A COMMISSIONER OF CUSTOMS (GEN), MUMBAI

v.

ABDULLA KOYLOTH

(Civil Appeal No. 1608 of 2005)

OCTOBER 29, 2010

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[D.K. JAIN AND T.S. THAKUR, JJ.]

Customs Act, 1962:

C *Section 14(1) – Valuation of imported goods for purposes of assessment – Mis-declaration with respect to country of origin, quantity and value of imported items – However, Tribunal accepting the transaction value as declared by assessee – HELD: Price paid by an importer to the vendor* D *in the ordinary course of commerce is to be taken the transaction value in the absence of any special circumstances indicated in s.14(1) of the Act and particularized in Rule 4(2) of 1988 Rules – In the instant case, the assessee admitted that there was difference between the items declared and seized and that the value arrived at after* E *market inquiries was acceptable to him – In the circumstances, the Tribunal failed to apply the procedure envisaged in s.14(1) of the Act read with 1988 Rules – Order of Tribunal set aside and matter remitted to it for consideration afresh – Customs Valuation (Determination of* F *Price of Imported Goods) Rules, 1988 – Rules 3(ii), 4(2) and 5 to 8.*

The proprietorship concern of the respondent imported a consignment of assorted consumer goods G **like glass ware, hair dryers, gas filled cylinders and refrigerant-22 gas (R-22). The bill of entry for the said goods was filed on 3.5.2002. The goods were seized, as it was found that there was mis-declaration with respect to country of origin, quantity and value of imported items,**

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and there was no actual user licence for import of R-22 gas filled cylinders. The Commissioner of Customs rejected the value declared by the respondent for the purpose of Section14 of the Customs Act, 1962 and held that the assessable value of the goods had to be determined under Rules 6-A and 7 of the Customs Valuation (Determination of Price of Imported Goods) Rules, 1988. The Commissioner confirmed the assessable value of the goods and the duty demand. Additionally, the goods were ordered to be confiscated under sections 111(d) and (m) with the option of redemption and payment of fine, and penalty was also imposed on the respondent. R-22 gas cylinders were confiscated absolutely u/s 111(d) of the Act, in the absence of actual user licence. The Customs, Excise and Service Tax Appellate Tribunal confirmed the order as regards R-22 gas cylinders, but in respect of the other items, it allowed the claim of the assessee.

In the instant appeal filed by the Revenue, it was contended for the appellant that as there was mis-declaration in the bill of entry in relation to quantity, country of origin and value of the goods, the transaction value had to be rejected in terms of Section 14(1) of the Act and Rule 4(2) of the 1988 Rules, and in the absence of contemporaneous imports of similar goods, Rule 7 of 1988 Rules would apply.

Allowing the appeal, the Court

HELD: 1.1 Both, Section14 (1) of the Customs Act, 1962 (as it existed at the relevant time) and Rule 4 of the Customs Valuation (Determination of Price of Imported Goods) Rules, 1988, provide that the price paid by an importer to the vendor in the ordinary course of commerce shall be taken to be the transaction value in the absence of any of the special circumstances indicated

A **in Section 14(1) of the Act and particularized in Rule 4(2) of the 1988 Rules. Therefore, the Customs authorities are bound by the declaration of the importer unless on the basis of some contemporaneous evidence the Revenue is able to demonstrate that the invoice does not reflect**
B **the correct value. It is only when the transaction value under Rule 4 is rejected, that by virtue of Rule 3(ii), the value shall be determined by proceeding sequentially through Rules 5 to 8 of the 1988 Rules. [para 15] [292-H; 293-A-C]**

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Commissioner of Customs, Mumbai Vs. J.D. Orgochem Limited **2008 (6) SCR 200 = (2008) 16 SCC 576; *and*** *Commissioner of Customs, Calcutta Vs. South India Television (P) Ltd.* **2007 (8) SCR 95 = (2007) 6 SCC 373;** *Commissioner of Customs, Mumbai Vs. Bureau Veritas &*
D *Ors.* **2005 (2) SCR 118 = 2005 (3) SCC 265; and** *Eicher Tractors Ltd., Haryana Vs. Commissioner of Customs, Mumbai* **2000 (4) Suppl. SCR 597 = (2001) 1 SCC 315 – relied on.**

E *Prasant Glass Works P. Ltd Vs. Collector of Customs, Calcutta* **1996 (87) E.L.T. 518 (Tri.-Del);** *Prasant Glass Works P. Ltd Vs. Collector of Customs* **1997 (89) E.L.T. A 179;** *Varsha Plastics Private Limited & Anr. Vs. Union of India & Ors.* **2009 (1) SCR 896 = (2009) 3 SCC 365; and** *Collector*
F *of Customs, Calcutta Vs. Sanjay Chandiram* **1995 (1) Suppl. SCR 19 = 1995 (4) SCC 222, cited.**

1.2 It is evident from a bare reading of the impugned order that having regard to the factual scenario emerging
G **from the record, the Tribunal has failed to apply the procedure envisaged in Section 14(1) of the Act read with 1988 Rules for determining the value of the imported goods. The finding of the Tribunal that "in the absence of any evidence to show that the invoice value was not correct and further in the absence of contemporaneous**
H **imports of identical goods the value declared by the**

assessee should be accepted as transaction value" is clearly perverse and cannot be sustained, particularly, in light of the fact that the information collected by the revenue from the market, veracity whereof was not questioned by the respondent, has also not been examined by the Tribunal. Importantly, the Tribunal has also overlooked the statement made by the respondent on 13.9.2002 under Section 108 of the Act, whereby he admitted that there was difference between the items declared, and the items actually seized by the Customs authorities, and that the value arrived at after market enquiries was acceptable to him. The said statement was not contested by the respondent either before the Commissioner or the Tribunal. [para 18] [294-E-G; 295-A]

1.3. In the facts and circumstances of the case, the Tribunal needs to re-examine the entire matter afresh, particularly, in relation to the manner of valuation, redemption fine and penalty. Consequently, the matter is remitted back to the Tribunal for consideration afresh in accordance with law after affording proper opportunity of hearing to both the parties. [para 19] [295-A-B]

Case Law Reference:

1996 (87) E.L.T. 518 (Tri.-Del)	cited	para 11
1997 (89) E.L.T. A 179	cited	para 11
2000 (4) Suppl. SCR 597	relied on	para 11
2009 (1) SCR 896	cited	para 11
2008 (6) SCR 200	relied on	para 15
2007 (8) SCR 95	relied on	para 15
2005 (2) SCR 118	relied on	para 15
1995 (1) Suppl. SCR 19	cited	para 18

A CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1608 of 2005.

From the Judgment & Order dated 10.12.2004 of the Customs, Excise and Service tax Appellate Tribunal, West
B Regional Bench at Mumbai in Appeal Noc./493/2003/Mum.

K. Swami, T.V. Ratnam, D.L. Chidananda, B. Krishna Prasad for the Appellant.

Tarun Gulati, Ramesh Singh, Kishore Kunal, Rony John,
C Praveen Kumar for the Appellant.

The Judgment of the Court was delivered by

D.K. JAIN, J. 1. Challenge in this appeal, by the revenue, under Section 130E(b) of the Customs Act, 1962 (for short "the
D Act") is to the order dated 10th December 2004 passed by the Customs, Excise and Service Tax Appellate Tribunal, (for short "the Tribunal") whereby the appeal preferred by the respondent has been allowed holding that the assessable value declared by the respondent in the bill of entry should be accepted for the
E purpose of valuation in terms of Section 14 of the Act.

2. M/s. IPCO Enterprise, Thane, a proprietorship concern of the respondent imported a consignment of assorted consumer goods ranging from glass ware, hair dryers etc. to
F gas filled cylinders and refrigerant-22 gas (R-22). The bill of entry for the said goods was filed on 3rd May 2002, by M/s Vegha Shipping & Transport Pvt. Ltd. on behalf of M/s. IPCO Enterprise, whereby the total assessable value of the goods was declared at ' 6,75, 796.90/- with duty liability of ' 3,86,352/ -.

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3. On an examination of the bill of entry, invoice dated 17th April 2002, and packing list issued by one M/s. Plizer Trading, Dubai, certain discrepancies were noticed by the Central Intelligence Unit, and therefore, first check appraisement was

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ordered. Subsequently, 100% examination of the goods was carried out on 13th-14th May 2002, and it was found that there was mis-declaration with respect to country of origin, quantity and value of the imported items. A

4. On 31st May 2002, the respondent was summoned by the Central Intelligence Unit, and his statement under Section 108 of the Act was recorded. Subsequently, another statement was recorded on 6th June 2002, wherein the respondent stated that he was not aware that he required license for import of certain goods, and that he did not remember the country of origin of some of the goods. B C

5. Due to large number of discrepancies found in the bill of entry, and the fact that the import of R-22 gas filled cylinders required actual user license, the goods were seized on 4th July 2002. D

6. On 26th August 2002, the respondent wrote a letter to the Central Intelligence Unit whereby he stated that he had accepted the wholesale prices found out by the department by market survey, and that the case be finalized and settled at the earliest. Thereafter, duty liability was calculated in terms of Rule 6A and 7(1) of the Customs Valuation (Determination of Price of Imported Goods) Rules, 1988 (for short "the 1988 Rules") as it was observed that Rules 3(i) and 4 were not applicable due to mis-declaration, and Rule 5 and 6 could not be invoked as there were no contemporaneous imports of similar or identical goods. E F

7. On 13th September 2002, another statement of the respondent was recorded under Section 108 of the Act, wherein he admitted, *inter alia,* that there was difference in the items declared and the items actually found and seized under Panchnama, and that the prices of the items, in question, found by the market survey were acceptable to him. G

8. Vide his order dated 21st April 2003, the Commissioner H

A of Customs rejected the assessable value declared in the bill of entry. Dealing with explanation furnished on behalf of the respondent regarding some of the crockery items, the Commissioner observed thus :

B "As regards the contention that inadvertently in the packing list and the invoice, the word "Set" was omitted and officers took it as single piece in place of set, I find that whoever there are dinner sets mentioned in the invoice and packing list, the quantities in sets have been specifically mentioned while for other items the declaration C have been in pieces. If the contention of the learned advocates that value declared is for a set is accepted then the value of these crockery items would become so low that such a proposition itself appears ridiculous. For example, the wholesale price of a single Arc brand, 25 D Cl, glass mug of France origin in the local markets is Rs.40/- and of a set of 6 mugs is Rs.240/-, the declared CIF price of a single same mug, if it is accepted that this price is for a set of 6 mugs as agitated by the learned advocates, would thus be Rs.0.41 or Rs.2.46/- per set of E 6 pieces. It is beyond any comprehension how the wholesale price of a single or set of this mug in the local markets can be Rs. 40/- and Rs.240/-respectively if they are so cheap as (*sic)* declared by the importers. Similar is the situation in case of all other crockery items. The F advocates have not given me any explanation for such a vast difference in market values of the goods and the declared prices. On the other hand Shri Abdulla Koyloth, the proprietor of the import firm has, in his letters dated 26,08,02,09.02 and statement dated 13.09.02, accepted G the determination of assessable value and the duty liability thereon in the basis of market surveys which were conducted in his presence. Under the circumstances, I am not inclined to accept the contention of the advocates that the value declared is of a complete set. In any case, these H goods are mis-declared in respect of both quantities as

well as value. This was done with a clear intention of evade duty." A

Thus, having rejected the value declared by the respondent for the purpose of Section 14 of the Act, the Commissioner held that the assessable value of the goods had to be determined under Rules 6A and 7 of the 1988 Rules. Accordingly, he confirmed the assessable value of the goods at '23,69,838/- and the duty demand of '13,17,091/- as customs duty on them. Additionally, the Commissioner ordered the confiscation of the said goods under Sections 111(d) and (m) of the Act, with the option of redemption on payment of fine of '30,11,525/-. However, R-22 gas filled cylinders were confiscated absolutely under Section 111(d) of the Act. The Commissioner also imposed a penalty of '10 lakhs on the respondent under Section 112(a) of the Act. B C D

9. Being aggrieved by the said order of the Commissioner, the respondent carried the matter in appeal before the Tribunal. As afore-mentioned, the Tribunal allowed the appeal of the importer in relation to the assessable value and confiscation of the imported glassware, *inter alia,* observing thus: E

"4. After going through the impugned order, we find that the Commissioner has rejected the invoice value on the sole ground that majority of the goods were declared with their generic description only without disclosing any brand name or make, etc. He has also gone on the reason that the glass items were found to be in excess quantity than the declared one. However, we find that the invoice as also the packing list was annexed with the bill of entry and the consignments in any case were of assorted items from different countries. As such, it cannot be said that there is mis-declaration as regards description of the goods. As regard, variation in quantity of glass items, the appellant have submitted that they had declared the number of sets instead of number of pieces. F G H

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The explanations tendered by the importer are plausible, and no case be made for rejecting the invoice value in the absence of any importation or evidence to reflect upon the
B flow back of money by the importer to the supplier.....

6. We are of the view that in the absence of any evidence to show that the invoice value was not correct and further in the absence of contemporaneous imports of identical
C goods, the value declared by the appellant should be accepted as transaction value and not to be rejected."

In relation to the confiscation of the R-22 gas filled cylinders, the Tribunal held that the confiscation of the said
D goods was justified on the ground that the said goods had to be imported against an actual user license, which the respondent did not possess. The Tribunal also deleted the penalty levied on the respondent on the ground that since the value enhancement had not been upheld by it, there
E was no cause for imposition of penalty.

10. Hence, the present appeal.

11. Mr. K. Swami, learned counsel appearing for the revenue, while assailing the order of the Tribunal, strenuously
F urged that since the respondent had made mis-declarations in the bill of entry in relation to quantity, country of origin and value of the goods, the transaction value had to be rejected in terms of Section 14(1) of the Act and Rule 4(2) of the 1988 Rules. Learned counsel further contended that in the absence of
G contemporaneous imports of identical or similar goods, Rule 7 of 1988 Rules would apply. Commending us to the decision of the Tribunal in *Prasant Glass Works P. Ltd Vs. Collector of Customs*[1], *Calcutta* which attained finality because of dismissal of assessee's appeal by this Court in *Prasant Glass Works P.*

H 1. 1996 (87) E.L.T. 518 (Tri.-Del)

Ltd Vs. Collector of Customs.[2], wherein it was held that in a case where the invoice value shown is inadequate, incomplete or erroneous, then such invoice and the price declared therein will carry little weight, and the department is not required to show that the invoice price is defective and cannot be accepted.

12. *Per contra,* Mr. Tarun Gulati, learned counsel appearing for the respondent contended that in light of the decisions of this Court in *Eicher Tractors Ltd., Haryana Vs. Commissioner of Customs, Mumbai*[3] and *Varsha Plastics Private Limited & Anr. Vs. Union of India & Ors.*[4], the onus lies on the revenue to establish that the transaction value disclosed by the importer is not correct. Learned counsel contended that in the instant case, the revenue having failed to bring on record any material indicating undervaluation in the invoice, the value declared by the importer had to be accepted. While candidly conceding that though there could be some discrepancy in the mode of declaration of the quantity of certain glassware, in as much as the respondent had declared the quantity in sets, whereas the Commissioner had gone by the actual numbers, learned counsel asserted that as such there was no mis-declaration in relation to the assessable value, more so, when the bill of entry was supported by the invoice and the packing list. It was thus, pleaded that there is no merit in this appeal.

13. Thus, the short issue that arises for determination relates to the manner of computing the assessable value of the imported goods. For the sake of ready reference, it would be useful to extract Sections 2(41), 14 (1) (as it stood at the relevant time) and 14(1-A) of the Act, which read as follows:

> *"2(41) 'v*alue', in relation to any goods, means the value thereof determined in accordance with the provisions of sub-section (1) of Section 14;

2. 1997 (89) E.L.T. A 179.
3. (2001) 1 SCC 315.
4. (2009) 3 SCC 365.

A 14. *Valuation of goods for purposes of assessment.*—(1) For the purposes of the Customs Tariff Act, 1975 (51 of 1975), or any other law for the time being in force whereunder a duty of customs is chargeable on any goods by reference to their value, the value of such goods shall
B be deemed to be—

the price at which such or like goods are ordinarily sold, or offered for sale, for delivery at the time and place of importation or exportation, as the case may be, in the course of international trade, where—
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(a) the seller and the buyer have no interest in the business of each other; or

(b) one of them has no interest in the business of other,
D and the price is the sole consideration for the sale or offer for sale:

Provided that such price shall be calculated with reference to the rate of exchange as in force on the date on which a bill of entry is presented under Section 46, or a shipping
E bill or bill of export, as the case may be, is presented under Section 50;

(1A) Subject to the provisions of sub-section (1), the price referred to in that sub-section in respect of imported goods
F shall be determined in accordance with the rules made in this behalf."

14. It would be also useful to extract Rules 2(f), 3 and 4 of the 1988 Rules, which provide that:

G "2(f) "*transaction value*" means the value determined in accordance with Rule 4 of these rules.

3. Determination of the method of valuation.-For the purpose of these rules –

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i. the value of imported goods shall be the transaction value, A

ii. if 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. B

4. Transaction value.—(1) 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. C

(2) The transaction value of imported goods under sub-rule (1) above shall be accepted:

Provided that—

(*a*) there are no restrictions as to the disposition or use of the goods by the buyer other than restrictions which— D

(*i*) are imposed or required by law or by the public authorities in India; or E

(*ii*) limit the geographical area in which the goods may be resold; or

(*iii*) do not substantially affect the value of the goods; F

(*b*) the sale or price is not subject to same condition or consideration for which a value cannot be determined in respect of the goods being valued;

(*c*) no part of the proceeds of any subsequent resale, disposal or use of the goods by the buyer will accrue directly or indirectly to the seller, unless an appropriate adjustment can be made in accordance with the provisions of Rule 9 of these rules; and G

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A (*d*) the buyer and seller are not related, or where the buyer and seller are related, that transaction value is acceptable for customs purposes under the provisions of sub-rule (3) below.

B (3)(*a*) Where the buyer and seller are related, the transaction value shall be accepted provided that the examination of the circumstances of the sale of the imported goods indicate that the relationship did not influence the price.

C (*b*) In a sale between related persons, the transaction value shall be accepted, whenever the importer demonstrates that the declared value of the goods being valued, closely approximates to one of the following values ascertained at or about the same time—

D (*i*) the transaction value of identical goods, or of similar goods, in sales to unrelated buyers in India;

(*ii*) the deductive value for identical goods or similar goods;

E (*iii*) the computed value for identical goods or similar goods:

Provided that in applying the values used for comparison, due account shall be taken of demonstrated difference in

F commercial levels, quantity levels, adjustments in accordance with the provisions of Rule 9 of these Rules and cost incurred by the seller in sales in which he and the buyer are not related;

G (*c*) substitute values shall not be established under the provisions of clause (*b*) of this sub-rule."

15. Both Sections 14(1) of the Act (as it existed at the relevant time) and Rule 4 of the 1988 Rules provide that the

H price paid by an importer to the vendor in the ordinary course

of commerce shall be taken to be the transaction value in the absence of any of the special circumstances indicated in Section 14(1) of the Act and particularized in Rule 4(2) of the 1988 Rules. Therefore, the Customs authorities are bound by the declaration of the importer unless on the basis of some contemporaneous evidence the Revenue is able to demonstrate that the invoice does not reflect the correct value. (See: *Commissioner of Customs, Mumbai Vs. J.D. Orgochem Limited*[5] and *Commissioner of Customs, Calcutta Vs. South India Television (P) Ltd.*[6]) It is only when the transaction value under Rule 4 is rejected, that by virtue of Rule 3(ii), the value shall be determined by proceeding sequentially through Rule 5 to 8 of the 1988 Rules. (See: *Commissioner of Customs, Mumbai Vs. Bureau Veritas & Ors.*[7] and *Eicher Tractors Ltd.* (supra)). Rule 5 allows for the transaction value to be computed on the basis of identical goods imported into at the same time whereas Rule 6 provides for the computation of transaction value on the basis of the value of similar goods imported into India at the same time as the subject goods. In the absence of contemporaneous imports into India, the value is to be determined under Rule 7 on the basis of a process of deduction contemplated therein. If this is not possible, then recourse must be had to Rule 7-A, and if none of these methods can be employed to compute the transaction value, Rule 8 provides that the transaction value can be determined by using reasonable means consistent with the principles and general provisions of these Rules and sub-section (1) of Section 14 of the Act and on the basis of data available in India.

16. In *Varsha Plastics Private Limited* (supra), this Court while dealing with a similar situation where the importer had misdeclared in terms of value, description and quality of the imported goods, had held that:

5. (2008) 16 SCC 576.
6. (2007) 6 SCC 373.
7. (2005) 3 SCC 265.

A "It has to be kept in mind that once the nature of goods has been misdeclared, the value declared on the imported goods becomes unacceptable. It does not in any way affect the legal position that the burden is on the Customs Authorities to establish the case of misdeclaration of goods B or valuation or that the declared price did not reflect the true transaction value."

17. Similarly, in *Collector of Customs, Calcutta Vs. Sanjay Chandiram,*[8] a three judge bench of this Court observed that:

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"These rules are based on the assumption that the price actually paid or payable for the goods has been genuinely disclosed by the importer. But, if the certificates of origin of the goods have been found to be false, the value D declared in the invoices cannot be accepted as genuine."

18. It is evident from a bare reading of the impugned order that having regard to the factual scenario emerging from the record, the Tribunal has failed to apply the procedure envisaged E in Section 14(1) of the Act read with 1988 Rules for determining the value of the imported goods. Having carefully perused the Tribunal's order, in particular the above-extracted paragraph, we are convinced that the finding of the Tribunal in para 6 (supra) of the impugned order is clearly perverse and cannot be sustained, particularly in light of the fact that the F information collected by the revenue from the market, veracity whereof was not questioned by the respondent, has also not been examined by the Tribunal. Importantly, the Tribunal has also overlooked the statement made by the respondent on 13th September 2002 under Section 108 of the Act, whereby he G admitted that there was difference between the items declared, and the items actually seized by the Customs authorities, and that the value arrived at after market enquiries was acceptable to him. The said statement was not contested by the

H 8. (1995) 4 SCC 222.

respondent either before the Commissioner or the Tribunal. A

19. In light of the foregoing discussion, we are of the opinion that the Tribunal needs to re-examine the entire matter afresh, particularly in relation to the manner of valuation, redemption fine and penalty. Consequently, the appeal is B allowed, and the matter is remitted back to the Tribunal for fresh consideration in accordance with law after affording proper opportunity of hearing to both the parties.

20. There will be no order as to costs.

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R.P. Appeal allowed.