis to determine the assessable value. Accordingly the assessable value of the goods has to be redetermined at the rate of S \$ 0.82 per dozen.

10. With these observations we set aside the impugned order and appeal is allowed with consequential relief to the appellants.

11. I agree with the conclusions drawn by Shri Brahmadeva, Member (Judicial). In my view, however, the difference in the country of origin is not material for valuation if the goods originating from two countries are of the same brand and quality. In the present case, the Collector has compared the price of "YKK" brand and LFC 8 inches specification of Japanese origin Zip fasteners with the Zip fasteners of the same brand and specification of Taiwan origin. These are comparable goods for the purpose of Section 14(1) (a) of the Customs Act. However, there was huge difference in the quantity of imports in the two consignments under comparison. The appellants cited contemporaneous imports at comparable prices. Therefore, at least the benefit of doubt should be extended in their favour, particularly when there is no conclusive evidence to prove undervaluation. Appeal is allowed.

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