Pujara Packaging Vs. Collector of Customs

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Feb-03-1992

Reported in : (1992)(38)ECC370

Judge : J Balasundaram, P Kapoor

Appellant : Pujara Packaging

Respondent : Collector of Customs

Judgement :

1. This is an appeal against the order passed by the Additional Collector of Customs, Bombay. Briefly stated the facts of the case are that the appellants imported a consignment of second hand printing machines. In the bill of entry the goods imported in 6 cases were declared to contain "One Guilltone 45" Polar 115 Electromat and one Two Colour 46 x 64 cm complete offset press standard equipment" and clearance was claimed under OGL-Appendix 10(3) read with Appendix 2(12)(18) and of AM-83 Import Policy. On examination of the goods in the docks it was found that in addition to the declared goods one additional Two Colour Offset Printing Machine Model Solna 225 had been imported. In the Chartered Engineer's certificate produced by the importers (he imported paper cutting machine and the offset printing machine were shown to be of 1974 and 1975 make respectively and the residual life of the offset machine was indicated as 15 years. On the basis of the price of S.E.K. 210000 = Rs. 29,556 in respect of a Two Colour offset printing machine Model Solna 225 of 1975 make, having residual life of 10 to 15 years and reconditioning charges SEK 120000 = Rs.

16,889/- shown in the Chartered Engineer's certificate relating to the machine imported by M/s. D.S. Sawant and Sons the lower authorities felt that the price of each unit of the imported Solna 225, Two Colour offset printing machine could not be less than Rs. 2,70,000/-. Further, having regard to the fact that the second-hand Polar 115 EC machine was priced at 7950 = Rs. 12,500/- as per the price-list issued by M/s.

Jackal International Co., a well known supplier of second-hand machinery the value of the imported "Guilltone 45" Polar 115 Electromat machine was assessed at Rs. 12,500/-. Thus the total value of the imported machines was worked out to Rs. 6,65,000/- as against the declared value of Rs. 2,81,193/- and the appellants were charged with undervaluation to the extent of Rs. 3,83,807/- and attempted evasion of duty amounting to Rs. 2,91,693/-. The appellants' contention that the extra Two Colour Offset machine was shipped by the supplier by mistake and the unit price of such second-hand machines was Rs. 1,50,000/-was rejected by the Additional Collector who in the impugned order determined the value of the imported machines at Rs. 6,65,000/- as against the declared value of Rs. 2,81,193/-. Though it was held that the importers were liable for penal action for having misdeclared the number of printed machines imported by them, the adjudicating authority took a lenient view and ordered the goods to be released on a warning.

2. On behalf of the appellants we heard the learned consultant Shri A.S. Sunderrajan. He contended that the order of adjudicating authority determining the value of the imported second-hand Two Colour offset printing machines on the basis of the assessed value of similar second-hand machines imported by other importers was erroneous. He added that similarly the determination of the value of the imported second hand "Guilltone 45" Polar 115 Electromat machine on the basis of the price list of similar used machine issued by some other supplier was not permissible. He stated that the value of a second hand machine cannot be determined on the basis of any other second hand machine of the same make and model since the condition and residuary life of one second hand machine would differ from the other depending upon the manner and extent of use [of] each one of them. He added that the appellants' explanation that the extra two colour offset

printing machine was shipped by mistake had been accepted by the adjudicating authority. He contended that under these circumstances and having regard to the fact that there was no evidence to show that the importers and the suppliers were related to each other or any amount in addition to invoice price had been remitted there was no justification for rejecting the declared unit price of the imported machines. In support of his contentions he cited the following case law:- 3. On behalf of the Revenue, the learned JDR Shri Satish Kumar placed reliance on the impugned order. He stated that the appellants had misdeclared not only the number of machines imported in the consignment but also the unit price of the machines. He contended that it was permissible to determine the value of the imported second-hand two colour offset Solna 225 printing machine of 1975 make under Section 14(1)(a) on the basis of the value of identical used machine of 1975 make. He pleaded for the rejection of the appeal.

4. We have examined the records of the case and considered the submissions made on behalf of both sides. It is seen that the appellants' case is that in the absence of any evidence to the effect that the seller and the buyer were related to each other or any amount in excess of the invoice value having been paid to the seller, the invoice value of the imported second hand machines would be the assessable value under Section 14(1)(a). It has been contended that the value of a second hand machine is not determinable on the basis of the value of any other similar second hand machine imported at or about the same time. In this regard we find that in the case of Rakesh Press, New Delhi v. Collector of Customs, Bombay the Tribunal had observed that there being no regular imports of second hand machinery in the country, the provisions of Section 14(1)(a) of the Customs Act, 1962 can hardly be of help in determining the valuation of such goods and the exercise of comparing the goods imported by one importer with goods of another importer, cannot be treated as legally leviable. Paragraph 6 of the said decision being relevant is reproduced below:- We have given very careful consideration to the submissions made by Shri Narasimhan and the stand taken by the learned S.D.R. We see a lot of force in the grounds urged by the learned Counsel for the appellants. We have had occasion to deal with a number of appeals where the charge of under- invoicing was in dispute. Some [of] these cases have been referred to by Shri Narasimhan. The burden of proving the charge of under-

invoicing lies squarely on the Department. It is an unquestionable proposition of law. Before discarding the valuation declared by a party, it is incumbent on the part of the lower authorities to take pains in making detailed enquires, collect materials and after such effort has gone into and adequate evidence is available on record, only then it is open to the lower authorities to enhance the value on suitable basis. We are afraid that nothing of the sort has been done in the present case.

There are no regular imports of second-hand printing machines in the country and, therefore, provisions of Section 14(1)(a) of the Act can hardly be of any help in determining the valuation of such goods. Further-more, valuation of second-hand machinery falling in different age groups...with different residual life, coming from different sources etc. is undisputedly a difficult task. This fact necessarily, therefore, casts a heavy responsibility on the lower authorities to collect evidence which could stand the scrutiny of judicial or quasi-judicial forums. The exercise done by the learned Collector by way of comparing the appellants' goods with similar goods imported by another importer and thereafter fixed the value of the appellants' goods in the manner adopted in this case, can hardly be treated as legally tenable based as it is, on one solitary instance, where we find the goods were not comparable in all aspects. Taking the evidence on record and after a very careful consideration of the same, we are of the view that the charge of under-valuation levelled against the appellants is not established on account of insufficient supporting evidence. We are, therefore, constrained to set aside the Collector's finding in this behalf and direct that the value declared by the appellants be accepted, in the absence of any acceptable evidence contra.Tara Art Printers, New Delhi v. Collector of Customs, BombayRakesh Press New Delhi v. Collector of Customs, Bombay the tribunal had held that the determination of the value of a second-hand printing machine by the Collector on the basis of the price at which a similar second-hand machine was imported by another importer was arbitrary and a charge of under-valuation cannot be held to have been proved on the basis of such evidence.

5. Similarly, in the case of Sanghvi Swiss Refills P. Ltd. v. Collector of Customs reported the Bombay High Court while reversing the order of the revisionary authority rejecting the invoice price of a second-hand machine, had observed that

"it is well known that there is variation or fluctuation in the price of machines and more so when the old machines are discarded in the foreign market".

6. On the ratio of the decisions quoted above we hold that the order passed by the Additional Collector determining the price of the imported second-hand Solna 225, Two Colour offset printing machines, on the basis of the import price of a similar machine imported by another importer and the price of the 'Guilltone 45" Polar 115 Electromat' on the basis [of] the price list issued by another supplier of second hand machinery is nor sustainable. In our view the assessable value of the imported goods comprising of two second-hand "Solna 225 - Two Colour offset printing machines" and one old 'Guilltone 45" Polar 115 Electromat' machine was determinable on the basis of the unit price of each type of machine as indicated in the supplier's invoice. Since the case records do not contain the invoice and the Chartered Engineer's certificate, we remand the case to Assistant Collector for determining the assessable value of the machines and the consequential relief to the appellants, if any.

7. The appeal is, therefore, allowed in the above terms by way of remand.