

M/S COMMERCE INTERNATIONAL

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v.

COLLECTOR OF CUSTOMS

MARCH 29, 1995

[R.M. SAHAI AND S.C. SEN, JJ.]

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Customs Valuation Rules: Rule 3(a)(b).

Import of toners—Custom clearance for—Declaration of value—Non-submission of price list by importer—Reliance by Customs on price list obtained from manufacturer—Determination of value under Rule 3(a)—Held valid.

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The appellant imported 125 cartons of toners and filed a bill of entry for their clearance declaring their value on the basis of invoice-cum-value and country of origin certificate issued by the trading company. It did not file the price list of goods imported as asked by the Department, stating that the trading company was not willing to reveal the source of supply. Consequently, the Customs Department obtained the price list from manufacturer and relying upon the same determined the value of goods under Rule 3(b) of Customs Valuation Rules holding that it was a case in which rule 3(a) could not be applied. On appeal the Tribunal upheld the valuation made under Rule 3(b). Hence this appeal by the importer.

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Dismissing the appeal, this Court

HELD: The determination under rule 3(b) of the Customs Valuation Rules could be undertaken if the valuation could not be determined under clause(a). The authorities found that in the nature of goods imported by the appellant the valuation of it could not be determined under rule 3(a). Therefore, rule 3(b) was rightly invoked. The determination having been done on comparable goods offered for sale in competitive conditions in countries outside India the order does not suffer from any error of law.

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2198 of 1988.

From the Judgment and Order dated 11.5.88 Central Excise and Customs and Gold (Control) Appellate Tribunal, New Delhi in A.No.

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A C.3088/87-A.

Rajiv Dutta and Vipin Nair for the Appellants.

Dr. R.R. Mishra, R.B. Mishra for P. Parmeswaran with him for the Respondent.

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The following Order of the Court was delivered :

The only question that arises for consideration in this appeal is whether the Tribunal was justified in applying Rule 3(b) of the Customs Valuation Rules framed under Section 14 of the Customs Act.

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The appellant filed a Bill of Entry for clearance of 125 cartons of toners declaring the value of the goods at a particular amount on the basis of invoice-cum-value and country of origin certificate issued by M/s. Sangill Ltd. Since the seller was not a manufacturer the Department required the appellant to furnish the price list of the goods under import but the appellant instead of filing the price list stated that they had purchased the goods from a trading company which was not willing to reveal the source of supply. Consequently, the Department obtained export price list from M/s. Coates Electrographics Limited. After examining the price list of M/s Coates Electrographics Ltd., the Collector was of the opinion that it was a case in which rule 3(a) could not be applied. Therefore, he proceeded to determine the value under rule 3(b) and on the price list supplied by the manufacturer the valuation of the toner imported by the appellant was determined. It was held that the value of the goods when compared with manufacturer's price list was much below the normal price in the international market. The goods were directed to be confiscated with an option to clear on Rs. 8 lakhs. Penalty of Rs. 1000 was also imposed. Against this order the appellant approached the Tribunal. The Tribunal found that the Collector did not commit any error in applying rule 3(b) but reduced the redemption fine from Rs. 8 lakhs to Rs. 5 lakhs. The penalty of Rs. 1,000 was maintained.

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Section 14(1)(b) of the Customs Act empowers the appropriate authority to determine the value of the imported goods in accordance with provisions contained in rules 3 to 8. Rule 3(a) provides for determination of value of such goods, with comparable goods produced or manufactured and ordinarily sold or offered for sale to other buyers in India under

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competitive conditions. Rule 3(b) permits the proper officer to determine valuation on the export price at which such goods or comparable goods are ordinarily sold or offered for sale under competitive conditions to buyers outside India. The determination under rule 3 (b) could be undertaken if the valuation could not be determined under clause (a). The authorities found that in the nature of goods imported by the appellant the valuation of it could not be determined under rule 3(a). Therefore, rule 3(b) was rightly invoked. And the determination having been done on comparable goods offered for sale in competitive conditions in countries outside India the order does not suffer from any error of law. The Tribunal further did not commit any error in relying on the price list supplied by the manufacturer as compared to trading company which refused to divulge the name of the manufacturer.

In the result, this appeal fails and is accordingly dismissed. But there shall be no order as to costs.

T.N.A.

Appeal dismissed.