

(2015) 08 SC CK 0040
In the Supreme Court Of India
Case No : C.A. No. 1507 of 2006

Commissioner of Customs (Import)

APPELLANT

Vs

Pundrick Ravindra Trivedi and Others

RESPONDENT

Date of Decision : 07-08-2015

Acts Referred:

Customs Act, 1962 — Section 108, 111, 112, 17, 46
Customs Valuation (Determination of Price of Imported Goods) Rules, 1988 — Rule 10A, Rule 2, Rule 8

Citation : (2015) 322 ELT 812 : (2015) 9 SCALE 18

Hon'ble Judges : A.K. Sikri, J; Rohinton Fali Nariman, J

Bench : Division Bench

Final Decision : Allowed

Judgement

A.K. Sikri, J—Three consignments of imported goods landed at Mumbai Port. Bills of Entries for clearance of these consignments were filed by one M/s. Saidutt Clearing Agency Pvt. Ltd. (for short, "CHA") on 30.07.2002. These Bills of Entries were filed on behalf of two importers, namely, M/s. Saumya Marketing (for short, "SM") and M/s. Mega Enterprises (for short, "ME"). It was declared that the consignments contained various electronic components/parts. These were supplied by the same supplier, M/s. Lim Manufacturing (Pte.) Ltd., Singapore. They had also arrived on the same vessel, viz., OLIVIA VW 005. However, after inspection of these consignments by the customs authorities, it was observed that not only the supplier was same and the consignments came through the same vessel, they were also shipped on board on the same day, i.e., 20.07.2002. Even the Bills of Lading for the three consignments were also issued on the same day, i.e. 20.07.2002. The invoice raised by the suppliers in respect of all the three consignments were again issued on the same day, i.e. 22.07.2002. It so happened that an intelligence was received by DRI, Mumbai Zonal Unit, that certain electronic goods, namely, CD/VCD Hi-Fi Systems and Car Cassettes Players, were being imported in the guise of electronic components, namely,. Tape Deck Mechanisms, Plastic moulded components and metal parts, Remote

Control Units, populated PCBs etc. by certain traders. The intelligence also indicated that the importers were misdeclaring the description of the goods and also highly under-invoicing the same. Accordingly, the above three consignments imported by M/s. SM and M/s. ME, consisting of parts of electronic components for Car Cassette Player and Audio with Radio of Kenwood, Sony, Pioneer, Philips and Thomson brands, were taken up for investigation. Prima facie, it appeared that complete sets of Audio Systems had been imported in the disassembled condition under the three Bills of Entries.

2. To verify this aspect, technicians were called from the office of Thomson India and Philips India and panchnama was drawn on 14.08.2002 at the DRI Office. The said technicians were able to assemble the systems from the parts imported vide these Bills of Entries and make it function in the presence of panchas as well as Shri A.K. Dham, the Director of CHA. It was found by the Department that in all the above-mentioned cases, all the parts, down to the last screw, were imported to make complete sets. No additional part was added by the technicians to make the system functional.

3. During the course of investigations, statements of Shri Vinodbhai Patel, Proprietor of M/s. ME, and Shri Sohanbhai Soni, Proprietor of M/s. SM were also recorded on 17.10.2002. On the same day, i.e., 17.10.2002, statement of Respondent No. 1, Shri Pundrick Ravindra Trivedi, was also recorded wherein he had admitted that he was the actual owner of the said firms and that he had paid Shri Patel and Shri Soni a sum of Rs. 4,000 to Rs. 5,000 per month for operating the said firms in their names. He stated that Shri Patel and Shri Soni had no role in the import activities of the firms and that they had only signed cheques and documents as and when required by him. He also admitted that the complete function units of car cassette players and five-in-one music of Pioneer, Sony, Philips, Kenwood and Thomson can be made by assembling the respective parts. He also admitted that these goods were offered to him in Semi-Knocked Down (SKD) condition and he imported the same vide different Bill of Entries for tax management purpose.

4. Accordingly, a Show Cause Notice dated 09.02.2002 was issued by the Assistant Commissioner of Customs, Appraising Group VB, Mumbai, to the Respondent No. 1 to 3 as well as ME and SM. It was stated in the show cause notice, inter alia, that the goods imported in SKD condition were nothing but complete units (2189 pes.) of Car Cassette Players and Five-in-One Music Systems which were functional and all the parts had been imported, including screws; that the goods imported vide the three Bills of Entries were not parts/components of Electronic Goods, but were five-in-ones and Car Cassettes/CD with radio players of different brands; that the same were required to be classified under CTH 8527.21 of the Customs Tariff Act; that Respondent Nos. 2 and 3 had opened the fictitious firms viz., M/s. Saumya Marketing and M/s. Mega Enterprises with an intention to defraud the Government exchequer and they deliberately mis-declared the particulars of goods and the value thereof; that the

fact of misdeclaration of particulars of goods were further corroborated as the goods were supplied by same supplier, the invoices were numbered serially and were raised on the same day; that the goods were shipped on the same day in the same vessel; that the three Bills of Entries were filed on the same day by the same clearing agent; that the declared address of the owners of both M/s. Saumya Marketing and M/s. Mega Enterprises was identical; that the facts of the invoices clearly showed that the goods were nothing but complete functional items split up under three consignments by declaring the items as mere electronic parts and components. In view of the said factual position, which had come to light upon investigation, the Respondents were called upon to show cause as to why:

"(i) the consignments imported under the above three Bills of Entry not clubbed together and treated as completed units of 2189 Systems comprising of Car Cassette Players and Five-in-One AV Systems and be not classified under Customs Tariff heading 8527.21.

(ii) the said goods be not classified under 8527.21 of the Tariff and CVD be not charged on MRP basis in terms of Notification No. 13/2002 CS(NT) dated 01.03.2002 or on ad valorem basis, whichever is higher.

(iii) value declared be not rejected Under Rule 10A of the Customs Valuation (Determination of Price of Imported Goods) Rules, 1988 and redetermined Under Rule 8 ibid as Rs. 89,09,602.

(iv) Differential duty amount of Rs. 37,95,206/- be not recovered on the re-determined value.

(v) the said goods, imported in disassembled condition/misdeclared as parts/components be not confiscated Under Section 111 (m) of the Customs Act, 1962.

(vi) penalty be not imposed Under Section 112 of the Customs Act, 1962 for willful mis-declaration, suppression of facts and improper and illegal import.

(vi) As the goods had already been released against PD Bond/Bank Guarantee of the differential duty, fine and penalty leviable for illegal import be not recovered from the said guarantee."

5. The learned Assistant Commissioner of Customs, Appraising Group VB, Mumbai, issued corrigendum dated 17.02.2004 in partial modification to the Show Cause Notice dated 09.02.2004. In the said corrigendum, it was stated that the duty difference amount mentioned in para 17(iv) of the Show Cause Notice to be read as Rs. 43,22,319/- as per revised work-sheet.

6. Replies were filed by the Respondents and also by SM and ME to the show cause notices as well as to the corrigendum. Thereafter, oral hearing was afforded by the Commissioner of Customs, Excise and Service Tax Appellate Tribunal (for short, "CESTAT") which resulted in adjudication order dated 17.05.2004. The learned Commissioner ordered that the impugned consignments

imported under the Bills of Entries in question be clubbed together and treated as complete units of 2189 systems comprising of car cassette players and five in one audio systems and should be classified under Customs Tariff Heading 8527.21. It was further ordered that the impugned goods be subjected to levy of CVD on the basis of MRP in terms of Notification No. 12/2002-CE(NT) dated 01.03.2002. The learned Commissioner also ordered to enhance the value of the impugned consignments to Rs. 89,09,602/- in terms of Rule 8 of the Customs Valuation (Determination Price of Imported Goods) Rules, 1988 and ordered to recover an amount of Rs. 37,95,206/- towards differential duty from the importer and/or Respondent No. 1. The learned Commissioner had also imposed penalty of Rs. 5,00,000/- on Respondent No. 1, Rs. 1,00,000/- each on Respondent Nos. 2 and 3 in terms of Section 112(a) of the Act.

7. In coming to the said conclusion, the learned Commissioner had recorded following findings:

"(a) All the three statements given by Respondent Nos. 1 to 3 were voluntarily given before the investigating officers and the same were not retracted by them at any point of time.

(b) In the instant case, the Respondents deliberately imported the complete systems in the guise of parts/components so as to avoid duty by mis-declaring their value. Therefore, the transaction value could not be accepted and the same was rejected.

(c) The reasons cited in the show cause notice for redetermination of value of the goods in terms of Valuation Rules 8 were correct and legally tenable.

(d) Since the importers mis-declared the goods in respect of description and value they contravened the provisions of Section 46 of the Act and, therefore, rendered the impugned goods liable for confiscation in terms of Section 111(m) of the Act.

(e) The Respondent No. 1, in his own admission, held himself to be importer and owner of impugned goods in an indirect manner. Therefore, the case clearly falls within the definition of importer given Under Section 2(26) of the Act and, therefore, liable to penalty along with the importer for his role in rendering the impugned goods liable for confiscation."

8. All the three Respondents preferred three separate appeals challenging the aforesaid Order-in-Original dated 17.05.2004 passed by the Commissioner of Customs (Import). These appeals were heard by CESTAT, which has, vide impugned order dated 18.03.2005, allowed the appeals and set aside the order passed by the Commissioner. The impugned order would reflect that while doing so, the Tribunal referred to its own earlier orders in certain cases including decision in the case of Sony India Ltd. v. CC, ICD, New Delhi 2002 (143) ELT 411 (Tri-LB) , on the basis of which following reasons have been recorded:

"(i) Section 17 of the Act deals with assessment of each Bill Entry and Rule 2(a)

of the Interpretative Rules does not apply when import pertains to two different importer who have filed separate Bill of Entries;

(ii) The goods cannot be considered as import of complete unit and the same could not, therefore, be confiscated Under Section 111(m) of the Customs Act, 1962.

(iii) As the adjudicating authority had not indicated the Section of the Act under which penalty was imposed on the Respondents, the imposition could not be upheld."

9. It is how the present appeal came to be filed by the Revenue questioning the propriety of the decision rendered by the Tribunal.

10. The neat submission made by Mr. Adharyu, Learned Counsel for the Revenue, was that the Tribunal blindly applied the decision in the case of Sony India Ltd. (supra) with no regard to the facts of this case which clinchingly show that the two firms which had purportedly imported the goods, namely, SM and ME, were bogus and sham and the real person who had effected the imports was Mr. Pundrick Ravindra Trivedi, who was the actual owner of these two firms and was, in fact, paying salaries to Mr. Patel and Mr. Soni, and they were set up as the sole proprietors of the aforesaid two firms on papers only. He further pointed out that there was no sufficient evidence/material produced on record, which not only formed part of the show cause notice but discussed in detail by the Commissioner in his order, which proved that what was, in fact, imported was complete sets of audio systems in dis-assembled conditions with a view to evade custom duties. He submitted that all these aspects are not even considered and looked into by the Tribunal which renders the judgment of the Tribunal totally erroneous in law.

11. After considering the matter, we find full justification in the said submissions made by Mr. Adhyaru. We have already taken note of the evidence that emerged during the investigating and also the statements of the two purported proprietors of M/s. SM and M/s. ME as well as Mr. Trivedi, in some detail. Very material aspect which is glossed over by the Tribunal is that the technicians from the office of Thomson India as well as Phillips India were called who had inspected the goods in question and were able to assemble the systems from the parts imported by the Respondent and make it functional. This was accomplished in the presence of panchas as well as Mr. A.K. Dham, Director of CHA. What was found was that all the parts, down to the last screw, were imported to make complete sets. There was no rebuttal by the Respondents to the aforesaid clinching evidence. On the contrary, there are clear admissions by Mr. Patel and Mr. Soni, the alleged sole proprietors of these two firms, as well as Mr. Trivedi in their statements recorded Under Section 108 of the Customs Act. Mr. Patel and Mr. Soni stated that they are small time agents and it is Mr. Trivedi who had opened the said two import firms in their names and back accounts were also opened by Mr. Trivedi. They further stated that they were paid between Rs. 4,000 to Rs. 5,000 every month

for signing various import documents and they did not know anything about the import of electronic goods. They also stated that they have no knowledge of DGFT/IEC code etc; that they had never visited the office premises of the said firms which had been opened in their name; that they had not met the concerned clearing agent at any time; and that they were called upon by Mr. Trivedi time and again for signing certain papers.

12. What is most important, which nails Mr. Trivedi, i.e., Respondent No. 1, is his own statement. He has accepted the aforesaid arrangement as disclosed by Mr. Patel and Mr. Soni and admitted that it is he who was calling the shots and, in fact, was actual importer of the material in question which was imported in the name of two dummy firms. Not only he admitted that the complete functional units of car cassettes players and five-in-one music systems of Pioneer, Sony, Phillips, Kenwood and Thomson can be made by assembling the respective parts. He also stated that these goods were offered to him in SKD condition and he imported the same vide different Bills of Entries for tax management purpose.

13. It is worth mentioning here that none of the three persons retracted their statements which were recorded Under Section 108 of the Customs Act.

14. The legal approach that is to be adopted in this fact scenario is laid down in the case of *Prasant Glass Works P. Ltd. vs. Collector of Customs* 1996 (67) ECR 614 as under:

"The proposition that the transaction value as shown in the invoice has some sanctity and the burden is on the department to collect evidence to show that the invoice value is not genuine or below ordinary price in international trade at the time and place of import cannot be applied to cases of import where description is substantially inadequate, incomplete description in cases where the goods are not inspected and checked may mislead customs officers and depending on the fact and circumstances it may indicate a deliberate design to suppress the true state of affairs. In such cases the invoice and the prices declared in the invoice will have very little weight and the department is not required to show that the invoice price is defective and cannot be accepted; in such cases there is only the question of finding out the ordinary price in international trade at the time and place of import, for which any reasonable and reliable method can be followed."

15. We find that the material produced by the Department which is discussed above clearly proves that instant is a case where substantially inadequate and wrong descriptions were given in the import documents which gave right to the Revenue to correctly assess the goods. The transaction value, as disclosed by the importers, was doubtful and was rightly rejected by the adjudicating authority. Further, even the declaration given in the Bills of Entries showing the goods as "parts/components" was erroneous and, therefore, rightly rejected by the Commissioner Under Rule 10A of the Customs Valuation Rules, 1988.

16. On our repeated queries to the Learned Counsel for the Respondents, he

could not dispute the authenticity of the aforesaid material which was produced against the Respondents.

17. In the light of these facts backed by solid evidence, the Tribunal committed grave error in ignoring these facts and allow the appeal by simply relying upon the case Sony India Ltd. (supra).

18. We may point out that the aforesaid decision of the Tribunal in Sony India Ltd. (supra) has been affirmed by this Court in Commissioner of Customs, New Delhi Vs. Sony India Ltd., (2008) 133 ECC 77 : (2008) 159 ECR 77 : (2008) 231 ELT 385 : (2008) 10 JT 666 : (2008) 12 SCALE 706 . However, the distinguishing feature can be discerned from paras 13 and 14, which we reproduce below:

"13. Though, the learned ASG heavily relied on this case to draw a parallel with the present case, we are of the clear opinion that the principles emerging out of the decision of Commissioner of Customs, New Delhi Vs. Phoenix International Ltd. and Another, (2007) 121 ECC 393 : (2007) 147 ECR 393 : (2007) 216 ELT 503 : (2007) 7 JT 189 : (2007) 11 SCALE 332 : (2007) 10 SCC 114 : (2007) 10 SCR 126 : (2007) AIRSCW 6721 : (2007) 6 Supreme 82 would have to be restricted to the facts in that case. Unlike in Phoenix International Ltd. Case (there is no allegation of fraud against the present Assessee. There is a complete absence of any such device or "subterfuge" in the present case, nor is there any allegation of the sort. Again the further point of differentiation is that in that case, the Court was dealing with the consumer goods like shoes and that was included in the negative list, whereas, the CKD in the present case (if at all it is to be CKD which was imported), was not in the negative list, it was in the restricted list.

14. In our opinion, the other differentiating feature and the most important one, is that while the parts imported by the Assessee in this case could be independently used as the spare parts or sold in the market, that was not the case in Phoenix International Ltd. case (supra), at least there is no finding to that effect in Phoenix International Ltd. case. It was very fairly admitted by the learned ASG that the parts imported could be independently utilised or sold in the open market, which was not the case with the parts involved in Phoenix International Ltd. case. The learned ASG also very fairly admitted that there was a specific fraud alleged and proved on the basis of which the Court came to the conclusion that this was nothing, but a device to deceive the Revenue."

19. It is clear from the above that in Sony India Limited (supra) what was found that there was no allegation of fraud and there was also absence of any subterfuge. On this basis, earlier judgment of the Supreme Court itself in Phoenix International Ltd. (supra) was distinguished. We find that the present case is more akin to the facts of Phoenix International Ltd. (supra). As a consequence of our aforesaid. discussion, present appeal stands allowed thereby quashing the orders passed by the Tribunal and restoring that of the Commissioner. There shall be, however, no order as to costs.