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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Aug-23-1996

Reported in : (1996)(88)ELT247TriDel

Appellant : Vikram Plastics

Respondent : Collector of Customs

Judgement :

1. These appeals arise from a common adjudication order, Order-in-Original No. MC-146/89, dated 28-7-1989 passed by the Collector of Customs, Bombay ordering that the value of Low Density Polyethylene imported from Brazil by the appellants should be taken as US $ 780 per Metric Tonne for purposes of assessment of Customs duty as against the value of US $ 680 per Metric Tonne declared in the relevant invoices covering the consignment. While ordering so, the Collector had, however, held that the local indents and Sales Confirmation covering the imports were genuine. The charge of misdeclaration of value as well as the proposal for confiscation of goods and imposition of penalty contained in the show cause notice were dropped by him.

Aggrieved with the order fixing the assessable value as above rejecting the invoice value, the appellants have filed these appeals.

2. Shri B.N. Rangwani, learned Consultant appeared for the appellants M/s. Supreme Plastics. He pleaded that the invoice prices were genuine.

The goods had been invoiced at US $ 680 per Metric Tonne. Their seller had purchased the material at US $ 570 per Metric Tonne. The transaction is at arms length and there is no evidence that there has been any payment beyond the invoice amount. He cited Tribunal decisions in Sunshine Metals & Alloys Inds. Pvt. Ltd. v. Collector of Customs, BombayCollector of Customs, Bombay v. Jasmine Commercial Ltd. reported in 1996 (14) RLT 5 in support of his plea for acceptance of their invoice price.

3. The other appellants were represented by Shri V. Sridharan, learned Advocate. He stated that the Collector has passed the impugned order enhancing the assessable value of the imported goods on a supposition that the time for supply of goods is between four to eight weeks from the date of the contract and that since the shipment had been made on 15th August, 1987 the contract must have been placed in June, 1987. On this basis he had applied the rate prevailing at that time. There is no prevailed valid support for the supposition that it took four to eight weeks for the supply to be made after the contract. The Collector had dropped the charge contained in the show cause notice about the contract not being genuine. He has held that though the said contract dated ...-4-1987 was genuine, that did not relate to the subject imports. Shri Sridharan submitted that such a finding does not account for the fact that no other import had taken place against the said contract. There was also no evidence that there was a subsequent contract in June, 1987 against which the goods in question had been imported. It was hence contended by the learned Counsel that the imports were in fact against the April, 1987 contract only and the contracted price was genuine. The contract in question itself provided for a delivery time of about three [months] and the shipment was to be in July, 1987. The actual date of shipment was 15th August, 1987. On the score it is not justified to come to a conclusion that the import was not against that contract and that there must have been different contract entered into subsequently. All the reasons adduced by the Collector for holding that the contract did not relate to the actual imports and that the invoice prices were not acceptable for purposes of assessment are based upon an erroneous approach. He had gone by the prices published in the Economic Times. This was not disclosed in the show cause notice and is not acceptable.

4. The arguments were resisted by Shri M. Ali, learned Departmental Representative. He took us through portions of the impugned order to press his point that the documents produced did not cover the imported goods and hence the Collector had rightly refused to accept the invoice price for assessment purpose. He referred to the charge against the appellants that the contract had actually been entered into later than the date shown therein but the said document had been ante dated.

Various statements had been recorded wherein the concerned persons had clearly admitted that the contract was not genuine. The statement had been recorded not from an employee of the identing firm but from its partner. The document had been correctly held to be not relating to the subject imports. As regards the submission of the learned Counsel that the Collector had relied upon the prices shown in the Economic Times which evidence had not been disclosed in the show cause notice, Shri Ali stated the appellants themselves had referred to the Economic Times in their reply to the show cause notice. Shri Ali, learned Departmental Representative also stated that the manufacturer's invoices were not produces by the appellants as stated in Page 2 of the Collector's order. Shri Ali submitted that the Collector has granted a big concession to the appellants by fixing the assessable value at US $ 680 per Metric Tonne. The proposal in the show cause notice was to take the assessable value as $ 900 Metric Tonne which was the price noticed for contemporaneous import. He relied upon the Tribunal decision in Poonam Plastic Industries v. Collector of Customs 5. Shri Sridharan, learned Counsel gave a brief rejoinder to the submissions made by the learned DR. He said that the statement referred to by him regarding the indent had been retracted by the concerned person. The Collector had given his finding on indents and invoices and he has accepted the genuineness of the same. It is, therefore, not permissible for the department to go behind the impugned order and question the documents. He reiterated his plea for the appeals to be admitted.

6. We have considered the submissions and perused the records. We find that the findings of the Collector on the different questions that arose in this case are as follows :- (1) There is not enough evidence to discard the Sales contracts/confirmation dated 14-4-1987.

(2) In the absence of any concrete and conclusive evidence as to the time and creation of the indents, it would not be possible to sustain the allegations that these documents were created at a later date and ante dated and therefore, the benefit of doubt in this regard should flow to the charged persons.

(3) The claim that the subject imports had been despatched in terms of the said sales confirmation, is rejected.

(4) Even if the local indents are conceded to be genuine they cannot be held as related to the two sale confirmations.

(5) It can be assumed that the estimated date of placing of orders in respect of the subject imports would be in the first week of July, 1987 as the shipment had taken place in the middle of August, 1987. The Average GIF offer prices during the first week of July, 1987 should be around $ 780 per Metric Tonne taking into account the normal period of question from the date of entering into a contract to the date of its execution in the form of shipment as experienced in the study of various orders. The supplier's prices do not reflect the ruling prices prevailing at the time of despatch.

(6) No evidence is found to doubt the bonafide nature of the supplier's invoices.

(7) The allegation of misdeclaration and under invoicing has not been established.

From the Collector's findings, summarised above, it is seen that all the relevant documents, namely, the local indent the confirmation by the supplier and the supplier's invoices have been held to be genuine.

All the allegations regarding their non-bonafide nature have been dropped. The finding, however, is that the supplier's confirmation of the order which is crucial for fixing the prevailing price which was dated 14-4-1987 did not relate to the subject goods. This has been arrived at on the basis that this confirmation mentioned the delivery period as July, 1987 while the shipment actually took place in the middle of August, 1987. It has been held that normally the time required for executing an order after the placement of the order and confirmation of the order will be 4 to 8 weeks. The mean of this is taken at 6 weeks and the date of contract determined as July, 1987. The international GIF prices of LDPE in March-October, 1987 were reported as follows as recorded in the Collector's order :-Mid March, 1987 Around US Dollar 650 CIF PMTMid April, 1987 " 680 " "Mid May, 1987 " 720 " "Mid June, 1987 " 760 " "Mid July, 1987 " 800 " "Mid Aug., 1987 " 900 " "Mid Sept., 1987 " 950 " "Mid Oct., 1987 " 1050 " " For Mid June, 1987 the price was 760 and Mid July, 1987 it was 800. The mean of the same has been taken as 780 and applied. The price in Mid April, 1987 is seen to be $ 680 per Metric Tonne which was the price quoted in the order of confirmation. The genuineness of that document has not been denied by the Collector in his order. This document itself refers to the delivery period as July, 1987. Simply because the shipments took place in August, 1987, it cannot be held that such shipments did not relate to the April contract and a subsequent contract must have been entered into against which only the actual shipment took place. The charge of manipulation of documents has been dropped by the Collector. There is no appeal by the department to challenge that findings. If the April confirmation/contract was genuine as accepted by the Collector the question will be what happened to the same. It is not likely that such a contract was simply entered into and allowed to lapse without any import being made and the import which did take place was against a subsequent contract. The plea in this regard by the learned Counsel of the appellants is that no imports had been made against their contract. This would remove any doubt that the said order confirmation of 14th April, 1987 had already been utilised and become a spent force in relation to the August, 1987 shipment. During the raids of the premises of the various parties no documents pointing to any other subsequent contract was found. Though it may not be a clinching factor, the stand taken that since the shipment.took place in August, 1987 contract must have been entered into in July, 1987 will be a presumption. It there was such a steady pattern that four weeks to eight weeks was the lead time for shipment of the goods after the contract the shipment time shown in the 14-4-1987 confirmation was July, 1987. this would mean the delivery time was 10 weeks to 14 weeks depending upon whether shipment was in the first week of July or the last week of July. The actual shipment took place in August after 16 weeks. The delay is either 2 weeks or 6 weeks depending upon whether the shipment was to be made in the first week of July or the last week of that month. The plea was taken before us on behalf of the appellants that in view of the rising trend of prices of LDPE in the international market due to factors like oil crisis they had entered into the contract in April, 1987 to make sure of the availability of the material at competitive prices. The plea is plausible. The April, 1987 contract/confirmation cannot be dismissed as unrelated to the goods in question on the ground that the shipment was made only in the middle of August, 1987. Once the documents, local indent, supplier's order confirmation and the supplier's invoices have been held to be bonafide and genuine documents, the benefit arising from such a position cannot be denied to the imports on the ground that the said order/confirmation does not relate to the goods and that there must have been a subsequent contract and the price that prevailed at the time of such a subsequent contract must be adopted. The factors that weighed with the Collector for dropping the charge of misdeclaration of value will hold good for the acceptance of the invoice value for the purpose of assessment of duty also. The decisions cited by the learned Counsels support such a course. Thus, in the Sunshine Metal of Alloys Indus. Pvt. Ltd. case, the Tribunal held that where the prices were fluctuating in the market and the contract was genuine, the contracted price was acceptable.

7. In the circumstances, the Collector's order enhancing assessable declared by the appellants cannot be sustained. We set aside the same and allow the appeals.