



R.K. Jain's

**GST-ExCus**

Electronic Library for GST, Customs, Excise, EXIM, FEMA &amp; Allied Laws

**2004 (178) E.L.T. 883 (Tri. - Mumbai)**

IN THE CESTAT, WEST ZONAL BENCH, MUMBAI

**S/Shri S.S. Sekhon, Member (T) and T. Anjaneyulu, Member (J)****ARROW COATED PRODUCTS LTD.***Versus***COMMISSIONER OF CUSTOMS, MUMBAI***Order Nos. A/812-815/2004-WZB/C-III, dated 15-7-2004 in Appeal Nos. C/645-648/99*

**Confiscation and penalty - Valuation (Customs) - Transaction value - Undervaluation of imported goods - Machines being, demo models, price at which they were procured was lower negotiated price for inventory clearances - Interpretative Notes to Rules 4(2)(f) of Customs (Valuation) Rules, 1988 stipulates condition that demo clause enhancing to promote business of supplier shall not be a reason to reject transaction value - Transaction value based on introductory prices as per invoices accepted and confiscation and penalty set aside - Sections 14, 111 and 112 of Customs Act, 1962. [[1996 \(81\) E.L.T. 195](#) (S.C.) followed]. [paras 1(e), 1(f), 1(g)]**

**Appeals allowed****CASES CITED**Basant Industries v. Additional Collector — [1996 \(81\) E.L.T. 195](#) (S.C.) — *Followed*..... [Para 1]Eicher Tractors Ltd. v. Commissioner — [2000 \(122\) E.L.T. 321](#) (S.C.) — *Relied on*..... [Para 1]**REPRESENTED BY :** *Shri S.D. Nankani, Advocate, for the Appellant.**Shri S.S. Bhagat, SDR, for the Respondent.***[Order per : S.S. Sekhon, Member (T)].** - Heard both sides and considered the matter. It is found that -

- (a) Proceedings were launched pursuant to an intelligence to the effect that 'Vinyl Sign Cutting Machines' were being imported by grossly undervaluing the same. Enquires were caused and notice were issued to the appellants herein.
- (b) One machine imported by Patel Paper Product (PPP for short) and seven machine imported by M/s. Arrow Converters Pvt. Ltd., (ACPL for short) were found to be undervalued resulting in demand of duty short paid. Shri Shilpan Patel, being the Managing Director, Appellant in Appeal No. C/648/99 of ACPL and proprietor of PPL was imposed a penalty of Rs. 18 lakhs. No penalty was imposed on ACPL. The valuations were ordered to be enhanced from the declared and accepted values. The machines were held liable to confiscation under section 111(m) of the Customs Act, 1962 and were offered to be redeemed on fine and demand of duty short paid confirmed & appropriate.
- (c) Incriminating documents, as per allegation, were recovered from the premises of M/s. Arrow Coated Products (P) Ltd., which were import BES for these machines and other goods effected by other firms. M/s. Arrow Coated (P) Ltd., were found to have imported 6 different models of Vinyl Cutting Machines. A copy of Price list of the supplier was also recovered.
- (d) Statement of Shri Shilpan Palel, who was the Managing Director of M/s. Arrow Coated (P) Ltd., ACPL & PPL recorded revealed, that he did not have any authentic price list in his possession & the Price-List recovered by the officers was the Retail Price list to the Agents. He also produced a sealed envelope from the manufacturers, which showed the prices of supply of 17 machines of different models which when compared with the price disclosed reveal the following :

Sr. No.	Bill of Entry Date	Model & Number	Declared Price (in US\$)	Price as per price list (in US\$)	Quantity imported	Name of the importer
1.	2113/ 5-12-1993	IIS-15"	500/-	6880/-	One	M/s. Patel Paper Products

2.	4235/ 13-4-1994	GS-15"	525/-	4892/-	Seven	M/s. Arrow Converter Pvt. Ltd.
3.	10921/ 27-11- 1993	437.5				-do-
4.	7919/ 9-6-1994	GS-750 30"	1025/-	5757/-	One	-do-

Shri Shilpan Patil also explained his imports to be of discontinued models sent on inventory clearance by suppliers, and were at lower negotiated prices for **Demo machines**.

- (e) The adjudicator, after accepting the plea of the machines being Demo models, concluded that "the price at which the subject machines was procured were introductory prices" they admittedly were not at true market value of the machine, as per Price List of the manufacturers. The intent to provide & improve the business of the supplier, would create a mutuality of interest, therefore the value declared was rejected and consequential demand of duty, penalty and fine would emerge at the higher values.
- (f) Interpretative notes to the Customs (Valuation) Rules, 1988 stipulate the condition under which a value would not be transaction value. Then notes -  
 "However, condition or consideration relating to the production or marketing of the imported goods shall not result in rejection of the transaction value..."  
 Therefore, the Demo clause enhancing to promote the business of supplier, i.e. marketability cannot be a reason for arrival to reject the transaction value. The rejection of Transaction value therefore cannot be upheld.
- (g) Negotiated prices with special discounts claimed, are acceptable, following the Apex Court ruling in case of *Basant Industries - 1996 (81) E.L.T. 195* (S.C.) and we find force in reliance on the decision of *Eicher Tractor Ltd., 2000 (122) E.L.T. 321* (S.C.) placed by the appellants to hold that transaction value as per invoices in this case has to be accepted it cannot be departed from.
- (h) Consequently the duty demands, consequent liability to confiscate and penalty cannot survive. The orders are required to be set aside and appeal allowed.
2. Ordered accordingly.
  3. Appeals consequently allowed.