

Collector of Customs Vs. Mcdowell and Co. Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jul-18-1996

Reported in : (1996)(87)ELT506TriDel

Appellant : Collector of Customs

Respondent : Mcdowell and Co. Ltd.

Judgement :

1. After the clearance of goods on payment of customs duty, the respondents filed refund claim in regard to the addition of US \$ 798 per MT C&F to the invoice price as also the landing charges. The Assistant Collector allowed refund on the former, but rejected the claim in regard to the landing charges. The Collector (Appeals), however, allowed refund in regarding to the landing charges also.

2. The initial assessment was not provisional but final. That was why the respondents paid the customs duty under protest. We have been consistently following the view taken by the Tribunal in the case of Collector of Customs v. India Polyfibres Ltd., 1988 (38) E.L.T. 517, wherein it has been held that landing charges are to be added on notional basis as adoption of actual amount of landing charges for arriving at the assessable value would add enormous amount of infructuous work for the Customs Houses as well as the importers.

3. The learned counsel for the respondents places reliance on the decision of the Tribunal in the case of Collector of Customs v. Hindustan Petroleum Corpn., 1993 (67) E.L.T. 159, wherein after quoting extensively from the case of Collector of

Customs v. India Polyfibres, the Bench observed that there is no prohibition on inclusion of landing charges at actuals for determining the assessable value. We have our own reservation regarding this, but we do not propose to refer to the matter to a Larger Bench, since the facts of the case in Collector of Customs v. Hindustan Petroleum Corpn. 1993 (67) E.L.T. 159, are clearly distinguishable from the facts of the present case. In the case of Hindustan Petroleum Corpn., the original assessment was provisional, with the result a regular assessment remained to be made and meanwhile actual landing charges became available. It was in those circumstances, the Tribunal held that actual landing charges should be taken into account. The present is not a case of provisional assessment, but of regular assessment even initially. Therefore, we are governed by the decision in the case of India Polyfibres Ltd. 4. We, therefore, hold that the Collector (Appeals) was in error in holding that actual landing charges should have been included and refund should be made on that basis. The order of the Collector (Appeals) is set aside and the order of the Assistant Collector is restored. The appeal is allowed.

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