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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Sep-20-1994

Reported in : (1995)LC349Tri(Delhi)

Appellant : Arihant Auto Accessories

Respondent : Collector of Customs

Judgement :

1. This appeal arises out of and is directed against the Order-in-Original dt. 4-1-1991 passed by the Collector of Customs, Madras.

2. Facts of the case in brief are that the appellants imported bulbs for Automobile Lamps. They have filed a bill of entry for the clearance of 15 Cartons containing 30,000 pcs of bulbs for Automobile Lamps. The value of the consignment was declared as Rs. 64,289/- based on the invoice raised by M/s. Subh Traders, Singapore. Since the Department was not satisfied with the declared value the case was taken up for investigation for the purpose of verifying the correctness of the declared value. On examination the goods were found to be 'Halogen Auto Lamps' 12V-55W(H3 Model) and of W-Phoenix Brand of Japanese origin and the manufacturer's name was found to be M/s. Phoenix Electronics Company Ltd., Japan. Since the goods were found to be 'Phoenix Brand' of Japanese origin, a direct telex enquiry was made with the manufacturers and they confirmed the prices for such lamps as Japanese Yen 95/pc fob. According to the Department in view of this piece of evidence the declared value viz., S $ 0.21/pc did not represent the correct value of the goods and the price ascertained from the

manufacturers viz., Yen 95/pc fob for such Lamps were considered as the normal price in the international trade. Accordingly show cause notice was issued for enhancement of the value based on the quotation and for confiscation of the goods under Section lll(d) and lll(m) of the Customs Act, 1962 and to impose the penalty under Section 112 of the Act. Show cause notice was duly answered by the appellants contending among other things a quotation at higher rate would not by itself show underinvoicing of the goods imported relying upon the decision in the cause of Kajaria Exports Ltd. and Ors. v. Collector of Customs -1986 (1) Calcutta Law Journal page No. 231. The Collector who adjudicated the proceedings after considering the reply and submissions observed that transaction value shown as per invoice is not acceptable since the manufacturer's quotation is relevant in deciding the valuation under Section 14 of the Customs Act and there cannot be a question of supplying the goods on a lesser price than the manufacturers themselves. However after taking into consideration of the submissions made by the party that the price quoted by the Department is forward sale price and the manufacturers have made the transaction in Singapore Dollar, he determined the price at Japan Yen 66/pc fob after allowing a price concession to the extent of 30% on the manufacturer's price. He held that there is deliberate misdeclaration of value of the goods accordingly he ordered for confiscation of the goods under Section lll(d) and lll(m) of the Customs Act. However he gave an option to redeem the goods on payment of redemption fine of Rs. 1,50,000/- (one lakh fifty thousand only) in addition to imposing penalty of Rs. 50,000/- (fifty thousand only).

3. Arguing for the appellants Sh. A.S. Sundar Rajan, learned Consultant submitted that there was no valid reason to discard the transaction value since the similar goods have been imported and cleared for the same price at different ports including at Madras and the same was accepted by the Department. In the instant case the Department solely relied upon the quotation sent by the manufacturer in enhancing the value, but quotation is neither a contemporaneous evidence nor relevant in determining the value. Quotations obtained from manufacturer is of much later date after importation and such price quoted is a forward sale price since it is applicable for future delivery. Further the clarification issued by the Manufacturer that Japan Yen 95 is for 10 pcs and not per piece has been

discarded without making an enquiry. The Collector adopted the Valuation Rules in determining the value of the goods but without adhering to the principles therein and the importers have made their transaction in Singapore Dollar but he adopted the value on the basis of Japanese currency. Further the Collector erred in allowing the price concession of 30% only on the manufacturer's price without any basis. In support of his contention that conversion of Singapore Dollar into Japanese Yen was not justified to prove any misdeclaration or undervaluation relying upon the decision in the case of Junta Traders v. Collector of Customs [1988 (34) E.L.T. 65] and referring to the following decisions he submitted that quotation or offer cannot be the basis for enhancement of transaction value.P.A.C. Systems (P) Ltd. v. Collector of Customs 4. Sh. A.K. Singhal, learned JDR while countering the arguments submitted that it is a case of misdeclaration since the goods are of Japanese origin whereas in the Bill of Entry it was declared country of origin as Singapore and not indicating "Phoenix" a known brand either in the Bill of Entry or in the invoice. He said that in view of the suppression of description Department had a reason to investigate further and on enquiry from the manufacturer it was revealed that transaction value was not the normal price in the course of international trade. The manufacturer's invoice was not produced at any time and the way clarification was received by the party on the very day but later by the Department and in view of the various discrepancies that clarification was solicited by the party and there was no reason to discard the quotation from the manufacturer as price per piece was quoted consciously with reference to the query made by the Department for the purpose of assessment. He said that in view of misdeclaration of description of the goods invoice value or declared value cannot be accepted as true and correct value relying upon the following decisions:-Shiv Shakti Enterprises v. Collector of Customs -1991 (52) E.L.T. 439 (T).Khaitan Makanji Spg. & Wvg. Co. Ltd. v. Collector of Customs -1992 (57) E.L.T. 604 (T).

He submitted that invoice value is not acceptable in the facts and circumstances of the case and quotations from manufacturer can be taken as basis in determining the value and referred to the following decisions in support of his contention :- Sharp Business Machines (P) Ltd. v. Collector of Customs - 1990 (49) E.L.T. 640 (SC) 2. Satellite Engineering Ltd. and Anr. v. Union of India and Ors. - 1987 (31)

E.L.T. 356 (Bom).Unisef Electronics India Ltd. v. Collector of Customs -1990 (49) E.L.T. 380 (Tribunal).Muchhala Consultants v. Collector of Customs -1993 (64) E.L.T. 146 (T).Gapp's Industries Inc. v. Collector of Customs -1992 (60) E.L.T. 305 (T).Popular Exports (P) Ltd. v. Collector of Customs -1993 (67) E.L.T. 695 (T).German Remedies Ltd. v. Collector of Central Excise -1994 (72) E.L.T. 654 (T).

5. It was replied by Sh. Sunder Rajan, learned Consultant that the decisions referred to by the learned JDR are not applicable to the facts of this case since they were dealt with reference to old Valuation Rules or held in different context. In Sharp Business Machines (P) Ltd. (Supra) Supreme Court did not give ruling that quotation can be taken as the sole basis in determining the value but observed that nothing wrong in relying upon the quotations since it was produced by the importer and furthermore supplier was the authorised agent of the manufacturer. There was neither charge nor finding on the issue of misdeclaration of country of origin to discard the transaction value and the point to be considered in this case whether the Department was justified in enhancing the value based upon the quotations.

6. We have carefully considered the submissions made by both sides with reference to the facts of this case. We find that the Department has mainly relied upon the quotations from the manufacturer in enhancing the value. Since there has been huge difference in between the declared price and price quoted by the manufacturer in respect of the goods of the same brand an inference can be drawn that there was a misdeclaration of the value of the goods and the price declared by the party was not the normal price. Sufficient evidence was brought on record to show that price declared was very low but this suspicion will not substitute for positive proof. A higher quotation would not by itself without there being any other material or evidence justify the inference of underinvoicing. In other words mere quotation cannot be taken as basis in enhancing the value unless it is corroborated by other evidence. The Department should have examined whether identical or similar goods were imported into India for higher price during the relevant time. The Collector himself observed in the order that quotations relied upon by the Department is a forward sale price and further

detailed examination should have been done whether any other import has taken place during the relevant time and there was no justification to allow concession of 30% on manufacturer's quotation unless similar concession was extended to other importers or price of similar imports was higher than declared price as it was rightly argued on behalf of the appellants. There is some force in the plea taken by the learned Consultant if the clarification issued by the manufacturer was not genuine it was open for the Department to make detailed enquiry and while determining the value the Department should adopt the Valuation Rules in sequence as specified therein. We may also point out that under Rule 3(ii) of the Customs Valuation Rules, 1988, it is specifically provided that if the value cannot be determined under the provisions of clause (i), the value shall be determined by proceeding sequentially through Rules 5 to 8 of the Rules. In other words, Rule 3 provides that the value of imported goods shall be the transaction value and the transaction value under Rule 4 is defined as the value of the price actually paid or payable for the goods when sold for export to India. Since the department failed to prove under-valuation, the value has to be determined by following Rule 4 of the Rules. In view of Rule 3(ii), the Department cannot jump over to Rule 8 without exhausting Rule 4. It is only in cases where the value of imported goods cannot be determined by the transaction value, under Rule 4 the authorities are entitled to proceed to determine the value under Rules 5 to 8, that too sequentially. Although the Collector was right in rejecting the invoice value in view of the huge difference in the price in between quotation and the price declared but the important point whether similar goods were imported with reference to quotation or at higher price than the price declared during the relevant period was not looked into while determining the assessable value. We are of the view that this issue has to be examined thoroughly and the value is to be determined with reference to contemporaneous evidence, if any.

Accordingly we are remanding the matter to the concerned Collector to examine the issue on making detailed enquiry and to determine the value based upon the relevant evidence and to pass an appropriate order after disclosing such evidence and giving an opportunity of hearing to the appellants. In case the Department fails to establish with contemporaneous evidence there would be no justification for enhancement of the value based upon mere quotation and accordingly the declared price is to be accepted as transaction value. Thus the appeal is disposed of in the above terms.