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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Nov-21-1990

Reported in : (1991)(32)ECC235

Appellant : Videotronics

Respondent : Collector of Customs

Judgement :

1. The facts relevant for a decision in this matter are that in April 1983 the appellants imported video cassette tapes under two bills of entry. They declared a total value of Rs. 87,338/- (30 HK\$ per cassette). After some enquiries and due process Customs raised the assessable value of the goods to 57 HK\$ fixing the total assessable value at Rs. 1,36,052.16 paise GIF. The goods were confiscated and a fine of Rs. 30,000/- was levied as also a penalty of Rs. 15,000/-.

Hence this appeal.

2. Shri Sridharan, the learned Advocate submitted that the impugned order cannot be sustained because the so called price list of Erbis Engineering Company Ltd. Japan (Erbis price list for short) was not shown to the appellants in spite of a request being made. The learned Advocate argued that a copy of the price list as filed by the Revenue on 25-10-1990 before this Tribunal cannot be used against the appellants because it is an "edited" list not showing the addressee and in any event the appellants should not be confronted with such a document 7 or 8 years after the importation as they would be helpless in obtaining material for rebutting

the same. The learned Advocate further argued that the other bit of evidence on which the Customs acted was the catalogue issued by Andrews. He submitted that the Collector reduced the catalogue price by 40% to arrive at the assessable value of the imported goods and argued that the margin of 40% was entirely arbitrary. He had other arguments against any reliance on this piece of evidence but later the learned DR submitted that Customs entirely relied on the Erbis price list. Therefore, we are not going into this part of Shri Sridharan's arguments.

3. Shri Prabhat Kumar, the learned DR submitted that the Collector considered the value of similar goods when fixing the value of the imported goods. He referred to the efforts of the appellants to get the value fixed at the price of Akai cassettes whereas they imported TDK tapes. The learned representative advanced arguments supporting the margin of 40% given on the main order catalogue price but subsequently pointed out that as can be seen from the Collector's order reliance was placed only on the Erbis price list. Therefore, it is not necessary for us to examine in detail the learned representative's arguments about the validity of the 40% discount. In so far as the Erbis price list was concerned Shri Prabhat Kumar's argument was that while a copy of the price list was not supplied to the appellants, in all such cases the Tribunal has been consistently remanding the matter to the Customs for fresh adjudication. After hearing the appellants he pleaded that the same course of action may be followed in this matter also. He emphasised that there was no ground to expect any bias against the appellants. In this context the learned representative cited and relied on a judgment of the Tribunal in *Steel Tubes Products v. Collector of Customs* [1989 (44) ELT 97] with specific reference to paragraph 25 thereof. Shri Prabhat Kumar further argued that even if quotation does not bear any name it is valid and cited the judgment of the Bombay High Court, first passed by a Single Judge and then upheld by a Division Bench in *Satellite Engineering Co. Ltd. v. Union of India* [1983 (14) ELT 2177 (Bom.) and 1987 (31) ELT 356 (Bom.)]. Arguing that physical import of goods was not necessary to place reliance on a price list he cited the order of the Tribunal in *Honesty Traders v. Collector* (Order No. 389/90-A) (copy not filed). He also cited a judgment of the Tribunal in *Aarkeyess Imports Corporation v. Collector of Customs* [1988 (12) ETR 112 (Tribunal)].

4. In his rejoinder Shri Sridharan submitted that the Department cannot take advantage of their own omission to seek a remand at this late stage. He reiterated that a remand at this stage after 7 to 8 years of importation would harm the interests of the appellants.

5. We have considered the arguments of both sides. Shri Prabhat Kumar's assertions that reliance was placed only on the Erbis price list narrows down the area of dispute considerably.

6. There is no dispute that a copy of the Erbis price list (described so in the document) was not supplied to the appellants. The fact was admitted not only by the learned DR but it is clear from the impugned order itself.

7. The question is whether in these circumstances a remand would be in the interests of justice. The learned representative cited case law to argue that when such omissions are noticed there must be a remand. We have examined this document. Before proceeding to case law we take specific note of two aspects of the matter. These are that (i) the appellants made a request to the Collector for a copy of the document and the same was not given and (ii) it is now 7 years since the importation has taken place.

8. In *Steel Tube Products* (supra) the Tribunal remanded the matter to the Collector with a direction that full details of the contemporaneous imports relied on by the Collector should be given to them. We are aware that there are other appeals in which the Tribunal remanded the matters to authorities for compliance with the principles of natural justice. However, in our opinion there cannot be a claim for remand when the omission was made deliberately as is the factual position in this case. This position is clear from the impugned order which records the appellants' request for the document. There may be cases where in spite of such a circumstance the Bench may feel that in spite of a deliberate omission by Customs justice would be best served by a remand. However, in the present matter we do not feel that such would be the case as the importation took place 7 years ago, the price list of Erbis is not addressed to any one in India (it appears that in the photostat copy the address has been omitted; the original was not available before us) and as pleaded by the learned Advocate it would be

impossible for the appellants to make any rebuttal in view of the lapse of time and in the absence of any address on the document. Therefore, we do not consider that the evidence of Erbis price list can be taken on record and considered at this stage and we do not think that it would be in the interests of justice to remand the matter to the Collector to make good an omission which was deliberate and not explained till now.

9. In view of this finding it is not necessary for us to go into the other arguments regarding the validity of a price list in the absence of physical imports.

10. As according to the learned representative the valuation was based only on Erbis price list we have not found it proper to accept this document and remand this matter, the appeal has to succeed on the ground that the impugned order was not based on evidence. We find accordingly and allow the appeal.

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