

(2011) 10 SC CK 0053

In the Supreme Court Of India

Case No : Civil Appeal No's. 1699, 2114, 2129, 2518, 2519, 2520, 2521, 2522, 2523, 2853, 3197, 3487, 3564 of 2006 and 5006 of 2007

Commissioner of Customs, Vishakhapatnam

APPELLANT

Vs

Aggarwal Industries Ltd.

RESPONDENT

Date of Decision : 17-10-2011

Acts Referred:

Customs Act, 1962 — Section 14, 14(1), 14(1)(A), 14(1A), 14(2)
Customs Valuation (Determination of Price of Imported Goods) Rules, 1988 — Rule 10A, 2(1), 4, 4(1), 4(2)

Citation : (2012) AIRSCW 742 : (2011) 188 ECR 107 : (2011) 12 JT 250 : (2011) 2 SCALE 64 : (2011) 7 Supreme 319

Hon'ble Judges : Sudhansu Jyoti Mukhopadhaya, J;D.K. Jain, J

Bench : Division Bench

Advocate : R.P. Bhatt, Shyam Divan, Shipra Ghose, Binu Tamta, B. Krishna Prasad, P. Parmeswaran, V.K. Verma, Pramod B. Agarwala, Praveena Gautam, Anuj P. Agarwala, Kailash Pandey, Ranjeet Singh, K.V. Sreekumar, M. Gireesh Kumar, K. Parameswar, Khwairakpam Nobin Singh, S. Nanda Kumar, Parivesh Singhand V.N. Raghupathy, for the Appellant;

Final Decision : Dismissed

Judgement

D.K. Jain, J.—This batch of appeals arises out of final orders dated 4 th August, 2005 in Appeal No. C/139-140/02; C/209/02; C/288/03; C/291-93/03; C/299/03; C/243/02; C/264/02 & C/313/03; 5th August, 2005 in Appeal No. C/265/03, 22nd June 2005 in Appeal No. C/213/02 and 29th December, 2006 in Appeal No. C/300/03 passed by the Customs, Excise & Service Tax Appellant Tribunal South Zonal Bench, Bangalore (for short "the Tribunal"). By the impugned orders, the Tribunal has allowed the appeals preferred by the Respondents-importers.

2. Since all the appeals involve a common question of law, these are being disposed of by this common judgment. However, in order to appreciate the controversy, the facts emerging from C.A. No. 2521 of 2006, which was treated

as the lead case, are being adverted to. These are as follows:

On 26th June 2001, the Respondent entered into a contract with foreign suppliers viz: M/s Wilmar Trading Pvt. Ltd., Singapore, for import of 500 Metric tons of crude sunflower seed oil at the rate of US \$ 435 CIF/Metric ton. Under the contract, the consignment was to be shipped in the month of July 2001 but as the mutually agreed time for shipment was extended to "Mid August 2001" vide Addendum dated 31st July 2001, the goods were actually shipped on 5th August 2001. On filing of the bill of entry, the goods were assessed provisionally, pending verification of contemporary price, the original documents and the test report from the government chemical examiner.

3. On verification of the documents filed, the Adjudicating Authority noticed certain discrepancies in the shipment period. Accordingly, on 5th October 2001, he issued a demand letter to the Respondent under Rule 10A of the Customs Valuation (Determination of Price of Imported Goods) Rules, 1988 (for short "CVR 1988") to show cause as to why the contract price be not rejected and the Customs duty be not determined by adopting contemporary invoice price on which other importers had entered into contract for supply of the same item either with the same supplier or other suppliers in the same country. Since the imputation in the show cause notice has a material bearing on the determination of the issue involved, the relevant portion of the notice is extracted below:

As per the condition incorporated in the contract dated 26.6.2001, the goods are to be shipped during the month of July 2001. Whereas the goods were shipped after expiry of the Shipment period i.e. on 5.8.01. By the time of actual shipment i.e. during August 2001, the international market prices of the Crude Sunflower Seed Oil (Edible Grade) have increased drastically. Hence, the contract price is not acceptable in terms of Section 14(1) read with Rule 4 of Customs Valuation (Determination of Price of Imported Goods) Rules, 1988.

4. In short, the case of the revenue was that when actual shipment took place, after the expiry of the original shipment period, the international market price of crude sunflower seed oil had increased drastically, and, therefore, the contract price could not be accepted as the "transaction value" in terms of Rule 4 of CVR 1988.

5. In response, the plea of the Respondent was that the contract envisaged extension of time for shipment but the exporter was bound to supply the oil at the agreed price despite delay of one month in shipment and further that in the absence of any evidence to show that they had paid or agreed to pay an extra price to the exporter for the consignment, the transaction value had to be the invoice price. However, the said plea did not find favour with the Adjudicating Authority. Accordingly, he confirmed the demand indicated in the demand letter and ordered the Respondent to pay the differential amount of duty. Respondent's first appeal to the Commissioner (Appeals) was unsuccessful.

6. Being dissatisfied with the order of the Commissioner (Appeals), the

Respondent took the matter in further appeal to the Tribunal. As aforesaid, by the impugned common order in the cases before us, the Tribunal has set aside the order of the Commissioner (Appeals) and held that there was no basis for demand of differential duty by ignoring the invoice price. Placing reliance on the decision of this Court in *Eicher Tractors Ltd., Haryana Vs. Commissioner of Customs, Mumbai* 2000 (122) E.L.T. 321 (SC) : (2001) 1 SCC 315, the Tribunal held as follows:

In the above mentioned case, the Supreme Court has held that in the absence of "special circumstances, price of imported goods is to be determined u/s 14(1)(A) in accordance with the Customs Valuation Rules, 1988. The "special circumstances" have been statutorily particularized in Rule 4(2) and in the absence of these exceptions, it is mandatory of Customs to accept the price actually paid or payable for the goods in the particular transaction. In all the cases, we find that the transaction value has been arrived at purely on commercial considerations based on contracts. The supplier, in order to honour the contracts, supplied the goods at the contracted price. There is also no allegation that the Appellants paid to the supplier more than the contracted value. Under these circumstances, there are actually no grounds to reject the transaction value.

7. Hence these appeals by the revenue.

8. Mr. R.P. Bhatt, learned senior counsel, appearing for the revenue submitted that in the light of the invoices, in possession of the adjudicating authority, showing contemporaneous import of the crude sunflower seed oil at much higher price, the adjudicating authority was justified in invoking Rule 10A of CVR 1988 and in rejecting the invoice price declared by the Respondent-importer. It was argued that the contemporary invoices clearly indicated that at the time of actual shipment of the goods, the international market price was much higher and therefore, the transaction value declared by the Respondent could not be accepted in terms of Rule 4 of CVR 1988. Placing reliance on the decision of this Court in *Commissioner of Customs (Gen), Mumbai Vs. Abdulla Koyloth* (2010) 13 SCC 473, learned senior counsel contended that in the light of cogent contemporaneous imports, showing much higher market price of identical goods as on the date of shipment of goods, the transaction value had been rightly rejected in terms of Section 14(1) read with Rule 4(2) of CVR 1988.

9. Per contra, Mr. Shyam Divan, learned senior counsel, appearing for the Respondent contended that in the absence of any material even remotely showing that the market price of crude sunflower seed oil at the time of execution of the contract by the Respondent was higher than what was recorded in the invoice, the adjudicating authority had no reason to doubt the genuineness or the accuracy of the declared value, so as to attract Rule 10A of CVR 1988. It was pointed out that under clause 7 of the special conditions under the contract, entered into between the Respondent and the foreign supplier, the Respondent was obliged to extend the period of shipment and therefore, addendum dated 31

st July, 2001 was signed, where under, except for the change in the period of shipment all other conditions, including the price of crude sunflower seed oil remained unchanged. It was argued that in the absence of any material brought on record by the revenue indicating that as on the date of contract, i.e. 26th June 2001, the market price of the crude sunflower seed oil was more than the contracted price, none of the special circumstances enumerated in Sub-rule 2 of the Rule 4 of CVR 1988 were attracted and thus, the revenue was bound to accept the invoice price as the transaction value.

10. Before evaluating the rival submissions, it would be useful to have a bird's eye view of the relevant provisions. Section 14 of the Customs Act, 1962 (for short "the Act"), in so far as it is relevant for the present appeals, reads as follows:

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 where under a duty of customs is chargeable on any goods by reference to their value, the value of such goods shall 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 the seller and the buyer have no interest in the business of each other 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 u/s 46, or a shipping bill or bill of export, as the case may be, is presented u/s 50;

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

(2) Notwithstanding anything contained in sub-section (1) or Sub-section (1A), if the Central Government is satisfied that it is necessary or expedient so to do it may, by notification in the Official Gazette, fix tariff values for any class of imported goods or export goods, having regard to the trend of value of such or like goods, and where any such tariff values are fixed, the duty shall be chargeable with reference to such tariff value.

....

According to Rule 2(1)(f) of CVR 1988 "transaction value" means the value determined in accordance with Rule 4 of CVR 1988. The relevant portion of Rule 4 reads as follows:

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.

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

Provided that -

- a. the sale is in the ordinary course of trade under fully competitive conditions;
- b. the sale does not involve any abnormal discount or reduction from the ordinary competitive price;
- c. the sale does not involve special discounts limited to exclusive agents;
- d. objective and quantifiable data exist with regard to the adjustments required to be made, under the provisions of Rule 9, to the transaction value;
- e. there are no restrictions as to the disposition or use of the goods by the buyer other than restrictions which -
 - i. are imposed or required by law or by the public authorities in India; or
 - ii. limit the geographical area in which the goods may be resold; or
 - iii. do not substantially affect the value of the goods;
- f. 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;
- g. 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
- h. 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).

....

11. On a plain reading of Sections 14(1) and 14(1A), it is clear that the value of any goods chargeable to ad valorem duty is deemed to be the price as referred to in Section 14(1) of the Act. Section 14(1) is a deeming provision as it talks of deemed value of such goods. The determination of such price has to be in accordance with the relevant rules and subject to the provisions of Section 14(1) of the Act. Conjointly read, both Section 14(1) of the Act and Rule 4 of CVR 1988 provide that in the absence of any of the special circumstances indicated in Section 14(1) of the Act and particularized in Rule 4(2) of CVR 1988, the price paid or payable by the importer to the vendor, in the ordinary course of international trade and commerce, shall be taken to be the transaction value. In other words, save and except for the circumstances mentioned in proviso to Sub-rule (2) of Rule 4, the invoice price is to form the basis for determination of the transaction value. Nevertheless, if on the basis of some contemporaneous evidence, the revenue is able to demonstrate that the invoice does not reflect the

correct price, it would be justified in rejecting the invoice price and determine the transaction value in accordance with the procedure laid down in CVR 1988. It needs little emphasis that before rejecting the transaction value declared by the importer as incorrect or unacceptable, the revenue has to bring on record cogent material to show that contemporaneous imports, which obviously would include the date of contract, the time and place of importation, etc., were at a higher price. In such a situation, Rule 10A of CVR 1988 contemplates that where the department has a "reason to doubt" the truth or accuracy of the declared value, it may ask the importer to provide further explanation to the effect that the declared value represents the total amount actually paid or payable for the imported goods. Needless to add that "reason to doubt" does not mean "reason to suspect". A mere suspicion upon the correctness of the invoice produced by an importer is not sufficient to reject it as evidence of the value of imported goods. The doubt held by the officer concerned has to be based on some material evidence and is not to be formed on a mere suspicion or speculation. We may hasten to add that although strict rules of evidence do not apply to adjudication proceedings under the Act, yet the Adjudicating Authority has to examine the probative value of the documents on which reliance is sought to be placed by the revenue. It is well settled that the onus to prove under-valuation is on the revenue but once the revenue discharges the burden of proof by producing evidence of contemporaneous imports at a higher price, the onus shifts to the importer to establish that the price indicated in the invoice relied upon by him is correct.

12. In *Eicher Tractors Ltd.* (supra), relied upon by the Tribunal, this Court had held that the principle for valuation of imported goods is found in Section 14(1) of the Act which provides for the determination of the assessable value on the basis of the international sale price. Under the said Act, customs duty is chargeable on goods. According to Section 14(1), the assessment of duty is to be made on the value of the goods. The value may be fixed by the Central Government u/s 14(2). Where the value is not so fixed it has to be decided u/s 14(1). The value, according to Section 14(1), shall 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 and importation in the course of international trade. The word "ordinarily" implies the exclusion of special circumstances. This position is clarified by the last sentence in Section 14(1) which describes an "ordinary" sale as one where the seller or the buyer have no interest in the business of each other and price is the sole consideration for the sale or offer for sale. Therefore, when the above conditions regarding time, place and absence of special circumstances stand fulfilled, the price of imported goods shall be decided u/s 14(1A) read with the Rules framed there under. The said Rules are CVR 1988. It was further held that in cases where the circumstances mentioned in Rules 4(2) (c) to (h) are not applicable, the Department is bound to assess the duty under transaction value. Therefore, unless the price actually paid for a particular transaction falls within the exceptions mentioned in Rules 4(2)(c) to (h), the

Department is bound to assess the duty on the transaction value. It was further held that Rule 4 is directly relatable to Section 14(1) of the Act. Section 14(1) read with Rule 4 provides that the price paid by the importer in the ordinary course of commerce shall be taken to be the value in the absence of any special circumstances indicated in Section 14(1). Therefore, what should be accepted as the value for the purpose of assessment is the price actually paid for the particular transaction, unless the price is unacceptable for the reasons set out in Rule 4(2). (Also See: Rabindra Chandra Paul Vs. Commissioner of Customs (Preventive), Shillong (2007) 3 SCC 93

13. Applying the above principles to the facts in hand, we are of the opinion that the revenue erred in rejecting the invoice price. As stated above, in the present case the whole controversy arose on account of difference in price of the same commodity, contracted to be supplied under different contracts entered into at different points in time. As aforesaid, in the instant case, admittedly the contract for supply of crude sunflower seed oil @ US \$ 435 CIF/PMT was entered into on 26th June 2001. It could not be performed on time because of which extension of time for shipment was agreed to between the contracting parties. It is true that the commodity involved had volatile fluctuations in its price in the international market but having delayed the shipment, the supplier did not increase the price of the commodity even after the increase in its price in the international market. This fact is also proved by the actual amount paid to the supplier. There is no allegation of the supplier and importer being in collusion. It is also not the case of the revenue that the transaction entered into by the Respondent was not genuine or under-valued. Nor was there a misdescription of the goods imported. It is also not the case of the revenue that the subject imports fell within any of the situations enumerated in Rule 4(2) of CVR 1988. It is manifest from the show cause notice, extracted in para 3 supra, that the contract value was not acceptable to the Adjudicating Authority in terms of Section 14(1) of the Act read with Rule 4 of CVR 1988 merely because by the time actual shipment took place in August 2001, international price of the oil had increased drastically. No other reason has been ascribed to reject the transaction value under Rule 4(1) except the drastic increase in price of the commodity in the international market and the difference in price in the invoices in relation to the goods imported under contracts entered by the Respondents in the month of August 2001. In our opinion, the import instances relied upon by the revenue could not be treated as instances indicating contemporaneous value of the goods because contracts for supply of the goods in those cases were entered into almost after a month from the date of contract in the present cases, more so, when admittedly there were drastic fluctuations in the international price of the commodity involved. We are, therefore, of the opinion that the revenue was not justified in rejecting the transaction value declared by the Respondents in the invoices submitted by them.

14. For the foregoing reasons, we do not find any merit in these appeals. All the appeals are dismissed accordingly, with no order as to costs.