

Customs, Excise and Gold Tribunal - Delhi

Gordon Woodroffe And Co. (Madras) ... vs Collector Of Customs on 19 September, 1983

Equivalent citations: 1983 (14) ELT 2380 Tri Del

ORDER F.S. Gill, President

1. Since these two appeals arise out of a common Order-in-Appeal and they involve a common point at issue and also relate to the same appellants, this combined order is being issued in respect of both of them.

2. The facts, in brief, are that the appellants entered into two contracts with their foreign supplier on 20-9-1976 for supply of tungsten ore. One contract No. V. 7321 was for supply of 60 M.T. at the fixed price of U.S. \$ 129.50 per M.T. The other contract No. V 7317 was for supply of 150 M.T. at a price to be based on the average of the High London Bulletin Tungsten Ore quotation plus a premium of 0.80 per cent for the contractual month of shipment c.i.f. Madras. The actual price charged under this second contract worked out to U.S. \$ 156.24 per M.T. The Department was of the view that since both the contracts were entered into on the same date and were between the same buyer and seller and for the same goods, the assessable value under Section 14 of the Customs Act, 1962 could not be different for the goods supplied under the two contracts. Accordingly, the Department assessed the first-mentioned quantity of 60 M.T. also at the Higher London Metal Bulletin price. The Assistant Collector and the Appellate Collector maintained the decision of the Department. The appellants then filed revision application to the Central Government which, on transfer to this Tribunal under Section 131-B of the Customs Act, 1962, have been taken up as the subject appeals.

3. During the hearing today, the appellants explained that at the time of contracting, the international price of tungsten ore, which is a scarce commodity, had been steadily and steeply increasing and for this reason the sellers were hesitant to commit themselves to supply the entire quantity over a period of six months or so at a fixed price. Their suppliers agreed to supply 60 M.T. at a fixed price and the remaining quantity at the L.M.B. high quotation. The appellants stated that what they had done was nothing unusual but was in accordance with the international trade practice in this commodity. They had already substantiated this contention before the Appellate Collector by producing the "Metal Bulletin" for March, 1977 published by International Alloys Ltd., London. The appellants maintained that in view of the market conditions and the international trade practice, the Department was not justified in rejecting the lower contracted price of U.S. \$ 129.50 for the smaller consignment of 60 M.T.

4. The Department's representative reiterated the reasoning of the lower authorities that for the same goods contracted on the same date with the same supplier, there could not be two different assessable values. He added that it was a strange phenomenon in this case that a lower price had been charged for a smaller lot and a higher price for the bigger lot while, normally, it should have been the other way round.

5. We have carefully considered the matter. We find force in the appellants' argument that in a rising market the suppliers would not normally commit themselves to supply large quantities of a scarce commodity over a period of some months at a fixed price prevailing at the time of contracting. They

have substantiated their case with the help of the "Metal Bulletin" that there was nothing unusual in the supply of some quantity at a fixed price and some quantity at the "formula" price. The Department has produced no evidence to show that the other Indian importers of tungsten ore who contracted for the goods at about the same time had paid any different price. There is also no evidence on record to indicate that the Department doubted the bona fides of the transaction. Nor is there any suggestion that the fixed price obtained by the appellants was not a price at arm's length. In the circumstances, we hold that the Department was not justified in escalating the contracted price of U.S. \$ 129.50 for the smaller lot of 60 M.T. Accordingly, we allow both the appeals with consequential relief to the appellants.