

Orwo Films Vs. Collector of Customs

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : May-02-1991

Reported in : (1991)LC682Tri(Delhi)

Appellant : Orwo Films

Respondent : Collector of Customs

Judgement :

1. Since a common issue is involved in all these appeals, a common order is being passed.

2. The issue in all these appeals is whether in case of goods imported by air, in order to arrive at the value under Section 14 of the Customs Act for the purpose of assessment of Customs duty, freight to be included should be the air freight or the sea freight if such goods had been imported by sea instead of air.

2.1 The Collector (Appeals), Madras in identically worded order has stated as follows :- "In this case actual air freight is Rs. ... whereas FOB is Rs. ...

i.e. actual air freight is less than 20% of FOB. Actual air freight taken for assessment is in order. The appeal is rejected." 22 In appeal No. 1075/84-A Collector (Appeals), Bombay has observed as follows :- "It may be noticed that transportation of goods by air has now become normal mode of transport in the international trade. Moreover Section 14(1) refers to the price prevailing at the time and place of importation. In the present case the place of importation is airport.

In the first place it is very difficult to ascertain the sea freight for the goods at the material time when they are imported by air.

Secondly even if the said sea freight is ascertainable it would not be legally sound to accept the same as freight for the goods that were imported by air. In view of the fact that normal price for the goods ought to be determined with reference to the place of importation.

If the place of importation is airport and the goods have been imported from airport to airport, it would not be legally sound to substitute the air freight actually incurred with sea freight that might have been charged in respect of the same goods if imported from sea-port outside India to sea-port in India.

This view has also been upheld by the Govt. of India in the revision application No. 617 to 623/81 of 1981 dated 12-6-1981.

In view of foregoing I do not find any merit in the appeal. In the result the appeal is rejected." 3. The appellants have now urged that this issue has already been considered by the Tribunal in a number of matters and the Tribunal has observed as follows in appeal No. 353/80-A, 354/80-A and 549/80-A dated 15-2-1983 in almost identical words :- "In his order the Collector of Customs (Appeal), Bombay, rejected the Appellant's claim on the ground that import of goods by air was a normal trade practice and therefore the air freight payable thereon was acceptable for purposes of calculating c.i.f. value for purposes of Section 14(1) of the Customs Act, 1962. The Assistant Collector dealing with the same claim in his order dated 22-2-1980 rejected it as unsubstantiated. There is inconsistency in the two orders since evidently the Appellate Collector rejected the Appellant's claim on grounds which did not arise before the Assistant Collector, and without considering the documents placed before him. The Appellate Collector's order therefore needs further consideration.

2. It is conceded by Shri Nair, learned Senior Department Representative, that in cases like the present, the Custom Houses charge duty on air consignment by inclusion of only sea freight where sea freight for similar goods are ascertainable and the f o b price is given in the invoice or is ascertainable therefrom. Shri Nair

has not supported the order of the Collector (Appeals) in view of the assessment as has to be made in the said manner. The order of the Collector (Appeals), therefore, cannot be sustained.

3. We, accordingly, accept this appeal, set aside the order of the Collector (Appeals) and remand the case to the Appellate Collector for a fresh decision in the light of the observations made above.

It is also to be seen that the appellants are the same as in the present cases namely OR WO FILMS.⁴ It is also urged by the appellants that the same Collector (Appeals) has passed different orders allowing the appeals of the appellants herein vide order Nos. - The Appellants have further stressed that subsequently Collector (Appeals) have also accepted the claims of the appellants vide order Nos. - 5. Having regard to the aforesaid facts and circumstances and the decision already taken by the Tribunal, we feel that the matter is no longer *res integra*. The directions of the Tribunal as given in the orders dated 15-2-1983 mentioned *supra* should be followed. It has not been rebutted that the evidence given by the appellants regarding the sea freight is wrong. Consequently the appeals are allowed with consequential relief to the appellants.

6. Before parting with these matters we may mention about another ground referred to by Collector of Customs (Appeals), Bombay in appeal No. 1075/84-A. He has in his impugned order No. S/49-138/83-VL dated 16-4-1984 referred to Government of India's decision in revision application Nos. 617 to 623/81 dated 12-6-81. Although no citation is given, the reference is perhaps to Government of India's order-in-revision Nos. 30-B to 37-B/82 dated 12-2-1982 reported in 1982 (10) ELT 292 (GOI) in the case of Kirloskar Cummins Ltd. and Ors. We notice from para 7 of the said Report that the Government has arrived at its following decision :- "Going by the above test it cannot be suggested by any stretch of imagination that sea freight that would have been incurred in the event of the goods being imported by sea instead of air, should substitute the actual air freight incurred by the importers".

The aforesaid decision, we further notice has been arrived at by discussing the corresponding EEC Regulations and the practice which is prevalent in different

countries of European Community. It is a settled rule of law that each Act has its own scheme. The concept of EEC Regulations cannot be brought in for the purpose of Customs Act while determining the scope of Section 14. Further as para 7 itself indicates that the words used in the EEC Regulations are 'the place of introduction' rather than 'the place of importation'. The reasoning adopted by the Collector of Customs (Appeals), Madras in C3/2016/1982 dt. 7-7-1983 mentioned supra to the effect that "value of the goods as per Section 14 of the Customs Act is not affected by the mode of transport of the goods" is convincing and the reasons given by the Government of India do not appeal to us. We endorse the view of the Collector of Customs (Appeals) in C3/2016/1982 dt. 7-7-1983.

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