(1986) 01 BOM CK 0011

In the Bombay High Court

Case No : Writ Petition No. 570 of 1981

Associated Bearing Company Limited, Bombay APPELLANT

Vs

Union of India RESPONDENT

Date of Decision : 27-01-1986

Acts Referred:

Customs Act, 1962 — Section 14, 14(1), 18(1)
Customs Valuation Rules, 1963 — Rule 6

Citation : (1988) 37 ELT 510

Hon'ble Judges : M.L. Pendse, J

Bench : Single Bench

Judgement

1. Petitioner No. 1 is a Company incorporated under the provisions of the Companies Act and carry on business of manufacturing ball and taper roller bearings and textile machinery components and accessories of various kinds. The petitioner Company imports equipments and machinery required for manufacturing the aforesaid items and also raw material and components. 51% of the shareholding of the Company is held by Aktiebolaget SKF, SKF, (U.K.) Ltd., England and Aktiebolaget S. A. Des Roulement a Bills. The Company had entered into collaboration agreements with these companies for the manufacture of ball bearing and taper roller bearing in India, for technical information and assistance for manufacture of textile machineries parts in India and for supply of technical information for manufacture of new textile items in India. The import of machinery and spares constituted about 20% of the total imports and the balance is made up of imports of raw materials. The import of raw material are mostly from SKF STAL, Hofores, which is a division of Aktiebolaget SKF but registered as a separate firm under the laws in force in Sweden.

2. Prior to February 14, 1980 inquiries were made by the Special Valuation Branch from the Company with regard to the imports, and by letter dated October 9, 1979 the company furnished some of the particulars called for. By a notice dated February 14, 1980 the Assistance Collector of Customs asserted that the company had been making imports from the collaborators and has been

using the trade mark of those collaborators. It was further asserted that the company had made payments of royalty to the collaborators and there was no evidence of value u/s 14(1)(a) of the Customs Act. 1962, and thereof, the value of the goods imported would be determined under Rule 6 of the customs valuation Rules, 1963 by loading the amount of royalty paid to the collaborators to the invoice value. The company replied to the notice on February 28 and March 14, 1980. Thereafter a personal hearing was also granted. The Assistance Collector of Customs, Special Valuation Branch passed order dated September 1, 1980 holding that the tentative decision communicated on February 14, 1980 that the value of the goods would be determined under Rule 6 of the Customs Valuation Rules has been confirmed.

3. The petitioners carried an appeal before the appellate Collector of customs and the appeal was allowed by order dated December 30, 1980. The Appellate Collector held that the claim of the petitioner that Rule 6 of the Customs Valuation Rules is not applicable to the petitioners case is correct and deserve to be accepted. The Appellate Collector thereafter observed that the Assistance Collector. Who belongs to the cadre of post-independence recruits, should have given his attention to ascertain whether there was over-invoicing or under-invoicing in the ultimate order the Appellate Authority observed that if the loading is proposed in respect of the invoice valued of the goods imported prior to September 1, 1980 then a new order would be required to be passed by Assistant Collector or some other competent authority.

4. Thereafter Assistance Collector, Special Valuation Branch has issued notice dated March 9, 1981 to the Company, inter alia, reciting that in view of the appellate decision it has been decided to reopen the case and re-examine the same. The Company was called upon to produced certain documents and was informed that pending the decision it has been decided that all imports from collaborators their associated/subsidiary or connected concerns will continued to be assessed provisionally u/s 18(1) of the Customs Act read with provisional Duty Assessment Regulations, 1963, after collection 10% extra duty deposit and a bond to the satisfaction of the assessing unit concerned. The legality of the noticed issued by the Assistant Collector is under Challenge.

5. Shri Vahanvati, learned counsel appearing on behalf of the petitioner, urged that the order passed by the Appellate Collector of Customs was binding on the Assistance Collector and the appellate order specifically provided that the provision under the Customs Valuation Rules are nor applicable to the goods to the petitioner. The learned counsel argued that inspite of the specific finding of the Appellate Authority, the Assistance Collector has tried to reopen the issue on a misconception of the decision of the Appellate Authority. The submission is correct and deserved acceptance. As mentioned herein before, the Assistant Collector had proceeded to assess the value of goods under Rule 6 of the Customs Valuation Rules by loading the amount of royalty paid to the collaborators of the invoice value. The Appellate Authority in paragraph 9 of the

order specifically observed that there is no material to indicate that the petitioners imported finished of semi-finished goods manufacturer outside by a person entitled to use trade mark and that after importation such goods are sold in India under that or an allied trade mark. The appellate authority also found that the petitioners do not import goods manufacturer out side India in accordance with the patented invention or registered design or that the petitioners pay any fees ordinary payable for such trade mark or patent design. The appellate authority also accepted the claim of the petitioners that 80% of the total imports comprise of row materials. On recording these specific findings, the, appellate authority held that the provision of Rule 6 of the Customs Valuation Rules are not attracted in respect of import made by the petitioners. After recording this specific finding, the appellate authority made certain general observation as to what is the care required to be taken by the Assistance Collector in Examining the invoices. These observation were purely obiter and were merely in the nature of guidelines to the Assistant Collector and could not be construed by any stretch of imagination as a direction to re-open and re-examine the issue as to whether Rule 6 is applicable in respect of imports made by the petitioners in my judgment, the Assistant Collector has clearly misunderstood the conclusion recorded by the Appellate Authority and the notice dated March 9, 1981 served on the petitioners is entirely misconceived. In my judgment, the impugned notice is required to be struck down.

6. Accordingly, petitions succeeds and the rule is made absolute in term of prayer (a). The bonds furnished by the petitioners in pursuance of this notice would stand discharged. In the circumstances of the case, there will be no order as to costs.

