(2006) 12 MAD CK 0141

In the Madras High Court

Case No : Writ Petition No. 21603 of 2001

Indo Overseas Films APPELLANT

Vs

Union of India (UOI) RESPONDENT

Date of Decision : 11-12-2006

Acts Referred:

Customs Act, 1962 — Section 14
Customs Valuation (Determination of Price of Imported Goods) Rules, 1988 — Rule 19(1), 3, 4, 5, 6

Citation : (2006) 12 MAD CK 0141

Hon'ble Judges : K. Raviraja Pandian, J

Bench : Single Bench

Advocate : S. Murugappan, for the Appellant; R. Subbiah, for the Respondent

Final Decision : Dismissed

Judgement

K. Raviraja Pandian, J.—The relief sought for in this writ petition is to quash the order of the second respondent, Customs, Excise and Gold (Control) Appellate Tribunal dated 3-9-2001 made in Order No. 1504/2001 by which, the second respondent confirmed the order of the lower authorities including the royalty, in determining the transaction value of the imported goods.

2. The facts are:

The petitioner, a firm engaged in import and distribution of feature films, in the course of its business, had entered into an agreement with London distributors for the import and distribution of the film "Web of Silence-AIDS". The goods were by filing bill of entry dated 21-4-2000 on payment of Customs duty as determined by the respondent, which included a sum of 12,500 US $ towards royalty. The inclusion of 12500 US $ in the value of the imported goods was disputed by the petitioner to the Commissioner and thereupon to the second respondent, who confirmed the order determining the assessable value by the lower authority. The correctness of the said order is canvassed in this writ petition.

3. The one and the only contention raised by the learned Counsel for the petitioner is that the inclusion of 12500 US $ in the assessable value of the feature film is not in accordance with the statutory provisions. It is clear from the invoice that the print in 35 mm to a length of 2569 meters is valued at 1000 US $ and in addition to that 35 mm of trailer to a length of 35 mm of the said film is 20 US $. So, the value of the imported goods, i.e., feature film is 10200 US$. The inclusion of 12500 US $ which pertains to royalty in the assessable value is not correct.

4. I heard the learned Counsel on either side and perused the materials available on record.

5. The value of the imported goods for the purposes of determination of the duty has to be arrived at in terms of Section 14 of the Customs Act, which in turn provides for determination of value in terms of the Customs Valuation (Determination of Price of Imported Goods) Rules, 1988. Rule 3 of the 1988 Rules provides for (i) the value of the imported goods shall be the transaction value; (ii) if the value cannot be determined under the provisions of Clause (i) above, the value shall be determined by proceeding sequentially through Rules 5 to 8 of these Rules. Rule 4 provides that the transaction value of imported goods shall be the price actually paid or payable for the goods when sold for export to India, adjusted in accordance with the provisions of Rule 9 of these Rules. Rule 9 refers to the charges incurred for various types of services and stipulates addition in respect of the same whether actually paid or not. Rule 9(1)(c) provides that in determining the transaction value, there shall be added to the price actually paid or payable for the imported goods, - royalties and licence fees related to the imported goods that the buyer is required to pay, directly or indirectly, as a condition of the sale of the goods being valued, to the extent that such royalties and fees are not included in the price actually paid or payable. Rules have interpretative note and the interpretative note to Rule 9(1) is to the effect that royalties and licence fees referred to in Rule 9(1)(c) may include among other things, payments in respect to patents, trademarks and copyrights. However, the charges for the right to reproduce the imported goods in the country of importation shall not be added to the price actually paid or payable for the imported goods in determining the customs value. It further provides that payments made by the buyer for the right to distribute or resell the imported goods shall not be added to the price actually paid or payable for the imported goods if such payments are not a condition of the sale for export to the country of importation of the imported goods.

6. It could be seen from the invoice made available at page No. 3 of the typed set of papers that the petitioner has imported the feature film - "Web of Silence - AIDS". The cost of the materials, i.e., one 35 mm (2569 meters length) is valued at 1000 US $ and in 35 mm of trailer (35 mm length) of the said film is 20 US $. So, the value of the imported goods, i.e., feature film is 1020 US $. Apart from that royally including one new print and one trailer with the right of reproduction

and distribution of public performance for the territories of India had been valued at 12500 US $. The payment of 1020 US $ for the print and trailer and 12500 US $ towards royalty for exploitation of the film is condition precedent in the importation. Though the value has been splitted out as royalty and the cost of materials, as per the agreement, the petitioner imported the feature film for exploitation only and without exploitation there is no purpose for importing the feature film. On the other hand, the purpose of importation of the film is only for exploitation. For the purpose of exploitation the charges is stated to 12500 US $. As per Rule 19(1)(c) the royalty and licence fee relating to the imported goods that the buyer is required to pay, directly or indirectly, as a condition of the sale of the goods being valued, to the extent that such royalties and fees are not included in the price actually paid or payable.

7. In the case on hand, the petitioner had to pay not only the cost of movie materials, but also the royalty and the rights specified in the distribution agreement as a condition of sale, as without the right of exploitation the print or trailer could not be of any use to the petitioner to enjoy theatrical or video right conferred on the petitioner. In the light of the statutory provisions and peculiar facts and circumstances of the present case and in the light of the reasoning above stated, I do not find any substance in the argument of the learned Counsel to the effect that 12500 US $ referable to as royalty cannot be included in the valuation of the imported goods.

8. In the result, the writ petition is dismissed. However, there is no order as to costs.

