

(2008) 05 SC CK 0134

In the Supreme Court Of India

Case No : Civil Appeal No. 1831 of 2006

Commissioner of Customs, (Prev.) Gujarat

APPELLANT

Vs

Reliance Petroleum Ltd.

RESPONDENT

Date of Decision : 16-05-2008

Acts Referred:

Customs Act, 1962 — Section 14, 16, 18, 2(1), 25(1)
Customs Valuation (Determination of Price of Imported Goods) Rules, 1988 — Rule 5, 9(2)

Citation : (2008) AIRSCW 4846 : (2008) 3 CLT 277 : (2008) 129 ECC 103 :
(2008) 155 ECR 103 : (2008) 227 ELT 3 : (2008) 7 JT 299 : (2008) 8 SCALE 81 :
(2008) 7 SCC 220

Hon'ble Judges : S. B. Sinha, J; Lokeshwar Singh Panta, J

Bench : Division Bench

Advocate : G.E. Vahanvati, S.G., Menaka Gurswamy and B.V. Balaram Das, for the Appellant; Harish N. Salve and S. Ganesh, K.R. Sasiprabhu, Tarun Gulati and Bindu K. Nair, for the Respondent

Final Decision : Dismissed

Judgement

S.B. Sinha, J.—The validity of an exemption notification bearing No. 11/97-Cus dated 1.3.1997 as amended by notification No. 55/97-Cus dated 13.6.1997 granting exemption to various imported goods including EOT mobile crane required for setting up crude petroleum refinery subject to fulfilment of certain conditions, is in question in this appeal which arises out of judgment and order dated 8.7.2005 passed by the Customs, Excise and Service Tax Appellate Tribunal, West Zonal Bench, Court No. 2.

2. The fact that the crane in question was imported for using the same in setting up a refinery is not in dispute.

What is in dispute is that whether a crane when placed on a vehicle which the appellant wrongly stated to be a 'motor vehicle' would fulfill the description of a mobile crane or a 'material handling equipment'. Valuation of the said crane was

also questioned.

The fact that different parts of the said crane were imported by the respondent herein as second hand equipment is also not in dispute. It is, however, accepted that the original manufacturers of the two part of the said equipment were different. We may, at the outset, notice that the Notification dated 11.4.1997 was issued by the Central Government, in exercise of its power conferred upon it u/s (1) of Section 25 of the Customs Act, 1962, being satisfied that it was necessary in the public interest so to do, made further amendment in notification No. 11/97, CUS. dated 1.3.1997, the relevant entry whereof is as under:

(1) (2) (3) (4) (5) (6) 144A 84 or any Goods specified Nil Nil - other in List 8A Chapter required for setting up crude petroleum refinery

3. By reason of the amendment, it was, inter alia, provided that in the annexure, for List 8A the goods specified therein shall be substituted, relevant portion of which reads as under:

16. All types of Materials Transporting Equipments, including loading and unloading arms and racks; gantries, dispatch tanks, loading/ transfer pumps, hydraulic systems, weighbridges, Diesel shunters, feed or injection or spray nozzles, skimmers, soot blowers; with instrumentation and control systems, including load cells and metering stations.

XXX XXX XXX 18. All types of Material Handling Equipments, including belt or pneumatic conveyors, ducts, hoists, bucket or jib cranes, (with or without access gangways), pipes and hoses, funnels, hoppers, disengaging lock hoppers; catalyst addition pots, valves and sampler devices; bagging, weighing and bag stitching systems; weigh bridges; buoy systems for crude oil receipt; pipeline end manifolds with valves, tenders, mooring aids, laser docking systems, product tanker loading facilities; with associated equipments, instrumentation and control systems and auxiliaries.

XXX XXX XXX 44. Special Maintenance Systems, including hydrojetting tools, pneumatic torque wrenches; EOT/mobile cranes; hoists, grinders, high pressure cleaning systems, induction bending machines; auto welding machines, various welding equipments like girth-welding, vertical flux cord, bottom saw, four side edge preparation, angle rolls; rolling and leveling machines, sky climbers, hot tapping machines, bolt tensioners, high pressure test pumps, tube bundle pullers, tube nippers, ultrasonic leak detectors, machine condition monitoring systems and associated sub-assemblies; vibration analysers and computerized alignments systems.

4. Respondent No. 2, for the purpose of setting up a crude petroleum refinery was required to make erections at 28 different locations. For the said purpose, it entered into a contract with M/s. Europa BV of Holland on or about 23.10.1997 with effect from 20.11.1997 for supply of the crane and the trailer. Pursuant to and in furtherance of the said contract, a heavy duty platform ringer mobile

crane and other equipments were imported on or about 31.1.1998 wherefor the bill of entry contained the following declaration in respect of the said goods as:

(a) Heavy Duty Platform Ringer Mobile Crane and Grove MZ90 sky Worker Mobile Crane.

(b) Fork Lift Manitw - HT-3500.

5. Indisputably, the said item was imported in a dismantled condition in 146 packages showing the consignment to be falling under Chapter Sub-Heading 8426.19 and 8427.90 respectively of the Customs Tariff.

6. Respondent claimed the benefit of concessional rate of duty in terms of the said notification showing the value of the imported item to be US \$ 34,84,500 (CIF). The said declaration of valuation was made for custom purposes only.

7. On the premise that the value declared therein was inadequate and/or ingenuine, the valuation thereof was assessed by Jawahar/Mumbai Customs House through an expert. It was opined:

That the 6 Line Trailers (self propelled modular transport system) supplied along with Platform Ringer Crane could not be treated as one unit i.e. Mobile Machine/ Mobile Crane as the Crane was neither mounted on the 6 Line Trailers nor the Crane and the Trailers were specially designed for each other forming an integral mechanical unit and, accordingly, suggested assessment of Cranes and Trailers separately.

8. The value of the said goods was assessed at DFL 60,00,000/-. A provisional assessment was made in terms of Section 18 of the Act and the goods were released on respondent's furnishing a bond for a sum of Rs. 5,84,32,813 along with a Bank Guarantee of Rs. 58,43,281/-.

9. An Appraising Officer valued the said equipment at Rs. 11,86,20,000/- as in the year of manufacture. A final assessment was made upon enhancing the value and denying the benefit of concessional exemption claimed under Notification No. 55/97-Cus. A total customs duty of Rs. 20,04,58,132/- was assessed by the Superintendent of Customs.

10. A show cause notice was issued as to why the differential customs duty of Rs. 18,62,92,602/- should not be directed to be paid by the respondent.

11. An appeal was preferred thereagainst. The Commissioner (Appeal), in terms of his order dated 5.5.2000 noticed the clauses in the contract for import of machinery and opined that the imported item was a self-propelled modular transport system, stating:

It is seen from the above discussion that the appellants had imported a mobile crane, technically known as "Heavy Duty Platform Ringer Mobile Crane & Grover MZ 90 Skyworker Mobile Crane". The description itself suggests that is a mobile crane. The invoices describe them as mobile crane and also the Chartered

Engineer who has issued a certificate about the valuation and other technicalities of the imported goods has mentioned the goods as mobile crane. The purpose of importing these goods is that the appellants were in the process of setting up a crude petroleum refinery and they required the work of erection to be done at various points and to carry the load to different locations, a crane was required, as the crane which would carry such heavy load, could not remain static, for the purpose of providing mobility to the crane, 8 SPMTS i.e. self propelled modular transport system have been provided, this crane is mounted on the 8 SPMTS. The intention of the appellants is very clear that they have imported mobile crane. The said mobile crane was disassembled by the supplier while dispatching the same for the sake of convenience in transport and the same has been re-assembled at the site. It appears that this has been misunderstood by the lower authority and it has been held that these are two separate items. I find substantial force in the contentions raised by the appellants in this regard that these are not two separate items but a single mechanical unit.

As regards classification of the said goods, it was held:

In the present case, the crane and 8 SPMTS have been imported as an integral unit, as independently they cannot perform the work for which they have been imported and for this purpose the crane has been mounted on the 8 SPMTS to provide mobility and therefore, both the goods have to be considered as a one single unit. The heading 87.04 is in respect of "Motor Vehicle for the transport of goods" and the disputed goods 8 SPMTS are not motor vehicles, they have been specifically designed to make the crane mobile. Therefore, in any view of matter, the classification of 8 SPMTS under chapter heading 8704.90 is ruled out. For the reasons given above, the 8 SPMTS is an integral part of Platform Ringer Crane and would merit classification under chapter heading 84.26.

On the aforementioned finding, it was held that the said imported item attracts the benefit of the exemption, stating:

Since it is now clear that the imported item is a mobile crane which has been imported for setting up of crude petroleum refinery, which is an undisputed fact, the exemption from duty is admissible to the present goods under the said notification. These goods in the alternative, can also be considered as material handling equipment. The definition of the term "material handling equipment" as given in Encyclopedia Britannica which has also been discussed in the decision of the Tribunal in the case of Ranadip Shipping (*supra*), defines material handling equipment in different classes, in terms of product handled, it includes machinery for bulk products in large continuous volumes, continuous processing based on industrial parts movement, discontinuous processing of a wide variety of goods and order filling of large varieties of goods. Secondly it classifies in relation to its mobile characteristic and includes both stationery and movable facilities. Thirdly, it identifies the types of equipments itself and includes wheeled carts, power and lift trucks, trailer trains, racks and pallets, bins and boxes, mono rails and conveyors, containers, unit loads and cranes and hoists. There is

no doubt that the mobile crane is a material handling equipment as per this definition and is therefore, also covered under Sr. No. 18 of the notification which covers all types of material handling equipments and is exempt from the duties specified thereunder.

On the question of valuation, it was held:

In this regard, I find that the addition of 1% of the value of the imported goods towards the transportation charges for bringing the goods from anchorage to jetty has no sanctity of law. The appellants have included 1% landing charges in the assessable value of goods for import of goods, which is evident from the bill of entry. Further adding 1% is in contravention of Rule 9(2)(b) of the Valuation Rules. In this regard, the appellants have placed reliance on the judgment of the Hon'ble Supreme Court in the case of Coromandel Fertilizers Ltd. (supra) wherein the Apex Court has held that landing charges when assessed at a percentage, Customs cannot add any amount thereto on the ground that expenses for unloading were not covered in the landing charges, since they cover the totality of all that an importer expends for bringing imported goods from ship to land. Further, I find that for resorting to Rule 5 of the Customs Valuation Rules, 1988, the value can be determined on the basis of "similar" or "identical goods". These terms are defined u/s 2(1)(c) and (e) of these aid Rules. As per the definition of these terms, identical goods or similar goods mean the imported goods which are same in all respects, including physical characteristics, quality and reputation, produced in the same country and produced by the same person. It is seen from the literature of both the items that these two cranes are not similar. The Platform Ringer Crane moves in a ring and for the purpose of mobility it has been mounted on 8 SPMTS, whereas, the comparable crane is a Crawler Crane, as the name suggests it has crawler mechanism which distinguishes it from the crane in question, the present crane has 8 SPMTS which are not there in the crawler crane, the crawler crane is new, the crawler crane is certified to move on its crawlers with 75% of its maximum load on the hook which is its unique feature, the year of manufacture of two cranes are different, the crawler crane being branded crane can realize a much higher commercial value whereas the crane in dispute is nearly an assembled tailor made crane.

It was furthermore held:

It is also pertinent to note that the present crane is a second hand machinery, which has been imported for a specific job to be carried out and it has not been purchased by the appellants, it has been hired by them with a condition to re-export the same after the job is accomplished. As regards the valuation of 8 SPMTS, I find that the year of manufacture of 6 Line Trailer imported at Jawahar Custom House has not been disclosed, moreover, it was a 6 Line trailer, whereas, the present one is 8 SPMTS, therefore, there is difference in the capacity of the two and they are not comparable goods. The lower authority has been found to have given deductions on account of depreciation for arriving at the fair value for all the disputed items, which he has considered as separate items, but there is

no reason forthcoming to show the basis adopted by him for giving such deductions on the original value of comparable goods. Moreover, I find that since the present goods are second hand goods, there is no contemporaneous import of similar goods or identical goods brought on record by the lower authority, declared value is the fair value u/s 14 of the Customs Act, 1962. There is no dispute nor any evidence that the appellants have remitted any extra payments clandestinely to the foreign suppliers over above the invoice value. In absence of such allegation, there is no justification in resorting to Rule 5 of the Valuation Rules, without adequate comparable goods. Accordingly, there is no legal justification in enhancing the value of the imported goods. Especially so in the present case, because the goods imported are second hand goods and there is a provision under EXIM policy as could be seen from the Handbook of Procedures 1997 - 2002, in para 5.4 it has been said that actual user shall, inter alia, furnish a certificate from any of the Inspection and Certification Agencies listed in Appendix 32A, where the CIF value of the imported goods is Rs. one crore and above, certifying the residual life of the capital goods and reasonability of the purchase price. In accordance with this proviso, the appellants have obtained and produced a certificate from a Chartered Engineer, whose name appears at Sr. No. 6 of Appendix 32A, wherein he has certified the fair market value of the goods, which is the same as has been declared by the appellants. Therefore, I find that there is no legal justification for enhancing the value of the imports made in the present case.

12. The Commissioner (Appeals) furthermore found that the assessment having been made behind the back of the respondent, the same was violative of the principles of natural justice.

13. The Tribunal agreed with the said findings of the Commissioner noticing several Chapter Headings. It was found that such mounted cranes primarily used for hauling pressing or changing the site of operation at this, shall would be classified under Heading 84.26 or under Heading 8431 even if presented with the tractor (whether or not mounted thereon), such tractors, with its operating equipment are to be classified separately under Heading 87.01.

14. Noticing the notes on machine mounted on tractor type appears under Heading 84.26, it was held:

The word 'presented separately' in the HSN chapter note has to be interpreted 'Imported independently of a lifting device of a Crane' and not when the import is along with such lifting device of Crane and platform, it has to be placed under 84.25 to 84.30, when sought for assessment & presented to be cleared on same BE as a set. Chapter note 3 to Section XVI would call for such a classification. The notes are being misread by Revenue. We find no reason to classify the propelling configuration platform of 8 SMPTs separately, in this case, than the Ringer Crane. Classification has to be under heading 84.26 and not under 8701 on the reasons as stated in the background of the case and on the grounds adopted. We find no reason to consider the SPMTs to be an independent

equipment imported and presented for classification separately in the facts of this case, and on the grounds made out.

It was furthermore held:

The uncontested role played, is to render the operations of the crane useful at different locations at the Refinery site, for which it has been imported; how it functions to lift a particular load, i.e., while on the moving platform or on its jack, is not relevant to rule out is common understanding to be as a 'Mobile Crane'. A 'Mobile Crane' would be one which can perform its function at different locations; a crane that can move with the load to different sites would be a 'Travelling Crane' like an EOT crane, while a crane on propelling platform haulage tractors or guided on rails, capable of operations at different sites would be a Mobile Crane.

It was observed:

Surely all elements/components as envisaged under note 3 to Section XVI cannot work simultaneously all the time. A component machine will function only when the ascribed function is called for. Propelling base SPMTs would be called for in use to change the location in this case and change in location need not be with the load lifted since it is not a traveling crane. The importer of SPMTs is admittedly is to import mobility to the Crane to operate at different places. A 'mobile crane' as would be understood has to be a crane which can move and relocate; as to how it functions at different sides i.e. mounted on its propelling mechanism or otherwise or partly on the propelling mechanism or otherwise or partly on the propelling mechanism and partly on jacks to gain leverage for lifting will not disentitle it from being 'mobile'.

It was concluded:

(i) Comparison from the Technical literature and then comparing the present import with the values of a Crawler Crane CC- 12600 an accepted Mobile Crane imported at Jawahar Custom House to be identical and similar to goods herein only on the grounds of Lifting Capacity of the Crawler Crane CC-12600 and the present imported Crane to be same and thereafter taking the purchase price of Crawler Crane CC-12600 as available in the literature to be DM 25 Million in 1997 and then applying the valuation to the crane in the present case cannot be upheld. One cannot appreciate comparison valuation, as arrived at, merely on capacity basis when goods are of different models old machinery with different usage and have 'Opportunity Costs' inbuilt for such specific old used machinery. The application of Best Judgment Rules also has to be in conformity with the Valuation Rules. One cannot compare unlike or dissimilar goods, to arrive at valuations based on by comparable goods rules, even under best judgment rules. The proposal as made in the appeal cannot be therefore upheld.

(ii) CC (Appeal) in the impugned order has dealt with the aspect of valuation in extension in para 11 and we find no valid grounds to repeal those findings.

15. Learned Solicitor General, in support of this appeal, would submit that a distinction must be made between a mobile crane and a crane mounted on a moving platform fitted with wheels. It was urged that the finding of the Tribunal is not clear as to whether the equipment is a mobile crane or a material handling equipment. It was urged that in any event only the crane would be a material handling equipment and not a platform fitted with wheels as they had been manufactured by two different manufacturers. As regards valuation, it was contended that keeping in view the report of the expert, the Commissioner (Appeals) as also the Tribunal committed a serious error in accepting the invoice value.

16. Mr. Harish N. Salve, learned senior counsel appearing on behalf of the respondent, on the other hand, would urge that the notifications contained overlapping entries. An equipment may fall within the meaning of the term 'electric overhead traction' or 'mobile'. Our attention was drawn to the fact that the said equipment was imported for a temporary period and it has already been re-exported.

17. We have noticed hereinbefore that the First Appellate Authority has delved deep into the matter to arrive at a finding of fact that the purpose for which the crane had to be used is an ordinary mobile crane.

It was opined that having regard to the nature of the work for setting up of a crude petroleum refinery would not have been possible and only for that purpose, such a material handling equipment, as per the definition contained in the said notification No. 11/97 as amended by notification No. 55/97 had to be imported.

18. The notification must be interpreted in a broad manner. Exemption had been granted to a large number of goods specified in List 8A required for setting up crude petroleum refinery. The project evidently was a huge one.

In List 8A, as many as 45 items were listed. Some of the headings are overlapping. Item Nos. 16 and 18 wherewith we are concerned use the word 'all types of materials' and 'all types of material handling equipments'. The fact that there are two parts in the crane in question is not in dispute. The fact that two parts thereof were manufactured by two different manufacturers is also not in dispute. It is also not in dispute that the respondent had imported the same as a second hand item from the same party. It was to be used as a crane and/or a material handling equipment. The findings of fact, as noticed hereinbefore, were arrived at by the Commissioner (Appeals) as also by the Tribunal. The Commissioner (Appeals), while accepting the respondent's case, had considered the report of the expert thoroughly.

19. Submission of learned Solicitor General, that the observation of the tribunal to the effect "The note 3 to Section XVI that when a combination of machines, the Ringer and propellers imported in this case are intended to contribute together for a clearly defined function, governed by one of the headings in

Chapter 84, lifting special machinery on this case at different sides, then the whole folk to be classified in the heading appropriate to that function. Therefore, propelling base in this case, which is presented as imported along with ringer crane cleared on the same BE, consisting of 8 haulage SPMTs in this case, are not elements presented separately for assessment in this case. They have been imported as a specific configuration set along with the Ringer Crane, platform etc.; are not clear, may not be correct. The Appellate Authority having considered the matter from several angles, it was not necessary for the Tribunal to deal with all aspects of the matter."; is not apposite.

20. In our opinion, the entire order has to be read as a whole. Exemption was granted to equipments made to be used for a particular purpose. A contextual meaning to the entries, keeping in view the nature of exemption sought to be granted by reason of the said notification, must be assigned. The crane was to be shifted from place to place covering a huge area. Its services were required at a large number of places. It has been found that the description of the crane, technically given as Heavy Duty Crane was, in fact, a mobile crane. Only with a view to provide mobility thereto, a self-propelled modular transport system had been provided.

It had to be consigned in different parts for convenience of transport so as to enable the importer to reassemble the same. It was on that basis, the equipment was found classifiable under Heading 84.26 and not 8724.90. In the alternative, the goods were found to be falling under serial No. 18 of the notification. This finding of fact is not in question.

What is in question is that only the crane part of the equipment would come within the purview of the exemption notification and not the entire equipment.

We do not agree with the said contention. The purpose for which the exemption was granted must be considered in its entirety. The purpose of grant for exemption cannot be lost sight of. The Central Government must be held to be aware, if not of the equipment itself, but about the nature thereof which would be required for setting up a crude oil refinery.

We are not oblivious of the proposition of law that an exemption notification should be construed directly but it is also well settled that interpretation of an exemption notification would depend upon the nature and extent thereof. The terminologies used in the notification would have an important role to play. Where the exemption notification *ex facie* applies, there is no reason as to why the purport thereof would be limited by giving a strict construction thereto.

21. The comparison made by the learned Solicitor General that mobility of a person would depend upon his personal fitness and not when he is placed on a wheelchair, in our opinion, is not apposite. The purpose of grant of exemption is different. The object for grant of notification shall be considered in a broad based manner. The wordings used therein have to be given its natural meaning. The purpose must be allowed to be achieved. The words 'all types of materials'

should be construed widely.

22. We, therefore, are of the opinion that in view of the entries and furthermore the purport and object the notification sought to achieve, the Commissioner (Appeals) and the Tribunal cannot be said to be wrong in their findings that the equipment in question would be entitled to the benefit of exemption.

23. So far as the valuation aspect is concerned, why a different view has been taken from the one disclosed in the invoices has not already been spelt out by the assessing authority. The valuation was found to be a plausible one. It was a second hand machinery. Valuation of the equipment which was in the mind of the expert of the equipment in question was found as of fact to be of different nature. Those who deal with valuation of a second-hand machinery and valuation of a newly manufactured equipment may be different persons. No fraud on the part of the assessee has been alleged. No illegality or any suppression has also been alleged.

24. The Appellate Authority has gone into the said question at some details. Its finding to the effect that addition of 1% of the value of the imported goods towards the transportation charges is contrary to Rule 9 (2)(b) of the Valuation Rules has not been disputed. The Appellate Authority, furthermore, apart from arriving at a finding of fact that the crane which was in the mind of the expert was different from the one which was imported by the respondent herein, also opined that the crane was a second hand machinery which had been imported for a specific object to be carried out and has not been purchased by the appellant, was also a relevant factor which, however, in our opinion, rightly been taken into consideration.

25. For the aforementioned reasons, we find no merit in this appeal. It is dismissed accordingly with costs. Counsel's fee assessed at Rs. 50,000/- (Rupees fifty thousand only).