

A COMMNR. OF CUSTOMS, NEW DELHI-IV

v.

M/S. ARYAN ELECTRONICS

(Civil Appeal No. 709 OF 2005)

B

APRIL 29, 2015

[A.K. SIKRI AND R. F. NARIMAN, JJ.]

Customs Valuation Rules, 1988: rr.4, 5, 6, 10A –
C *Import of goods – Transaction value @ Rs.36 per piece declared by the importer-respondent – Rejected by the Commissioner (appeal) and invoking r.6, he found that in 10 instances given by department, prices mentioned therein varied from Rs.73.94 and Rs.134.08 per piece and taking*
D *minimum of the said price fixed the transaction value at Rs.73.94 and confiscated the goods and imposed differential duty and redemption fine of Rs.20 lacs and penalty of Rs.5 lacs – Tribunal held that identical goods were imported @*
E *Rs.58 per piece and, therefore, there was no reason to justify the value fixed by Commissioner (appeal) – Held: In the 10 instances given by the Department, prices thereof ranged between Rs.73 to Rs.134 per piece – On the other hand, 5 examples given by respondent, prices thereof were from*
F *Rs. 58 to Rs.72.12 – The Departmental representative argued that even as per the respondent, the similar goods were imported @ between 58 to Rs.72.12 per piece and, therefore, the declaration of price in Bill of Entry at Rs. 36 per piece was not accurate – The price of Rs. 58/- was rightly not*
G *accepted by the Commissioner by giving a very valid reason, namely, even in respect of that import by the importer declaring the value of Rs. 58/-, a show cause notice had been issued by the Department and case was under scrutiny – Thus, the entire basis of the Tribunal's order was misplaced*
H *as it was founded on total misconception of law and was also*

contrary to the facts on record – The order of Tribunal is set aside and order of Commissioner is affirmed insofar as it relates to redemption of the value declared by the respondent at Rs. 36 per piece and fixing the value at Rs.73.94 per piece, as well as demand of differential duty on that basis – Redemption fine of Rs.20 lakhs and the penalty of Rs.5 lakhs which is imposed in the facts of this case is on a higher side – Redemption fine is reduced to Rs.6 lakhs which is the equivalent to the differential duty and penalty imposed is set aside altogether – Custom Act, 1962 – s.112.

Disposing of the appeal, the Court

HELD: 1. In the first instance, the comparable instance which was taken into consideration by the Commissioner was not that of “identical goods” but “similar goods”. The Commissioner himself mentioned that no evidence of identical goods was available. Therefore, the Tribunal wrongly proceeded on the basis that the Commissioner had loaded the value on the basis of import of identical goods. When the Commissioner rejected the transaction value declared by the respondent applying Rule 10A of the Customs Valuation Rules, 1988, on that basis he held that Rule 4(1) would not apply. Thereafter he stated that Rule 5 would not apply as there was no evidence of “identical goods”. It is for this reasons he undertook the exercise, as contemplated in Rule 6, by giving the example of “similar goods”. The instances which were given by the Department and even by the respondent himself, no objection was raised by the respondent that these instances were not of similar goods. Therefore, relying upon those instances by the Commissioner cannot be faulted. [Paras 9, 10] [259-C-G]

2. The Tribunal also committed error in rejecting

- A the basis of Commissioner's order on the ground that these instances which were relied upon by the Commissioner were of the import in May, 2003 while the import in question took place prior to that date. Insofar as the import by the respondent is concerned, that was
- B on 13.05.2003. Therefore, the instances which were relied upon by the Commissioner of May, 2003 are of the same period and fulfill the requirement of Section 14 of the Customs Act, 1962. Insofar as reasoning predicted on import of identical goods at the rate of Rs. 58/- per piece
- C is concerned, again a clear fallacy has occurred in making such observation. The ten instances which were given by the Department, prices thereof ranged between the 73 to 134 per piece. On the other hand, five examples
- D which were given by the respondent, prices thereof were from Rs. 58/- to Rs. 72.12. Thus, what the Departmental representative had argued was that even as per the respondent, the similar goods were imported at the rate of ranging between 58 per piece to Rs. 72.12 per piece
- E and therefore the declaration of price in Bill of Entry at Rs. 36/- per piece was not accurate. This price of Rs. 58/- has not been accepted by the Commissioner, and rightly so, by giving a very valid reason, namely, even in respect of that import by the importer declaring the value
- F of Rs. 58/-, a show cause notice had been issued by the Department the price proposed was Rs. 90/- per piece. Thus, the entire basis of the Tribunal's order is misplaced as it is founded on total misconception of law and is also contrary to the facts on record. For the said reasons
- G the order of the Tribunal is set aside and the order of the Commissioner is affirmed insofar as it relates to redemption of the value declared by the respondent at Rs. 36/- per piece and fixing the value at Rs. 73.94 per piece, as well as demand of differential duty on that basis.
- H Redemption fine of Rs. 20 lakhs and the penalty of

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Rs. 5 lakhs which is imposed in the facts of this case is on a higher side. Insofar as redemption fine is concerned, the same is reduced to Rs. 6 lakhs which is the equivalent to the differential duty and penalty imposed is set aside altogether. [Paras 11 to 15] [259-H; 260-A-H; 261-A-C]

CIVILAPPELLATE JURISDICTION : Civil Appeal No. 709 of 2005.

From the Judgment and Order dated 16.08.2004 of the Customs, Excise & Service Tax Appellate Tribunal, New Delhi in Appeal No. C/25/04-NB(A).

K. Radhakrishnan, T. C. Sharma, Binu Tamta, B. Krishna Prasad for the Appellant.

S. Vasudevan, V. Lakshmikumaran, M. P. Devanath, Vivek Sharma, L. Charanaya, Rachit Jain, Shalini, Aman D., Disha Jain, Shagun Arora, Rajesh Kumar for the Respondent.

The Judgment of the Court was delivered by

A.K.SIKRI, J. - 1. The respondent herein who is trading in electronic goods had imported a consignment of 30,000 pieces which was described in the Bill of Lading as "parts of VCD – LENCE WITH MECHANISM".

2. In the Bill of Entry which was filed by the respondent for clearing of the aforesaid imports, the value of the goods was declared at US \$ 0.72 per piece and total value of US \$ 21,600 was arrived at in the aforesaid import. In support of this declaration of value, the respondent had produced Bill of Lading dated 14.4.2003 and invoice dated 9.4.2003. Since the goods were not purchased directly from the manufacturer but from a trader, the invoice produced was that of the trader who had sold the goods to the respondent.

A 3. The goods were assessed to duty and ordered to
be examined before clearance. On examination the customs
authorities found that this has been sub-assemblies for VCDs
– Lens with mechanism. It was also found that in the result,
B the packets of the goods were marked as “Made in China”
and were bearing brand name of “Samsung”. As this fact was
not reflected on the invoice and the Department nurtured the
doubt that the goods are branded and therefore the value
discloses was not the true value of the goods, the Department
sought clarification from the respondent vide letter dated
C 23.5.2003 regarding brand name. In this communication the
respondent was also asked to justify the declared value.

 4. The respondent replied vide letter dated 28.5.2003
stating that only the eye of the lens with mechanism was
D branded and other parts like motor parts etc. were not
branded and were made in China. It was also stated that
only a few boxes were bearing a small sticker of Samsung to
distinguish that the mechanism is having Samsung brand Lens.
E Insofar as query on valuation is concerned, it was explained
by the respondent that imported goods are unbranded and
the transaction has been made through the bank and, therefore,
the declared value be accepted.

 5. This reply did not satisfy the Department and it chose
F to hold further enquiry into the matter. Accordingly, vide
communication dated 31.5.2003 the respondent was
requested to be present to conduct a 100% examination of
goods to verify their contention that only few boxes were
having stickers of Samsung. The respondent was requested
G to provide information regarding goods packed in branded
boxes and the goods packed in unbranded boxes. They were
also asked to submit manufacturer’s invoice as they had
informed that only eye of lens was provided by Samsung and
H rest of the parts were made in China and other information

was also solicited in this communication. The Department A
also conducted a market enquiry in the presence of the
representative of the respondent at two places i.e. Bhagirath
Place, Delhi and Lajpat Rai Market, Delhi. They also gathered
some information from M/s. Super Cassette Industries Ltd., B
Noida, who were the manufacturer of VCD players and were
regularly importing similar goods in connection with the said
manufacturer. Inquiries were also made from the custom
authorities at Inland Container Depot at Tughlakabad, New
Delhi. In the inquiry from Inland Container Depot, the C
Department learnt that lens with mechanism - parts of VCD
that had been imported at the said Port by some parties were
cleared at a higher value. The ICD Tughlakabad also provided
the information that those goods which were imported showing
the higher value were similar to the samples forwarded by the D
customs authorities from the consignment of the impugned
goods.

6. After collecting the aforesaid information the show
cause notice dated 5.9.2003 was issued to the respondent.
The respondent filed its reply. The material which was E
collected and mentioned above, was also supplied to and
put to the respondent. The respondent, in response, also
provided certain instances of import at the same time. After
hearing the respondent, the Commissioner of Customs F
passed Order-in-Original dated 22.10.2003. In this order,
he rejected the transaction value as declared by the
respondent under Rule 10A of the Valuation Rules, 1988
and on that basis observed that Rule 4(1) will have no
application. The Commissioner also accepted that no G
evidence of import of "identical goods" was available.
Applicability of Rule 5 was, thus, ruled out. In such a situation
he invoked the provisions of Rule 6 and referred to ten instances
which were collected of similar goods. He also cited five
instances which were given by the respondent during the H

- A course of personal hearing. Insofar as instances furnished by the respondent are concerned, for reasons recorded in the order he discarded four out of five instances. The fifth instance which was given by the respondent mentioned the import of the similar goods at Rs.71.50 per piece. He thus relied upon
- B the ten instances which were given by the Department and found that the prices mentioned therein varied from Rs.73.94/- and Rs.134.08/-per piece depending upon the quantity and the period of import. In terms of Rule 6, the Commissioner took the minimum of the aforesaid price and thereafter fixed
- C the transaction value at Rs.73.94 per piece. This resulted in confiscation of the goods. However, the Commissioner allowed the respondent to clear the goods on payment of differential duty i.e. Rs.6,11,694/- and on payment of redemption fine of Rs.20 lakhs. He also imposed penalty of
- D Rs.5 lakhs on the respondent under Section 112 of the Customs Act, 1962.

7. The respondent, feeling aggrieved by the aforesaid order, challenged the same in appeal before the Customs, Excise and Service Tax Appellate Tribunal (CESTAT). The
- E CESTAT by impugned order dated 16.8.2004 has allowed the appeal of the respondent herein. On going through the order of the Tribunal, we find that following three reasons have persuaded by the Tribunal to allow the appeal of the
- F respondent.

- (i) The Commissioner had loaded the value of the goods on the basis of the import of "identical goods" which cold not be done.
- G
- (ii) The import in question was prior to the date in comparison with the examples which were given of those identical goods which was in the year 1993 and it was contrary to the provision of Section 14 of the Customs
- H Act;

(iii) The identical goods were imported at the rate of Rs.58/- per piece and that was no reason enough to justify the value fixed by the Commissioner. A

8. After hearing the counsel on either side we find that on all three counts the Tribunal has committed serious error which has resulted in passing the impugned order allowing the appeal of the respondent. B

9. In the first instance, the comparable instance which was taken into consideration by the Commissioner was not that of "identical goods" but "similar goods". This is so stated by the Commissioner in his order itself. On the contrary as pointed out above, the Commissioner himself mentioned that no evidence of identical goods was available. Therefore, we do not understand as to how the Tribunal proceeded on the basis that the Commissioner had loaded the value on the basis of import of identical goods. C D

10. As mentioned above, when the Commissioner rejected the transaction value declared by the respondent applying Rule 10A of the Customs Valuation Rules, 1988, on that basis he held that Rule 4(1) would not apply. Thereafter he proceeded sequentially from Rule 5 onwards. As far as Rule 5 is concerned, again he stated that this would not apply as there was no evidence of "identical goods". It is for this reason he undertook the exercise, as contemplated in Rule 6, by giving the example of "similar goods". We would like to point out at this stage that the instances which were given by the Department and even by the respondent himself, no objection was raised by the respondent that these instances were not of similar goods. Therefore, relying upon those instances by the Commissioner cannot be faulted. E F G

11. The Tribunal also committed error in rejecting the basis of Commissioner's order on the ground that these H

- A instances which were relied upon by the Commissioner were of the import in May, 2003 while the import in question took place prior to that date. Insofar as the import by the respondent is concerned, that was on 13.5.2003. Therefore, the instances which were relied upon by the Commissioner of
- B May, 2003 are of the same period and fulfill the requirement of Section 14 of the Customs Act, 1962.

12. Insofar as reasoning predicated on import of identical goods at the rate of Rs.58/- per piece is concerned,
- C again a clear fallacy has occurred in making such observation. We have already pointed out above that ten instances which were given by the Department, prices thereof ranged between the 73 to 134 per piece. On the other hand, five examples which were given by the respondent, prices thereof were from
- D Rs.58/- to Rs.72.12. Thus, what the Departmental representative had argued was that even as per the respondent, the similar goods were imported at the rate of ranging between 58 per piece to Rs.72.12 per piece and therefore the declaration of price in Bill of Entry at Rs.36/- per
- E piece was not accurate. We may observe that this price of Rs.58/- has not been accepted by the Commissioner, and rightly so, by giving a very valid reason, namely, even in respect of that import by the importer declaring the value of Rs.58/-, a
- F show cause notice had been issued by the Department and the case was under scrutiny. In the show cause notice which was issued by the Department the price proposed was Rs.90/- per piece.

- G 13. Thus, the entire basis of the Tribunal's order is **misplaced** as it is founded on total misconception of law and is **also contrary** to the facts on record.

14. For the aforesaid reasons we set aside the order of the Tribunal and affirm the order of the Commissioner
- H insofar as it relates to redemption of the value declared by

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the respondent at Rs.36/- per piece and fixing the value at A
Rs.73.94 per piece, as well as demand of differential duty
on that basis.

15. However, we are of the opinion that redemption fine
of Rs.20 lakhs and the penalty of Rs. 5 lakhs which is imposed B
in the facts of this case is on a higher side. Insofar as
redemption fine is concerned, the same is reduced to Rs.6
lakhs which is the equivalent to the differential duty and penalty
imposed is set aside altogether.

16. The appeal is disposed of in the aforesaid terms. C

Devika Gujral

Appeal disposed of.

D