Komal Offset Vs. Collector of Customs

Komal Offset Vs. Collector of Customs

SooperKanoon Citation : sooperkanoon.com/9842

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Aug-05-1996

Reported in : (1996)(87)ELT501TriDel

Appellant : Komal Offset

Respondent : Collector of Customs

Advocate for Pet/Ap. : Shri. Harbans Singh

Judgement :
1. The appellants imported a second hand Solna 425 offset printing machine from U.K. and presented the invoice of the suppliers which showed the price as 25,000. This was not accepted by the Custom House as representing the correct value which was redetermined with reference to another invoice relating to a different import of the same make and model of printing machine, also imported from the same country, U.K.Against the Assistant Collector's order, the appellants filed an appeal before the Collector of Customs (Appeals) who confirmed the impugned order. Thereby the present appeal.

2. Shri Harbans Singh, learned counsel for the appellants raised a preliminary point that they were not issued a show cause notice in the matter and were also not heard in the matter. Moreover they got the order-in-original only after repeated letters to the Custom House requesting for issue of formal order to enable them to file an appeal.

After nearly a year after the payment of duty and clearance of the goods, they got the order-in-original which was issued by an Assistant Collector who had not ordered the enhancement of the assessable value.

There was thus denial of natural justice. On merits, Shri Harbans Singh submitted that the machine imported was a second hand used machine. The invoice value was duly supported by a Chartered Engineer's certificate.

The assessable value was redetermined by adopting the value of another [printing] machine. Such a comparison is not possible in second hand machines unlike in the case of new machines. The condition of the machines may not be similar to justify rejection of the declared value in favour of another value relating to an allegedly similar import.

3. The arguments were rebutted by Shri T.R. Malik, learned Senior Departmental Representative. He justified the valuation adopted by the department. The Chartered Engineer has certified the condition of the subject machine as quite satisfactory and its residual life as 15 years. The compared import was also of the same make and model imported in the same vessel as the subject import and the same Chartered Engineer is also the same who had certified a higher value of 30,000.

As regards the contention that the Assistant Collector who had assessed the value had not passed the order but another officer had done so and the order issued in the name of such other officer, Shri Malik submitted that it is a practical problem in the Custom House due to the work load and it is not always possible for the officer who orders the reassessment to issue the order in his name. In such cases, on the basis of the order in the file, a successor officer may issue the order instead. He pleaded that the appeal be dismissed.

4. We have considered the submissions. We find that the plea that the order has been issued in the name of an Assistant Collector who had not passed the order had been taken in the appeal before the Collector (Appeals). He had disposed of this point with the observation that it is not necessary that the same Assistant Collector who ordered enhancement of value should issue the order. We do not

agree. Such a procedure would be against the principles of natural justice. In this case even the order in question does not mention that the importers had waived the show cause notice or personal hearing. Be that as it may, since the facts are on record, we proceed to dispose of the appeal on merits. The Chartered Engineer has certified the value of the machine as 25,000. They had reportedly issued a certificate in respect of another machine showing the value as 30,000 which value has been adopted in the impugned proceedings. We accept the plea that in the case of used second hand machines, the, condition of the machines may not be the same unlike in the case of new machines where the similarity would be definite. The Chartered Engineer has certified two different values for two different machines. In the subject case, the value of equivalent new machine has been certified as approximately 65,000 and as 56,000 in the year of manufacture. The price charged by the supplier for the machine imported, namely, 25,000 has been certified to be very reasonable considering its condition and the prevailing market rates. The price charged by the suppliers is about 44% of the value of the new machine in the year of manufacture which would correspond to depreciation of value of about 56% in 1989. Such depreciation is not excessive. The value confirmed as very reasonable by the Chartered Engineer is acceptable and should not have been rejected by the authorities. The finding by the Collector (Appeals) rejecting the contention of the appellants about the condition of the machine on the ground that they had not been able to substantiate their point that the condition of their machine was so different from the compared machine as to justify the price differential is not correct.

The importer cannot be expected to testify the condition of another import and compare the value thereof to his own import. Moreover we find that the invoice of the subject import describes the goods as Solna 425 Offset Printing machine complete with all standard accessories while the compared invoice, copy of which had been attached to the order of the Assistant Collector, describes the goods as Solna 425 4 Colour Sheet Fed offset printing machine complete with accessories. It is not clear whether the apparent difference in the description of the two machines would have made a material difference in their value. We, however, feel that both the machines being second hand, the plea of the appellants deserves to be accepted. We set aside the order and allow the appeal.