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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : May-16-1994

Reported in : (1994)(72)ELT509TriDel

Appellant : Citicom Systems

Respondent : Collector of Customs

Judgement :

1. The present appeal has been filed by M/s. Citicom Systems, Daryaganj, Delhi, a sole proprietory concern, (hereinafter referred to as the 'appellants'/'importer'), being aggrieved with the Order-in-Original No. 201/91, dated 28-8-1991, passed by the Additional Collector of Customs, New Delhi.

2. The appellant had imported 4 fax machines and spares by 5 post parcels from Singapore. It was alleged in the show cause notice, dated 18-3-1991 that the goods had been imported without a valid import licence and that their value has been under-declared. The importer had filed a civil writ petition being No. 1769/91 in the Delhi High Court and the Hon'ble Delhi High Court directed the adjudicating authority to finalise the adjudication and pass the order, after giving a hearing to the petitioner in accordance with law, within 4 weeks from the date of the receipt of their order. The Additional Collector of Customs, New Delhi vide his Order-in-Original dated 28-8-1991 came to a finding that the goods imported were not covered by the import licence, produced by the importer for their clearance and that the 'true' or 'real' value of the goods has not been declared. He ordered for the confiscation of the goods but allowed their redemption on payment of a fine of Rs.

1 lakh in addition to the customs duty, on the valuation of Rs. 86420/-. A penalty of Rs. 50,000/- was also imposed. The import licence was ordered to be debited for the above amount of Rs. 86420/-.

3. The matter was posted for hearing on 12-4-1994 when Shri G.L. Rawal, Advocate with Shri Rajesh Rawal, Advocate appeared for the appellant.

Shri A.K. Singhal, JDR represented the respondent.

4. Shri G.L. Rawal, the learned Advocate stated that the appellant had imported 4 fax machines (two of model 150 Konika and two of model 285 Konika), from Singapore, by post. The goods imported were an accessory of telephone and could be termed as a component of telephone - a telephone attachment. The Customs had alleged FTC violation and under-valuation. The Customs had relied upon a fabricated document to establish under-valuation. There is no evidence that any extra payment had been made by the importer to the supplier. As regards ITC violation, the learned Advocate referred to the various provisions of the ITC policy and stated that they had purchased the licence for a consideration and that the import was covered by the licence. They referred to the clarifications on this account issued by the Chief Controller of Imports and Exports and DGTD. It was also mentioned that similar goods have been cleared under the same licence. It was pleaded that a very heavy redemption fine and penalty has been imposed.

Presently, the market is flooded with such machines; their goods are still with the Customs for the last 3 years and they have incurred heavy losses.

5. Shri A.K. Singhal, the learned JDR stated that the goods had been imported under forged documents. There were more than one invoice. In the original records, there were two invoices for the same goods. The parry had promised to produce bank attested invoice but failed to do so. The invoice is FOB and it has not been explained as to how the remittance towards the freight/postal charges had been made. The manufacturer's invoice had not-been produced. The importer failed to comply with the requirement of the customs valuation (Determination of Price of Imported Goods), Rules, 1988, (hereinafter referred to as the 'Customs Valuation Rules'). There is no letter of credit, just payment to the Bank. The

evidence on record establishes the charges against the importer with regards to under-valuation. The department has rightly relied upon the invoice at page 62 of the paper book. The correspondence produced by the appellant is vague. Even if the name of the company (who are the manufacturer in this case and from whom the correct prices have been ascertained by the customs) had been changed, the logo remains the same and the address also remains the same. On the licensing aspect, it was submitted that the licence produced for the clearance of the goods in question was not valid. The goods were not covered by the description as given in the licence. It was also mentioned that the appellant had been changing their stand calling the fax machine as a component or as an attachment. The clarification given by the DGTD and Chief Controller of Imports and Exports are general in nature and are not with reference to the present licence.

6. In rejoinder, the learned Advocate explained that the two invoices were one for the party and other for the Bank. As regards the postage charges, it was stated that the relevant provisions are already contained in the policy. The catalogue could not be looked into and the present case was distinguishable from the cases cited by the learned JDR in support of the arguments in reply advanced by him.

7. We have carefully gone through the facts and circumstances of the case and have given our due thought and consideration to the submissions made by both the sides.

8. The appellants have imported 5 post parcels containing 4 fax machines, plastic tray, paper rolls etc., from Singapore. The import licence produced covered the import for "raw materials, components, consumable S ores and packing materials in accordance with the provisions made in Para 1 16(1), Part C and Para 32(2) of Part B.Section 1 of Import Policy Book, Volume ii for the period 1977-78 excluding all the items presently covered in Appendix 2 (Part A) and Appendix 5 (Part B) of the Import-Export Policy, Volume-I for the period 1988-91". It has been contended by the importer that the goods imported by them were in the nature of electronic equipment/systems and for the purposes of import policy, they should be treated as components. Deputy Chief Controller of Imports and Exports, New Delhi had written to M/s. Team Automation Pvt. Limited, New Delhi under their letter dated

13-5-1991 that the fax machines were covered by the entry at serial No. 175 of Appendix 2, Part B of the Import and Export Policy 1990-93 (Vol.) subject to the conditions laid down therein. Serial No.175 of Appendix 2B covers all electronic equipment/systems howsoever described including consumer and professional types, excluding those specifically allowed under OGL in the Policy AM-1993 or specified elsewhere. Reliance has also been placed on letter dated 28-2-1991 from the DGTD wherein it has clarified that the fax machine was covered under Serial No. 175 of Appendix 2B of the policy 1990-93 subject to the condition laid down in the said policy.

9. The Adjudicating Additional Collector has observed that these clarifications are not categorical and were not applicable to the import licence in question. This assertion by the learned adjudicating authority, to our mind, needs elaboration. We also find that with regard to the licensing the angle, the learned adjudicating authority had raised a number of questions on page 8 and 9 of his order. He himself has replied to these questions and has drawn adverse inference against the appellant. In the interest of justice, we consider that the matter needs further clarification by the appellant and further investigation by the adjudicating authority.

10. As regards the valuation, the value declared was Singapore Dollars 3400 FOB (Rs. 35,509 FOB and Rs. 43,437 CIF). The goods were imported from a stockist. No indent, correspondence, manufacturer's invoice and printed price lists and other documents as required under the Customs Valua were produced. The importer were asked to submit Bank signed invoice and GATT declaration, and the importer had undertaken to submit Bank attested invoices, which had not been done. On investigation and on the basis of the price list received from the manufacturer M/s.

Konika Japan (Export Division) Overseas Department, it was found that the value of the consignment was Rs. 86,420/- as against the declared CIF value of Rs. 43,437/-. The appellants have challenged the authenticity of the pricelist received from the manufacturer. This aspect of the matter calls for categorical finding which is not reflected in the impugned order.

11. Taking all the relevant considerations into account, we set aside the impugned order and remand the matter back to the competent adjudicating authority for de novo adjudication after complying with the principles of natural justice. As the goods are reported to be in the custody of the revenue authorities, the de novo adjudication proceedings should be completed expeditiously, preferably within 3 months from the date of receipt of this order.