

Collector of Customs Vs. Tarachand and Co.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Feb-21-1995

Reported in : (1996)(85)ELT94TriDel

Appellant : Collector of Customs

Respondent : Tarachand and Co.

Judgement :

1. This is an appeal against the order dated 28-6-1985 passed by the Collector of Customs (Appeals), Bombay. The respondents imported a consignment of almonds in shell nonperil quality of 1992 crop from the suppliers M/s. Freehouse Farms Inc; California at U.S. \$ 0.87 per lb CIF Bombay as per invoice No. 1056, dated 25-11-1982. The Assistant Collector of Customs passed an order enhancing the assessable value of the imported goods to U.S.\$ 1 per lb on the basis of import of almonds in shell against invoice No. 0542806, dated 27-9-1982 issued by M/s.

California Almonds, Growers Exchange, California. Against the order passed by the Assistant Collector the respondents preferred an appeal before the Collector (Appeals) in which they made the following submissions : "(a) the appellants had placed indent on 30-7-1982 with M/s.

Freehouse Farms Inc; for 110000 lbs of Almonds in shell of non-peril quality of 1982 Crop. They entered into contract on 20-8-1982 at a price of U.S. \$ 0.87 per lb CIF Bombay and accordingly opened L/C on 16-10-1982 for U.S. \$95,700-./ (b)

the invoice value of U.S. \$ 0.87 was the actual landed cost based on the transaction entered into in terms of Section 14(l)(a) of the Customs Act, 1962 and that the shipment was to be effected during October- November, 1982.

(c) the suppliers had also offered 15000 bgs at U. S. Cente 72.6 per lb FAG Oakland plus actual freight and insurance to M/s. Ajax Associates of Delhi during September, 1982.

(d) the price of almonds is subject to fluctuation and the lower price charged in their case was on account of the large quantity ordered.

(e) there was no relationship between the suppliers and the appellants and the suppliers had supplied the same goods to other importers such as M/s. Mouz and Trading Co., Delhi and M/s. Uttam Chand Sunder Lal, Delhi at the same price and the appellants had not paid any amount in excess of invoice price.

(f) in the Govt. of India order in Revision No. 30 to 37, dated 12-2-1982 [1982 (10) E.L.T. 292] it had been held that the price actually paid by the importer to unrelated supplier represented the assessable value.

2. The respondents also submitted eight contracts / invoices for almonds in shell at the rate ranging from U.S.\$ 0.77 to U.S., 0.87 per lb CIF, Bombay issued by two different suppliers during the period 9-6-1982 to 2-3-1983.

3. By the impugned order the Collector (Appeals) set aside the order passed by the Assistant Collector and held that the invoice value was acceptable for the purpose of assessment. Being aggrieved by the order passed by the Collector the Department has filed this appeal.

4. No one appeared on behalf of the respondents. On behalf of the Revenue Shri Satish Shah, Id. JDR stated that the Collector (Appeals) had erred in holding that the invoice price represented the assessable value of the imported goods. He submitted that in a number of cases listed in the appeal memorandum the Department had noticed the imports of like goods by other parties at the relevant time at U.S. \$ 1.03 per lb. He contended that the assessable value under Section 14(a)(l) being the price at which such or like goods are 'ordinarily sold' or offered

for sale at the time and place of importation and in a large number of contemporaneous imports of like goods having been noticed at or around U.S. \$ 1.03 per lb, the assessable value was correctly determined by the Assistant Collector as U.S. \$ 1.1 per lb. He pleaded that the impugned order may be set aside.

5. We have examined the records of the case and considered the submissions on behalf of both sides. It is seen that in support of their claim that the price of U.S. \$ 0.87 per lb in respect of almonds in shell shown in their invoice dated 25-11-1982 issued by the supplier in California represented the correct assessable value of the goods in terms of Section 14(a)(I) the respondents had produced before Collector (Appeals) eight contracts/invoices issued by two different suppliers in respect of imports of almonds-in-shell by different parties during the period from 9-6-1982 to 2-3-1983 at prices ranging between U.S. \$ 0.77 to U.S \$ 0.87 per lb CIF Bombay. In support of their claim, the respondents had also produced a certificate from the Agricultural Counsellor, U.S Department of Agriculture, American Embassy, New Delhi which conformed that almonds -in -shell were sold to India at a price of U.S. \$ 0.87 per lb, having 65% yield. The respondents had also placed reliance on a telex from the suppliers M/s. Freehouse Farms Incs. California offering 50,000 bags of almonds-in-shell weighing of 50 lbs each at U.S. \$ 0.726 per lb with 65% yield. They had also submitted a copy of the Edible Net Market report No. 105 which stated that the policy and price of California Almond Growers Exchange had been maintained with Non-peril Select Seller Run offered at U.S. \$ 239.

80 per 220 lbs FOR, but other handlers had been consistently offering the goods at lower prices. While holding that the invoice price of U.S.\$ 0.87 per lb in respect of the imported almonds-in-shell represented the assessable value of the goods under Section 14(I)(a), the Collector (Appeals) took note of the documentary evidence produced by the respondents and also the fact that there was no evidence to show that the respondents were related to the supplier or the invoice price did not represent the price actually paid.

6. It is seen that the respondents had produced sufficient evidence in support of their claim that at the relevant time California almonds-in-shell of comparable

quality were being actually sold or offered for sale to a number of other importers in India at or around the rate of U.S. \$ 0.87 per lb. The department had also not led any evidence to show that the invoice price did not represent the sole consideration for the goods. *Honesty Traders v. Collector of Customs* reported in 1991 (51) E.L.T. 102 the Tribunal has held that the burden to prove undervaluation lies on the Department and it can be discharged only on the basis of corroborated evidence. In this case, the respondents had produced sufficient evidence in support of their claim that at the relevant time Californian Almonds-in-shell of comparable quality had been actually sold or offered for sale to other parties for importation into India at or around the rate of U.S. \$ 0.87 per lb, at which the disputed goods had been imported by the respondents. The Department had also not led any evidence to show that the dealings between the respondents and their suppliers were not at arm's length or the importers had paid in respect of the goods any amount in addition to the invoice price.

8. In view of the above discussion we do not find any infirmity in the order passed by the Collector (Appeals). The finding in the impugned order is, therefore, confirmed and the appeal is dismissed.

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