(2015) 09 SC CK 0201

In the Supreme Court Of India

Case No : Civil Appeal Nos. 1581 of 2007 and 3140-3143 of 2008

Commissioner of Customs, Gujarat — APPELLANT

Vs

Crown International and others — RESPONDENT

Date of Decision : 29-09-2015

Acts Referred:

Citation : (2015) 52 GST 970

Hon'ble Judges : A.K. Sikri and Rohinton Fali Nariman, JJ.

Bench : Division Bench

Advocate : K. Radhakrishnan, Sr. Advocate, Arijit Prasad, B. Shekhar and B. Krishna Prasad, Advocates, for the Appellant; Praveen Kumar and Bina Gupta, Advocates, for the Respondent

Final Decision : Dismissed

Judgement

Civil Appeal No. 1581 of 2007

1. Respondents are merchant exporters. They purchased CD-ROMs containing software from one manufacturer. Purchase price was Rs. 640/- per piece. Respondents had entered into a contract with foreign buyers for export of the CD ROMs at the rate of USD 18 per piece, which was equivalent to Rs. 761.40/- at the prevailing exchange rate. Respondents realised the full export proceeds from the foreign buyers.

2. Based on the investigations, show cause notice was issued alleging that the value declared by Respondents for export was inflated with a view to take the advantage of DEPB schemes. It was observed that the software in the CD-ROMs were otherwise freely downloadable from the internet. According to the Department, fair value of the CD-ROMs, after considering all incidental costs, should have been much lower.

3. The show cause notice was adjudicated upon by the Commissioner who vide Order-in-Original dated 27.03.2000 dropped the proceedings and held that there had been no contravention of the provisions of Customs Act.

4. Aggrieved, the Department appealed to the Customs, Excise and Service Tax Appellate Tribunal (hereinafter referred to as ''CESTAT'').

5. The CESTAT has allowed the appeal vide impugned decision dated 18.08.2006 accepting the case of the Respondent-Assessee, meaning thereby, the price of Rs. 640/- as declared by the Assessee is found to be genuine. A perusal of the order reveals that the CESTAT has noted that the Respondents purchased the CD ROMs from the local market directly from the manufacturer. The purchase price of Rs. 640/- has not been challenged. It is not the case of the Department that the transaction between the manufacturer and the Respondents is not genuine. It is also not Department''s case that the transaction between the Respondents and the foreign buyers is not genuine. Respondents have procured the goods for valuable consideration and in turn, received the foreign exchange fully for the sale of goods to the foreign buyers. Therefore, there is no reason to discard the transaction value as between the manufacturer and the Respondents nor as between the Respondents and foreign buyers. The CESTAT also found that the Department has not shown that at the time and place of exportation, such or like goods have been exported from India at much lower price as claimed by the Department. It is also an accepted fact that the Respondents and foreign buyers are not related parties.

6. We find that all the aspects have been duly and rightly considered by the CESTAT. The analysis of the material is on factual aspect and no substantial question of law arises for consideration in the instant appeal.

7. The appeal is, accordingly, dismissed.

Civil Appeal Nos. 3140-3143 of 2008

8. The appeals are dismissed in terms of the aforesaid order passed in Civil Appeal No. 1581 of 2007.

