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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jul-04-1995

Reported in : (1996)(87)ELT241TriDel

Appellant : Ranutrol Ltd.

Respondent : Collector of Customs

Judgement :

1. M/s. Ranutrol Ltd. of New Delhi have filed this appeal being aggrieved by the Order-in-Original passed by the Collector of Customs.

The Collector of Customs in his Order-in-Original had held : "I order confiscation of the goods under Section 111(d) and (m) of the Customs Act, 1.962. However, I allow the importer to redeem the goods on payment of redemption fine of Rs. 1,00,000/- (Rupees One lakh only). Assessable value of the subject consignment shall be worked as shown in the Annexure to this order. I also impose a penalty of Rs. 50,000/- (Rupees Fifty thousand only). Option to redeem the goods should be exercised within a month. Penalty shall be paid forthwith." 2. Briefly stated the facts of the case are that the appellants filed a Bill of Entry on 31-10-1990 declaring the goods as component parts of Expansion Valve and component parts of Dial Thermometers. The value of the goods was declared to be Rs. 4,99,209.00 c.i.f. The importers also claimed clearance of the goods under OGL Appendix VI List 8 Pt. I, S.No. 638/90-93. The Customs Authorities were of the view that the goods imported were Thermostatic Expansion Valve, complete component-wise but brought in S.K.D. condition and therefore were hit by S. No. 564 of Appendix III

Pt. A of A.M. 90-93 and therefore the imported goods required a specific licence. It was also alleged that Dial Thermometers were complete but were brought in S.K.D. condition and therefore was hit by S. No. 702 of Appendix III Pt. A of the Policy of 1990-93 and therefore it was alleged that the import of this item required a specific licence. The second allegation was that the value shown in the invoice and in the Bill of Entry did not reflect correct value.

Accordingly a show cause notice was issued to the appellants asking them to explain as to why the imported goods should not be confiscated and why penalty should not be imposed on them.

3. On further investigation when new facts came to light an addendum to the show cause notice was issued. It was argued before the lower authorities that in the original show cause notice, Rule 7 of the Customs Valuation Rules was adopted to quantify the value whereas in the Addendum issued subsequently the stand of the Department was totally changed and reliance has been placed on foreign invoice against the appellants; that the quantum of under-valuation estimated under these two basis differs; that the department cannot have resort to both these basis; that they have to choose between the two; that the additional confidential information collected by the Customs Officers abroad cannot be relied upon as it was not in departmental proceedings under Section 139 of the Customs Act, 1962, as Section 139 is applicable only in prosecution cases; that the department has not produced the persons for cross-examination; that the documents have not been signed nor authenticated.

4. It was also argued that in so far as the import of Appendix III, item, namely Dial Thermometer and Thermo-static Expansion valve under OGL is concerned, they had imported only components of Dial Thermometers and Thermo Expansion valves in S.K.D. condition; that the allegation of the department that the two items have been imported in fully manufactured condition is not factual; that the Collector's finding "that when import of complete equipment is restricted under a licence, the same cannot be permitted to be imported in S.K.D.condition or C.K.D. condition and if such imports were allowed then it would be a compromise with the Import Policy" is wrong; that for this decision, the Id. Collector relied on the case

law in the case of Sharp Business Machines Pvt. Ltd. v. CC; that reliance on this decision was misplaced. On the question of admissibility of the documents, the Collector's ruling : "A reading of Section 139 of the Customs Act, 1962 gives clear indications that when any documents have been received from a place outside India in the course of investigation of any offence alleged to have been committed by a person under this Act then it shall be presumed unless contrary is proved that it is correct and admit the documents in the evidence notwithstanding that it is not duly stamped" is not valid and legal.

5. Shri L.P. Asthana, Id. Advocate appearing for the appellants submitted that the limited issue is whether complete items in S.K.D.condition have been imported or components have been imported. He submitted that the Hon'ble Supreme Court in the case of UOI v.Tarachand Gupta and Brothers reported in 1983 (13) E.L.T. 146 had held that parts and accessories of motorcycle and scooters imported in C.K.D. conditions will be treated as import of parts and accessories only; that on an analogy of this ruling of the Apex court, the component imported by them should be treated as import of components even though the components imported by the appellants were so complete that when put together they would make complete Expansion valves and Dial Thermometers; that in the case of Sharp Business Machines Pvt.

Ltd. reported in 1990 (49) E.L.T. 640, the Hon'ble Supreme Court had held that it was an admitted position that fully finished plain paper copiers were prohibited item for import and thus the device adopted by the company in the present case was a complete fraud on the Import Policy itself because the fully assembled copiers are the end products of the importer and hence cannot import them. Consequently confiscation of the goods in question and imposition of penalty both on the company and the Managing Director are justified and do not call for any rejection."; that the facts of this case and the appellant's case are different in as much as the Hon'ble Supreme Court had before it the phased production programme in respect of Sharp Business Machines whereas in the instant case there was no phased production programme.

Further the Id. counsel submitted that there was no restriction as to the import of complete items and therefore the ratio of the judgment of the Apex Court in the case of Sharp Business Machines relied upon by the respondents will not be applicable to the facts of their case; that in the case of Tractors and Farm Equipment Ltd. v. CC, Madras reported in 1986 (25) E.L.T. 235, the Hon'ble Tribunal held that classification of an article was determinable by application of Rules of Interpretation Chapter notes and Rules of Classification in Section notes of the Customs Tariff Act, 1975; that in the case of Vivek Re-rolling Mills v. CCE reported in 1994 (73) E.L.T. 660 the Hon'ble Tribunal held that Interpretative Rules, Section notes and Chapter notes are not relevant for purpose of interpretation of notifications.

6. The Id. counsel submitted that the goods were component parts and were therefore fully covered by Appendix VI whereunder they were eligible to be imported under OGL.

7. On the question of valuation, the Id. counsel submitted that the value of the goods has been correctly shown in the invoice and in the Bill of Entry; that the Hon'ble Calcutta High Court in the case of Sandeep Agarwal v. UOI reported in 1992 (62) E.L.T. 528 had held that the normal principle for arriving at a price is to ascertain the transaction value in terms of the provisions of Section 14(1) of the Customs Act, 1962; that the said Valuation Rules provide for the method of valuation; that the value of the imported goods shall be the transaction value; that the said rules provide that if it is not possible to arrive at a transaction value then the other rule of the said Valuation Rules which are framed thereunder are to be followed; that Rule 4 of the said Valuation Rules, 1988 deals with transaction value; that the transaction value means the value determined in accordance with the provisions of Rule 4 of the said Valuation Rules.

The Id. counsel submitted that lot of reliance has been placed on the investigation report placed at page 48 of the paper book and the invoices and price lists received from U.K. He submitted that on careful examination of these documents, it will be seen that the documents cannot be admitted as evidence under the provisions of Section 139 of the Customs Act, 1962. He submitted that the

documents were received from a foreign country and that the persons named therein were not allowed to be cross-examined nor were they presented for cross-examination, therefore, the documents lose their value as admissible evidence. Analysing further, the Id. consultant submitted that the invoices though marked as export sales invoice were in fact the invoices for local sales and therefore the prices given in those invoices cannot be accepted as export price of the goods. Similarly, the price list for 1990-91 was the price list for internal sales as nowhere in the price list it has been stated that this is the export price list. This becomes more conspicuous, pleaded the Id. counsel, when the export price list of 1991-92 is looked at. Analysing this piece of evidence, the Id. counsel submitted that neither the price list nor the sales invoices can be accepted as evidence and even if they are accepted as evidence then they indicate only the local price and not the export sales price. The Id. counsel argued that there is definite difference between the two prices namely a price for export sales and a price for internal sales and the two are never the same.

8. Shri B.K. Singh, the Id. SDR submitted that the admitted position was that the imported goods were complete expansion valves and complete dial thermometers, though imported in S.K.D. condition; that the department had produced sufficient evidence by way of examination of the goods by the Customs House, inspection of the goods by the Adjudicating authority and also the contents of the investigation report at page 48 of the paper book, letter received from U.K. In view of this, the Id. SDR submitted that the declaration filed in the Bill of Entry becomes wrong as also the import of the goods without a specific licence becomes illegal. The Id. SDR therefore submitted that having regard to this ample evidence on record, the lower authority has rightly held that the goods required a specific licence which was not produced by the importers and therefore rightly confiscated the goods.

9. On the question of valuation, the Id. SDR submitted that on the basis of the evidence then available, the earlier show cause notice was issued and when, sufficient evidence on the question of valuation was received an addendum to the show cause notice was issued; that there is ample evidence on the records to show that the goods were under-invoiced. In this connection, he relied on the investigation report at page 48 of the paper book received from U.K., Invoice

No.4074 dated 30-6-1989, alongwith the packing list and invoice No. 4081 dated 29-9-1989 as also the price list for the year 1990 of M/s.

Teddington Controls Ltd. who are the manufacturers of the imported goods. He submitted that it has clearly been stated in the invoice that the invoices pertain to export sales; that the investigation report received from U.K. clearly shows that the price list of 1990/1991 pertains to export sales; that the declaration in the invoices also points to the fact that the invoices are not for local sales but for international sales.

10. On the question of the admissibility of these documents alongwith the investigation report received from U.K., the Id. SDR submitted that the Collector has rightly held that Section 139 of the Customs Act, 1962 allowed the admissibility of such documents as evidence. In view of the above submissions the Id. SDR submitted that the impugned order may be upheld and the appeal may be rejected.

11. Heard the submissions of both sides and considered them. We find that there are two issues to be determined in the instant case. Issue No. 1 is whether the imported goods were components or complete expansion valves and dial thermometers and. whether these goods were covered under OGL or required a specific licence. The second issue is whether the goods were under-invoiced.

12. Dealing with the first issue, we find that the evidence is that the goods were examined in the docks before the representatives of the importers and were found to be complete thermostatic expansion valves and complete dial thermometers though in S.K.D. condition. In addition, we observe that the adjudicating authority also examined the goods and found them to be complete dial thermometers and complete thermostatic expansion valves though in SKD condition. We also find that there is evidence on record that on the boxes, the marking was "Teddington KDA Dial thermometer (A) Distance Term -Thermometer and on some other boxes there were markings 'this carton contains instruments'. This marking points out that the goods were Dial Thermometers manufactured by M/s.

Teddington Controls Ltd. In addition to this, we find that Shri Chaman Mahajan, Director of the appellant firm in his statement stated that they manufacture expansion valves and dial thermometers among other items; that although the goods are imported as components they do not manufacture any other item than those imported to make either the expansion valves or dial thermometers; that what their company does is only to assemble imported items, test them and adjust them for local sales. This evidence clearly shows that the goods imported were complete Expansion Valves and Complete Dial Thermometers.

13. The appellants submitted that the items imported by them were components and were covered by Entry No. 614, dated 31-10-1990. The appellants also stated that in the market components of Dial thermometers and Expansion valves are never sold as complete thermometers and expansion valves. It was also submitted by the Id.counsel that there is no restriction under any law which prescribes that in one consignment all the component parts cannot be imported.

This contention of the appellants when examined will lead to absurdity, if it is held that assorted components and complete goods are one and the same thing. The restriction in the Import Policy vividly illustrates that only components are permitted under OGL and the complete Expansion Valves and complete Dial Thermometers will require a licence. Had the intention of the Import Policy been to permit import of the complete items then there was no question of placing them under S. Nos. 564 and 702 of Appendix 3 Part A of the 1990-93 ITC Policy.

14. On examination of the statements and evidence as set out in the preceding paragraphs, we find that the evidence clearly shows that the complete expansion valves and dial thermometers have been imported in S.K.D. condition. The arguments that import of all components at the same time is not banned is not acceptable to us in as much as import of complete expansion valves and dial thermometers require a specific licence. If their assertion that even if all the components are imported they are components only and they cannot be called as complete expansion valves or complete dial thermometers is fallacious. If their assertion is accepted that will mean that the entire plant and machinery large in volume which cannot be transported as a whole comes in CKD or SKD condition

then they will be treated as components which is far from truth and not acceptable. In the case law relied upon by the Revenue it has been brought out very clearly that anything which cannot be done directly cannot be done indirectly also. As complete expansion valves and complete dial thermometers though in S.K.D.condition have been imported, we hold that the goods imported were complete expansion valves and complete dial thermometers and require a specific licence and accordingly uphold the findings of the adjudicating authority in this regard.

15. The second allegation is that the importer had mis-declared the value of the goods and the evidence for this allegation was that the goods were manufactured by M/s. Teddington Refrigeration Controls Ltd. but supplied to the Indian buyers by M/s. Elnode Ltd. The Revenue also were of the impression that M/s. Ranutrol Pvt. Ltd. was having some sort of technical collaboration with M/s. Teddington Refrigeration Controls Ltd. and for having this impression, the Revenue had relied on M/s. Frig Sales who also claimed to be the distributors of M/s.

Ranutrol. This claim of M/s. Frigsales was also supported by the leaflet catalogue No. TR/202 of M/s. Ranutrol. Having regard to this piece of evidence, the Customs were of the view that the price of imported goods for purpose of assessment shall have to be determined under Rule 7 of the Customs Valuation Rules, 1988 by deductive value method. Therefore, the Revenue obtained the local price list of the product from M/s. Frigsales. However, on investigation abroad, it was found that the goods in question were supplied by M/s. Teddington Refrigeration Controls to M/s. Elnode and had issued export sales invoices. This fact that the goods were originally supplied by M/s.

Teddington was apparent also from the fact that on some of the cartons 'M/s. Teddington' was; found written. Price list of M/s. Teddington was also obtained for the year 1990-91 and also for the year 1991-92.

16. On the issue of technical collaboration between M/s. Ranutrol and M/s. Teddington Controls it was contended by the appellants that they had no collaboration. No doubt some talks took place but they ended in failure; that the product which they were manufacturing and selling was Teddington type and was

being manufactured from components imported from M/s. Teddington and therefore the words "Teddington Controls" may have been written in their leaflets at one stage.

17. From the evidence on record we find that there is the confirmation from the appellant that at one stage they were negotiating collaboration with M/s. Teddington Refrigeration Controls but the talks did not materialise. Having regard to this aspect, the investigation report becomes relevant. This investigation report contains the investigations undertaken in U.K. It was reported inter alia that the actual value of the goods was 23,743.10 Pound Sterling, and that an amount of 6,666 pound sterling relating to technology transfer between M/s. Teddington, U.K. and M/s. Ranutrol India was adjusted in the bill issued by M/s. Elnode. It was also further found from the investigation report that M/s. Teddington and M/s. Elnode confirmed that since import of complete items was not allowed in India, the goods were de-assembled on specific instructions. Having regard to this additional evidence procured on investigation, the Customs Authorities had intimated the appellants that the valuation aspect shall have to be examined in terms of the Customs Valuation Rules other than Rule 7 as indicated before.

The question of admissibility of the investigation report as evidence under Section 139 of the Customs Act was vehemently opposed by the Id.counsel for the appellants on the ground that this was not admissible as evidence in as much as it was neither seized from the possession of the appellants nor was handed over by them. We hold that the investigation report is to be seen in the totality of the evidence placed on record and submissions made before us. We find that some collaboration negotiations were going on between M/s. Ranutrol of India and M/s. Teddington of U.K., we also observe that the manufacturer of the imported goods was M/s. Teddington of U.K. We also find that on some packing cartons, the markings were "Teddington KDA Dial Thermometer-A distance Term - Thermometer". The importers could not furnish either the price list or the invoice of the manufacturer in support of their contention that the transaction value was the correct price.

18. We find that definitely there were negotiations going on between the Indian importer M/s. Ranutrol and the foreign supplier M/s.

Teddington as has been confirmed by the explanation given by the appellants. Therefore the investigation report becomes relevant. This investigation report is supported by export sales Invoice Nos. 4074, dated 30-6-1989 and. 4081., dated 29-9-1989. These two invoices become relevant in as much as they have been issued by M/s. Teddington to M/s.

Elnode. The declaration in the invoices shows that they are export sales invoices. These invoices carry a further declaration reading as : "We hereby certify that this invoice is true and correct and that the prices shown are the actual selling prices of the goods referred to therein excluding insurance freight and customs duties. Further we certify that the goods are manufactured by ourselves and are of European communities -U.K. origin. They are for free circulation within the EEC." The Id. SDR had pleaded that the invoice pertained to export sales and that the declaration refers to customs duties; that if the sales were internal as pleaded by the appellants, there was no question of declaring the invoices as export sales invoice and referring to customs duties as no customs duties are charged on internal sales. The Revenue also relied on the price list of 1990-91 stating that this was the relevant export price list which gave the rates for thermo-static expansion valves and dial thermometers. The appellants contested that this price list nowhere mentioned that these were the prices for export sales and argued that in this view of the matter, this price list was not relevant. The Revenue however argued that the prices indicated in these price lists were the prices which were quoted in the export sales invoices issued by M/s. Teddington to M/s. Elnode and referred to above and therefore this price list was also the price list concerning exports. We observe that the indication on the invoices referred to above shows that the invoices were export sales invoices and since the prices indicated in the price list in the year 1990-91 more or less conformed to the prices indicated in the export sales invoice, we find that they become relevant and acceptable. Having regard to the fact that these invoices and price lists were mentioned in the addendum to show cause notice and the appellants were given full opportunity to produce evidence to rebut this charge, the appellants have neither rebutted either

the invoice or the price list by production of the manufacturer's price list or the manufacturer's invoice in respect of the imported goods, we hold that looking to the totality of the circumstances, the invoices and price list are relevant and that the lower authorities were justified in accepting export sales invoice and price list of 1990/91.

19. Having regard to the above discussions, we do not see any reason to interfere with the impugned order. The appeal is accordingly rejected.

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