

Scientific Instruments Co. Ltd. Vs. Collector of Customs (Valuation Section) and anr.

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SooperKanoon Citation : sooperkanoon.com/852283

Court : Kolkata

Decided On : Jul-16-1975

Reported in : AIR1976Cal38,1980(6)ELT89(Cal)

Judge : A.N. Sen, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Order 41, Rule 23; ;[Customs Act, 1962](#) - Section 14(1); ;Customs Valuation Rules, 1963 - Rule 5; ;[Constitution of India](#) - Article 226

Appeal No. : Matter No. 478 of 1973

Appellant : Scientific Instruments Co. Ltd.

Respondent : Collector of Customs (Valuation Section) and anr.

Advocate for Def. : T.K. Basu, Adv.

Advocate for Pet/Ap. : Biswarup Gupta, Adv.

Judgement :
ORDER

A.N. Sen, J.

1. The validity of certain orders passed by the Assistant Collector of Customs (Valuation Section), respondent No. 1 herein, forms the subject-matter of challenge of this writ petition.

2. The petitioner acts as the sole distributor in India of various foreign companies manufacturing scientific instruments. As such sole selling agent or distributor, the petitioner has to work for promoting in India the sale of the said products of its principals and the petitioner is also bound to handle the servicing contracts with the purchasers in India and has to keep stock of necessary parts for maintenance works. Wherever there is a warranty against defective workmanship and/or material, when the instrument is replaced by the principals abroad, the petitioner is also to handle the installation and testing. The petitioner mainly deals in scientific instruments and the scientific instruments which are manufactured by the principals of the petitioner abroad and which are imported into India by the petitioner as the sole distributor or agent of the foreign principals in India are liable to Customs Duty. The petitioner has been carrying on its business for a number of years. In 1964 in the matter of assessment of duty payable by the petitioner on the goods imported, a dispute arose and the Assistant Collector of Customs, the respondent No. 1 herein, sought to disallow trade discount altogether and he changed the basis of determination of assessable value of the goods from Section 14(1)(b) to Section 14(1)(a) of the [Customs Act, 1962](#) (hereinafter referred to as the Act) Against the said order of the Assistant Collector of Customs, the petitioner preferred an appeal, and in the appeal, the contention of the petitioner was accepted by the Appellate Collector who by his order dated 8-12-1965, allowed the appeal and directed that in the matter of determination of assessable value for computing the duty payable by the petitioner, Section 14(1)(b) of the Act should be applied. On the basis of the order of the Appellate Authority, determination of the assessable value was being made in accordance with the provisions contained in Section 14(1)(b) of the Act. On the 25th April, 1970, the Assistant Collector of Customs addressed a letter to the petitioner asking the petitioner to show cause why in the matter of determination of the assessable value Section 14(1)(a) should not be applied and by the said letter the Assistant Collector of Customs held that according to him Section 14(1)(a) was applicable and he also stated in the letter that the said letter should be treated as a demand for the amount of duty short

levied and in terms of the proviso to Section 28(1) of the Act. The petitioner sent a reply to the said letter of the Assistant Collector of Customs on the 3rd June. 1970, and in the said letter the petitioner dealt with the contentions raised in the letter of the 25th April, 1970, and the petitioner denied and disputed that there could be any change in the basis of the determination of the assessable value from Section 14(1)(b) to Section 14(1)(a) of the Act. On the 11th September, 1970, the Assistant Collector of Customs after considering the representations made by the petitioner, in his letter dated 3rd June. 1970, passed an order holding that Section 14(1)(a) of the Act was applicable and determination of the assessable value should be on the basis of the provisions contained in Section 14(1)(a) of the Act. In paragraph 8 of the order passed by the AssistantCollector of Customs on the 11th September, 1970, he has held.

'* * * I have carefully considered the submissions made by you, written as well as oral. Whatever might be the circumstances for direct importation by third parties, the fact remains that because of such importations you ceased to be the sole importer of the agency products, you are not, therefore, eligible for assessment under Rule 5 (a) of the Customs Valuation Rules read with Section 14(1)(b) of the [Customs Act, 1962](#). The provisions of Section 14(1)(a) take precedence over Section 14(1)(b).'

Against the said order of the Assistant Collector of Customs (Valuation Section) the petitioner preferred an appeal on 9-11-1970. The said appeal filed by the petitioner was disposed of by the Appellate Collector on 12-1-1972. It is necessary to set out the order of the Appellate Collector of Customs.

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