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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Nov-19-1993

Reported in : (1994)(72)ELT634TriDel

Appellant : Didar Singh

Respondent : Collector of Customs

Judgement :

1. This appeal is directed against the order, dated 27-4-1992 passed by the Additional Collector of Customs, Bombay Customs House. The brief facts are that the appellants had imported a consignment described as "20 units-spares for trawlers, namely, used Diesel Engines". On examination, goods were found as old and used Diesel Engines and as detailed below :(1) ISUZU 4FB1 9 Nos.(2) Isuzu Turbo 4FB1 both above were found 1 No. suitable for motor vehicles All above were found fitted with gear box, clutch, exhaust manifold, starter, dynamo, fan, belt and fuel injection pump." 2. The Customs found that the imported goods were capable of being used in the market in Premier Padmini Fiat Model Cars as replacement for petrol Engine. The goods, further, were found to be having the characteristic, which would enable being used in automobile like gear box, clutch, exhaust manifold, starter, dynamo, fan belt and fuel injection pump. The Customs found that the goods were supplied from Singapore, though of Japanese origin. It was, further, found that the value declared for these goods was low and did not reflect the correct value. The Customs compared the value declared with those available for diesel Engine of Japanese origin of similar type imported through the

Cochin Customs and also with proforma invoice and quotation from Singapore for the same models of diesel engines, which were at a higher price. In these circumstances, the show cause notice was issued dated 28-3-1992 to the appellants charging that the REP import licences produced by them for the goods was not valid for the import since the goods were found old and used for which such licences can not be accepted. The appellants were also charged with mis-declaration as regards the value and description of the goods.

3. On considering reply to the show cause notice and hearing the appellants in the matter, the present impugned order came to be passed by the Additional Collector by which he confiscated the goods imported and enhanced the assessable value of the goods. He gave appellants the option to clear the goods on payment of fine of Rs. 5 lakh in lieu of confiscation. He also imposed a penalty of Rs. 50,000/- on the appellants. The appellants took the matter before the Hon'ble Supreme Court in SLP 15774 of 1992, which was disposed of by the Supreme Court by order dated 6-9-1993 with the following observations : "We have heard learned Counsel on both sides. This SLP is disposed of with a direction to the Tribunal to dispose of appeal No. C/755/92/SB(WR) as ex-peditiously as possible and in any event not later than two months from the date of receipt of this order." 4. The order of the Supreme Court, after being initially received in West Regional Bench of this Tribunal on 21-9-1993, has since been forwarded to the Special Bench. The time limit fixed by the Supreme Court expires on 21-11-1993.

5. Shri A.M. Haksar, Sr. Counsel for the appellants, submitted that as regards the charge that the REP licence produced by them is not valid to cover goods, the appellants are not denying this charge but would only plead that it took place because they were not aware of the details of the policy for old and used machinery. On the charge of under-valuation, the learned Counsel submitted that the Department had initially cited invoice of the Cochin Customs as the basis which, however, in the Additional Collector orders was discarded on the ground as not relating to the same model. But the Additional Collector has sought to rely upon proforma invoice of Bombay Mercantile Corporation Pvt. Ltd., Singapore for old and used diesel engines of the same brand three to six years old, and upon, a quotation from International Trading Enterprise, Singapore dated 11-11-1993 for

the same brand of diesel engines. However, the learned Senior Counsel pointed out that it has not been shown that these engines in the proforma invoice and those imported are of the same age. Only if this was established, according to the appellants, the prices should be held comparable. According to the appellants, engines imported are very old and the value assessed by the Customs House is disproportionately higher having regard to the age of the engines. The learned Sr. Counsel pointed out that the examination report of the goods also shows that the age of the engines had not been indicated though it has been confirmed that these are old and used engines and not reconditioned. The Id. Sr. Counsel, further, pleaded that in any case the quantum of fine and penalty were excessive.

6. Shri A.K. Singh, Id. D.R. contended that appellants, herein, ought to have raised issue regarding comparability of the age of the machine imported on the lines in which it is being done now before the Tribunal in the proceedings before the Additional Collector and not having done so this would amount to fresh ground being taken. The Id. D.R. referred to the examination report of the goods and pointed out that they were found without any name plate indicating the year of manufacture, nor can this information be supplied by the Singapore Supplier because he is not the manufacturer. There is mis-declaration as regards description of the goods because although the invoice description is diesel engine, they were found imported with other attachments. There is also mis-declaration regarding the value of this engine. Further, these goods were declared as spares for trawlers. On examination, they were found to be suitable for automobiles. This is another mis-declaration. The Id. D.R. referred to the reasoning of the Additional Collector as contained in the impugned order in determining the value. The Id. D.R. pointed out that the Additional Collector has arrived at reasonable value and pointed out that even on allowing depreciation value works out to higher than is actually been determined by the Adjudicating Authority and hence the value fixed is very reasonable. The Id. D.R., further, relied upon Tribunal's decision in the case of Shiv Shakti Enterprise v. Collector of Customs -1991 (52) E.L.T. 439 and on the case law reported in 1988 (38) E.L.T. 459 and in the same volume 471 that where direct evidence regarding valuation is absent, the department will be within its right to rely upon indirect evidence. The quantum of fine and penalty, according to the Id. D.R., required no modification being only 300% where as Section 125 of

Customs Act, 1962 permits levy of redemption fine to the extent of 500%. The Collector has also brought out the circumstances as to the fixation of these quantum fine and penalty having regard to use of goods in automobile and the margin of profit thereon. In reply learned Sr. Counsel urged that the Additional Collector had taken value of diesel Engines for automobile without bringing out whether he has considered the value of such engines when there are new or in the condition comparable with those which have been imported.

7. We have carefully considered the submissions made by the Id. Sr.

Counsel and the Id. D.R. The appellants have submitted that the charge of unauthorised import against REP licence is not being denied by them, and that they had effected the import out of their ignorance of the details of the import policy. As regards value of the goods, it has been argued before us that the age of engines imported ought to have been determined in order to have comparison as to whether they are in the same condition as the engines for which proforma invoice and quotation had been obtained by the Customs, and also because, according to the appellants, the goods imported are much older. But we find that in this regard the detailed arguments presented before the lower authority has not been on the same lines as submitted by the appellants before us now to contest the basis of the enhancement of value including the invoice obtained from Cochin Custom House, and the proforma invoice and quotation from Singapore, although these had been furnished to them alongwith the show cause notice, and thus the appellants have had ample opportunity to do so. The appellants have also failed to substantiate their claim in this regard that the engines are much older by production/submission of technical documents such as Chartered Engineer's certificate which is generally issued in case of old and second-hand machinery. And as is evident from the examination report of the goods, it was found that no name plate indicating year of manufacture was found on them and in such a situation, it will also not be possible to expect the Customs authorities to find the age of the engines, and, therefore, the arguments now put-forth, are of no avail.

In such circumstances, as has been pointed out by the Id. DR, the value arrived at by the Additional Collector in his best judgment on the basis of material before him

has to be held as reasonable and well-founded in terms of Section 14 of the Customs Act, 1962 and the Rules, thereunder, and not arbitrary. Therefore, we uphold the validity of the order of confiscation and determination of the assessable value of the imported goods in this case.

8. We, however, find that having regard to the fact that the appellants have no past record of such offence, there is a case for relief in the matter of fine and penalty. Accordingly, we reduce the fine in lieu of confiscation from Rs. 5 lakh to Rs. 3 lakh and the penalty from Rs. 50,000/- to Rs. 30,000/-. The order of the Additional Collector is, otherwise, upheld.

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