

Preto Industries Vs. Collector of Customs

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Sep-11-1995

Reported in : (1996)(81)ELT506TriDel

Appellant : Preto Industries

Respondent : Collector of Customs

Judgement :

1. The appellants, herein, imported a Tool Room Precision Coordinate Jig Boring Machine with accessories through the Bombay Customs House for which a Bill of Entry was filed in Jan., 1985. On examination of the goods, the machine was found to be used and second-hand. The Customs House also found that the invoice price of the machine, coming to Rs. 1,63,997/- was low. This was based on examination of the machinery by a panel expert, a copy of whose report was given to the appellants. In this report the panel expert gave the opinion that the value of the machine imported for the purpose of assessment should be in the vicinity of DM 50,000 to 55,000 FOB instead of DM 35,650 indicated by the importer. Show cause notice was, accordingly, issued on 4-4-1985 and the Additional Collector, after considering the appellants' reply thereto, passed the impugned order dated 16-4-1985.

In his order he dropped the charge of mis-declaration against the appellants and held that they could not be held to have deliberately not declared that the machine was old and used. On this ground, he did not impose penalty on the appellants. In respect of valuation of the machine, the Additional Collector accepted the opinion

given by the panel expert and, accordingly, ordered that the assessable value should be increased to Rs. 2,41,490/-.

2. When the appeal was called, none was present for the appellants, who have by their letter dated 30-1-1995 sought decision on merits. There was a direction to them by the Bench in its Misc. Order No. 38/95-A, dated 21-2-1995 to file a copy of the Bill of Entry in respect of contemporaneous import, catalogue of the imported machines and comparable goods and of the examination report of the machine. But it is found that till date the appellants have not produced the required documents except giving another copy of the Bill of Entry for the present import and not of the comparable goods. In their appeal memo., the appellants have pleaded that the Additional Collector has taken the higher figure of DM 55,000 for the machine recommended by the panel expert who had also said that the valuation could be from 50,000 to 55,000 DM. The panel expert report does not disclose as to how he determined this value. They have pleaded that the invoice value submitted by them should be accepted for the machine.

3. Ld. D.R. Sh. A.K. Singhal, submitted that this is a case of import of second-hand machinery in which the appellants had declared a substantially lower value. The department had got it examined by a panel expert, copy of whose report had been given to them. The Id. D.R. pointed out that the import, being of second-hand machinery, there cannot be 100% comparable imports for valuation purposes and in these circumstances, the Additional Collector has rightly based the valuation on the basis of the report of the panel expert suggesting the valuation having regard to the condition of the machine imported. The expert's report clearly indicates that the value declared was substantially low.

The Tribunal has also up-held the adoption of the valuation on the best judgment principle in the case of Mudeereswara Mining Industries Co. v. Collector of Customs reported in 1989 (39) E.L.T. 630 (Tribunal) wherein it was held that resort to best of judgment is justified when comparative price of similar machine not available. Further in the case of Rakesh Press v. Collector of Customs reported in 1995 (77) E.L.T.699 (Tribunal), the Tribunal by a majority decision had held that in case of second-hand machinery the exact comparison or a precise determination

is hardly feasible.

4. We have carefully considered the submissions made by the Id. D.R. and the appeal memo. The appellants had been asked to give details of contemporaneous import and were given opportunity to produce the catalogue of machine as already stated above. But the appellants have not been able to furnish any such document. The appellants have also not produced at any stage the Chartered Engineer's certificate on the machine which is a normal feature in case of import of second-hand machinery. It is, further, seen that before the Additional Collector, the appellants seemed to have referred to some other contemporaneous import of much bigger tool room precision coordinate jig boring machine. No such particulars have been given in the present appeal but the Additional Collector had observed in the order that it was a vague claim and also that the machine in question was totally different from the present import of the machine imported in the present consignment by the appellants. The Additional Collector had held that what was claimed as similar import was neither the same nor like kind of goods.

In such a situation, in a case of valuation of second-hand machine, the principles laid down in Rakesh Press case (supra) by the Tribunal will become relevant. Paras 19 and 20 of the majority decision in that case are follows : "Similarly it is also necessary to keep in mind that in the case of all secondhand machinery exact comparison or a precise determination on that basis is hardly a feasible proposition and to find two cases of second-hand machines identical in all respects was nearly impractical if not an impossible task (exceptions excepted). And in these circumstances the best assessment judgment was the only remedy and could hardly be avoided. Further, such an assessment cannot be set aside if it was based on reasonable considerations and recognised parameters such as comparison with the near equivalents in the circumstances of each case.

The case law cited by the Id. Counsel also does not help the cause of the appellants. The case of Job Printers (supra) cited takes note of the fact that value depends upon the conditions of the second-hand machine in such case and the case of Tata Art Printers also rightly emphasises that the assessment has to be based on adequate material in evidence and as we have seen above both aspects

have been duly taken care of by the Id. Additional Collector." 5. The present valuation on the basis of the panel expert the opinion on the condition of the machine on import in the absence of satisfactory evidence led by the appellants to challenge the valuation, the determination of value by the Additional Collector in the manner adopted in the present impugned order using the best judgment, cannot be faulted. The appeal is, accordingly, rejected.

6. I regret my inability to agree with the decision appended above. The reason is as follows. *Rakesh Press v. Collector of Customs* is that in valuing second-hand machinery, it is not possible to have exact comparison between two machines. The majority decision above has quoted copiously from that decision.

8. In the present case, the machine to be valued was a tool room precision coordinate jig-boring machine. The importer had cited the valuation of another machine bearing the same description in support of its claim that the machine imported by it, was correctly valued. This comparison was not accepted by the Additional Collector for the reason that the machine was larger and made in a different year. He had also stated that it had some other accessories which are not specified. The essential reason for not accepting the comparison, therefore was that the machine was larger and made in a different year.

9. In the *Rakesh Press* case, the machine which had been imported was a Solna 425 four colour offset printing machine manufactured in 1973 and reconditioned. The Customs House enhanced its value by comparing it with a similar machine manufactured in 1975 imported from some other country and also with a Sona 225 two colour offset printing machine.

The majority view in this Tribunal was that comparison of a machine imported with another machine having different features was valid for purposes of valuation, the reason for this being that it is virtually impossible to find a machine identical to a second-hand machine as has been spelt out in the extracts reproduced above. The ratio which clearly emerges is, thus for purposes of valuation, comparison with different machine manufactured in a different year, of a different capacity and having different features is valid. I had reservations about this view which I have expressed. However, the majority in the present case has relied upon the decision

of the Rakesh Press case. The logical outcome of such a reliance would, in my view, be that comparison with the larger jig-boring machine, as claimed by the importer, was valid. Therefore, by application of the ratio in Rakesh Press judgment, this point would have to be allowed.

10. In my view, therefore, the appeal ought to be allowed with a direction to Additional Collector to accept the value declared on the basis of value of the machine as claimed by the importer. I therefore, allow the appeal.

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