

Customs, Excise and Gold Tribunal - Mumbai

Commissioner Of Customs vs Multimetal Limited on 5 May, 2000

Equivalent citations: 2000 (121) ELT 467 Tri Mumbai

ORDER

1. During the hearing of this appeal of the Revenue on 5-10-1999 the Tribunal had reminded the departmental representative of their earlier directions to secure the case file and had made specific direction for production thereof on the next date of hearing. When the hearing resumed today Shri Deepak Kumar Id. SDR presented the case file bearing No. CIU/GEN/209/93/S/10-23/93.

2. The respondents Multimeters Limited had imported certain consignment of mixed copper scrap. Examination of the cargo indicated that substantial portion thereof was not scrap but useful prime goods. The goods were re-examined by an expert panel. The concerned officers of customs placed a note on the file mentioned above from note sheet page XXI to XXVII for the Collector's perusal. On note sheet No. XXVII it was mentioned that the importers had waived show-cause notice and had requested for personal hearing. The Commissioner accordingly heard the importers on 23-12-1993. He held that three items namely strips in coil form, pipes/tubes and square bars merited assessment on merits and not as scrap. Thereafter he made the following observation.

"No dispute has been raised before me regarding the value of the goods. These are two consignments of 17 M.T. each comprising predominantly of scrap with some serviceable items. There is no contemporaneous import of similar or identical goods at higher value. There is also no evidence or allegation or even a suspicion that the proper value has not been properly reflected in the invoice or any payment in addition to the invoice value has been made or is to be made for the impugned goods. I, therefore, do not find any ground to reject the invoice value for assessment of the goods.

In view of the fact both the consignments are mixed lot, predominantly containing scrap, there is genuine dispute regarding serviceable nature of part of the consignments, and there is no suppression of value or any evidence of mala fides or deliberate mis-statement, mis-declaration, there is no justification for either confiscation of the material or for imposing any fine cation for either confiscation of the material or for imposing any fine or penalty on the importers."

3. The Board reviewed this order under the power vested under Section 129D(1). In pursuance of this order the present appeal has been filed. The prayer made in the appeal is that in view of the discription and the value of the goods being misdeclared, the ground existed for confiscation of the goods and for levy of penalty- It is claimed that the Commissioner was wrong in not escalating the value and in giving finding that there is no suppression or mis-declaration.

4. The Bench observe that in terms of Section 124 of the Customs Act, 1962 where the issue of a written show-cause notice is not insisted upon, the allegation contained in the notes of the department would become the charges against the assesseees. During the adjudication proceedings it would be necessary for the adjudicating authority to appraise the noticee of such charges and to record their submissions and thereafter to give his finding. With this in mind we had directed

production of the case records. We find that certain proposals were contained in notes pages XXI to XXVIII of this file, which included enhancement of value if not for confiscation for levy of penalty.

5. Shri R.V. Desai, Senior Counsel appearing along with Shri A.D. Kango, advocate states that the respondents need to study the materials now being produced by the department. We find his contention acceptable and direct the departmental representative to furnish a photocopy of the relevant pages to the respondent.