
(2015) 08 SC CK 0150
In the Supreme Court Of India
Case No : Civil Appeal No. 1506 of 2006

Commr. of Cus. and C. Ex.

APPELLANT

Vs

Hindustan Lever Ltd.

RESPONDENT

Date of Decision : 07-08-2015

Acts Referred:

Customs Act, 1962 — Section 14(1A), 14(1), 46, 50

Citation : (2015) 325 ELT 7

Hon'ble Judges : A.K. Sikri and Rohinton Fali Nariman, JJ.

Bench : Division Bench

Final Decision : Partly Allowed

Judgement

1. The respondent herein had imported 3,800 metric tonne of soda ash light from M/s. Qing Dao Soda Ash Industrial Company Limited, China. It filed two Bills of Entries through its customs agents declaring the value of the aforesaid consignment at USD 120 per metric tonne C&F. The Appellant herein issued show cause notice dated 29-7-1998 asking the Respondent to show cause as to why the invoice price of the goods which was stated to be USD 153.50 per MT (C&F) will not be taken up for assessment in respect of the aforesaid import. The Respondent filed its reply, inter alia, stating that at the time of importation, the market price of the goods had drastically come down because of the downward movement in the prices of the imported soda ash light and the price at the time of the import, which was declared at USD 120 per MT, was on the basis of imports which were undertaken at that time. In support of this, the Respondent also submitted certain documents. The Assistant Commissioner, however, did not accept the aforesaid plea of the Respondent and passed Order-in-Original dated 27-8-1998 confirming the demand raised in the show cause notice. For this purpose, he invoked the provisions of Customs Valuation (Determination of Price of Imported Goods) Rules, 1988 (hereinafter referred to as "Rules") to arrive at "transaction value" of the goods. The Respondent challenged the said Order-in-Original dated 27-8-1998 before the Commissioner of Customs and Central

Excise (Appeals) who vide Order-in-Appeal dated 18-5-2001 rejected the appeal of the Respondent. Aggrieved by the aforesaid order, the Respondent filed appeal before the Customs, Excise and Service Tax Appellate Tribunal (hereinafter referred to as "CESTAT") and CESTAT had, vide its impugned decision, accepted the contention of the Respondent and set aside the order of the Commissioner holding that the value of the goods declared at USD 120 per MT is appropriate. As far as facts of the case, leading to the issuance of the show cause notice whereby the value declared by the Respondent was not accepted, are concerned, they were stated in the show cause notice itself, in the following manner:

"In this connection, the importer vide their letters dated 8-7-1998 and 24-7-1998 have contended that the goods were contracted for import in the month of June 1997 and was shipped out on board the vessel "Dastan" on July 31, 1997. Due to series of events which occurred post the sailing of the vessel such as the vessel being caught up in storm and having to undergo extensive repairs, the consignment could not be delivered on time to the scheduled destination i.e., Tuticorin in India. Further they have stated that after the vessel was arrested on Jan 3rd 1998 they filed an application before the Singapore Supreme Court as innocent cargo owner seeking discharge of cargo to India. Finally the vessel was sold to a party in Singapore and material has been brought to Tuticorin in the same vessel rechristened as "SAHAJ". They further stated that, there has been a marked downward movement in the price of imported soda ash light and the current import are based on value of USD120-125 per MT C&F major port in India."

2. It is clear from the above that in the show cause notice itself, the Department had accepted the fact that there was slump in the international market insofar as import of soda ash light is concerned. However, we find that the mistake which was committed by the Commissioner was to straightaway refer to the aforesaid Rules in order to arrive at the transaction value. This could be permissible only if the case had been covered by the provisions under Sub-section (1A) of Section 14 of the Customs Act, 1962 (hereinafter referred to as "Act"). In order to demonstrate this, we reproduce below the provisions of Sub-sections (1) and (1A) of Section 14, as existed at the relevant time, which read as under:

"Section 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 whereunder 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 under

Section 46, or a shipping bill or bill of export, as the case may be, is presented under Section 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."

3. Sub-section (1A) makes it clear that resort to the Rules is subject to the provisions of Sub-section (1) of Section 14. As per Sub-section (1) of Section 14, the value of the goods which are imported are to be fixed at the price on which such or like goods are ordinarily sold or offered for sale. Further, the said valuation has to be done at the time of delivery and place of importation or exportation. Thus, we are of the view that in the present case, the provisions of Sub-section (1) of Section 14 are clearly attracted and there was no necessity of invoking the rules. As mentioned above, in order to demonstrate the price at which these goods were ordinarily sold at the time of delivery and place of importation, the Respondent herein had filed various documents exhibiting the prices that were prevailing at that time. Some of these are taken note of in the show cause notice itself, the details of which are as under:

"Fax dated 17-3-1998 from Arroh International at \$127 per M.T. CIF.

Fax dated 20-4-1998 from Beacons private limited at \$ 124 per M.T. CIF.

Fax dated 13-5-1998 from Nahar at \$ 129 per M.T. CIF.

Fax dated 3-7-1998 from Tianjin at \$ 128 per M.T. CIF."

4. The aforesaid documents clearly show the prevailing market rate of the goods in question in international market at the relevant period. On that basis, if the value of the goods was declared at USD 120 per M.T. by the Respondent/importer, this was perfectly justified and in consonance with the provisions of the Section 14(1) of the Act. As mentioned above, the error which was committed by the Commissioner was to ignore the aforesaid material even when it was pointed out by the Deputy Commissioner in the show cause notice, and refer to the Rules for the purpose of arriving at the value, which was not necessary at all. We, thus, do not find any merit in this appeal, which is, accordingly, dismissed. As a consequence, if any extra duty is paid by the Respondent, the same would be refunded in accordance with law.