(2010) 01 MAD CK 0013

In the Madras High Court

Case No : Writ Petition No. 22052 and M.P. No. 1 of 2008

Cooper Bussmann India Ltd. APPELLANT

Vs

Asstt. Commr. of Cus. (SVB) RESPONDENT

Date of Decision : 08-01-2010

Acts Referred:
Customs Act, 1962 — Section 14
Customs Valuation (Determination of Price of Imported Goods) Rules, 1988 — Rule 3, 7, 7(1), 7(2), 7(3)

Citation : (2010) 254 ELT 55

Hon'ble Judges : T.S. Sivagnanam, J

Bench : Single Bench

Advocate : Joseph Prabakar, for the Appellant; A.P. Peter Gunasekaran, for the Respondent

Final Decision : Allowed

Judgement

T.S. Sivagnanam, J.—The challenge in the writ petition is to the order passed by the respondent dated 26-6-2008.

2. The petitioner is a company engaged in the manufacture of High Rupturing Capacity Fuses and Fuse Components.

3. The petitioner imported goods from Cooper Bussmann UK, which is a subsidiary of Cooper Bussmann Inc, USA and it is stated that the

petitioner also imported goods from other associated companies abroad. In terms of Section 14 of the Customs Act, 1962 read with Customs

Valuation (Determination of Value of Export Goods) Rules, 1998 (CVR) the petitioner was registered with Special Valuation Branch (SVB) of the

Customs Department at Chennai Customs House. An investigation was registered under the Customs Valuation Rules and accordingly 1% Extra

Duty Deposit (EDD) circular was issued as per CBEC Circular No. 11 of 2001.

4. It is stated in terms of the procedure of Special Valuation Branch the petitioner had submitted various documents for the consideration of the

authorities. Thereafter, a personal hearing was granted by the respondent and Order-in-Original No. 262 of 2003 dated 2-2-2003 was passed. In

this order, the respondent had ordered a loading of 20% on the import value since the cost of freight was not included in the value of goods in the

invoice raised by the overseas related parties. This order came to be challenged by the petitioner company before the Commissioner of Customs

(Appeals), Chennai and by Order in Appeal No. Cus. 723 of 2003 dated 28-11-2008, the Commissioner of Customs (Appeals) directed the

department to determine the value as per Rule 7 of the Customs Valuation Rules and also to add the value of freight under Rule 9(2)(a) of

Customs Valuation Rules as per the invoice.

5. The Special Valuation Branch as per its procedural review in Order-in-Original No. 262 of 2003 dated 2-2-2003 in the year 2007 sought for

various documents from the petitioner company. An opportunity of personal hearing was given to the petitioner on 8-5-2008, in which the Finance

Controller of the company appeared and made submissions and in fact, on the said date a written request was given to the respondent stating that

the petitioner was in the process of collecting necessary information and details as sought for by the department and since they had to collect such

details it would take some more time and collecting of such details would have a significant bearing on the matter and would assist the respondent

in justifiably disposing of the matter as per law. In the same representation, the petitioner had sought for 30 days time and requested for the grant

of an opportunity of personal hearing before the matter is finally adjudicated.

6. Since the company decided to engage the service of Mr. Joseph Prabakar, Advocate vakalaunama was filed by the counsel on 25-6-2008

which has also been acknowledged by the department by affixing their seal and signature. However, on 26-6-2008 the impugned order came to

be passed. It-''is stated that the date of the order is 26-6-2008 and the date of issue of the order was shown as 27-6-2008 and the order came to

be received by the petitioner on 30-6-2008. Mr. Joseph Prabakar, learned Counsel appearing for the petitioner''s preliminary argument was on the

grounds of violation of the principles of natural justice. The learned Counsel would submit that in normal circumstances the petitioner ought to have

been given the opportunity of appearing before the Appellate Authority. Since there is violation of principles of natural justice and since, the

authority has shown undue haste the petitioner is compelled to approach this Court by way of writ petition. The learned Counsel for the petitioner

has requested for an opportunity of personal hearing so as to collect the details on the issues sought for by the department and it would be

appropriate for the department to adjudicate the case after receipt of such documents. The learned Counsel would place reliance on the decision

of the Hon''ble Supreme Court reported in Tribhuvandas Bhimji Zaveri and Another Vs. Collector of Central Excise, and contend that this Court

would be fully justified in interfering with the order when there is violation of principles of natural justice. The learned Counsel appearing for the

respondent department on the other hand contends that the order has been validly passed and that the official of the company appeared for

personal hearing on 8-5-2008 and the submissions made on behalf of the company has been considered by the authority and the impugned order

dated 26-6-2008 has been passed. If at all the petitioner is aggrieved, he ought to have filed an appeal before the Commissioner of Customs

(Appeals) within the period of limitation and such appeal is effective and efficacious.

7. I have considered the arguments on either sides and perused the material available on record. This is a case relating to a procedure adopted by

the Special Valuation Branch of the Customs Department. The procedure to be followed by the department are adumbrated under Customs

Valuation Rules, 1998. Undoubtedly, the procedure under the Rules are sufficient to safe guard the assessee in the matter of providing him an

opportunity to establish their contention. However, in the instant case, the Order-in-Original came to be passed on 2-2-2003 wherein the

respondent had ordered the loading of 20% on the import value since cost of freight was not included in the value of goods. This order came to be

set aside in Appeal No. 723 of 2003 dated 28-11-2003 and the department was directed to determine the valuation as per Rule 7 of the

Valuation Rules. Therefore once the Appellate Authority has passed such an order, the respondent is bound to strictly comply with such direction.

8. Rule 7 of the Customs Valuation (Determination of Price of Imported Goods) Rules, 1988 which deals with Deductive Value, states that subject

to the provisions of Rule 3 of these Rules, if the goods being valued are identical or similar imported goods are sold in India, in the condition as

imported at or about the time at which the declaration for determination of value is presented, the value of imported goods shall be based on the

unit price at which the imported goods or identical or similar imported goods are sold in the greatest aggregate quantity to persons who are not

related to the sellers in India, subject to the deductions contemplated in Clause (1), (2), (3) and Sub-rule (1) of Rule 7. Similarly, Sub-rule (2) and

(3) also provides the procedure to be adopted while arriving at the deductive value.

9. Thus it is to be noted that the procedure involves adjudication into the facts, and in such case the petitioner should be provided with sufficient

opportunity to submit the documents in support of their claim so that all the relevant documents can be appreciated. In the present case, I find that

the respondent had acknowledged the Vakalatnama by the counsel of the petitioner company on 25-6-2008. In fact in page 11 of the typed set

filed in the writ petition a copy of the letter dated 25-6-2008 addressed to the respondent by the petitioner company has been placed and it has

been stated by the authorised signatory that they are enclosing the Vakalat in favour of Mr. Joseph Prabhakar, Advocate to represent in the special

valuation branch assessment in file No. S-50/31/2001-SVB. This letter has been acknowledged by the department on 25-6-2008. If that'' be the

case, it would be improper on the part of the respondent in not taking into consideration the said letter seeking to engage a counsel.

10. Hon''ble Supreme Court has time and again held that the opportunity of personal hearing should be effective and meaningful. In the instant

case, the officer concerned appears to have acted in haste and also failed to refer to the request made to the respondent through the counsel.

Undoubtedly, if the petitioner had the benefit of his counsel to represent the case, the representation would be effective as they are professionally

trained for such purpose. Hence, denial of the opportunity to represent the case is in gross violation of the principles of natural justice. Since die

issue has been dealt with by the department since 2003, the respondent authority could have very well afforded an opportunity for the petitioner to be represented by counsel and given reasonable time to place documents.

11. The Hon''ble Supreme Court in J.K. Aggarwal Vs. Haryana Seeds Development Corporation Ltd. and others, , was dealing with the question

as to whether the appellant therein was entitled to engage the services of a legal practitioner in the conduct of his defence. The Hon''ble Supreme

court in the said case was dealing with a service matter, where the respondent corporation ordered for disciplinary enquiry on certain charges,

which if established might lead to dismissal from service. The Hon''ble Supreme court while considering the provisions of the Civil services Rule

held that the Rule vests a discretion and in the matter of exercise of this discretion one of the relevant factors is whether there is likelihood of the

combat being unequal entailing a miscarriage or failure of justice and a denial of a real and reasonable opportunity for defence by reason of the

appellant being pitted against a presenting officer who is trained in law. Legal Adviser and a lawyer are for this purpose somewhat liberally

construed and must include ""whoever assists or advises on facts and in law must be deemed to be in the position of a legal adviser. The Hon''ble

Supreme Court also took note of an earlier decision of the Hon''ble Supreme Court in Board of Trustees of the Port of Bombay Vs. Dilipkumar

Raghavendranath Nadkarni and Others, , held that a stage has reached in the march to fair play in action that where in an enquiry before a

domestic tribunal the delinquent officer is pitted against a legally trained mind, if he seeks permission to appear through a legal practitioner, the

refusal to grant this request would amount to denial of a reasonable request to defend himself and the essential principles of natural justice would be

violated. Thus by applying the law laid down by the Hon''ble Supreme Court to the facts of the present case, it leads to a irresistible conclusion that

the type of enquiry conducted by the adjudicating authority is quasi judicial in nature with power to levy penalty and interest and such authorities

are trained for such adjudicating mechanism and therefore, the request made by the petitioner to avail the services of a legal practitioner ought to

have been granted. The failure to grant such opportunity has resulted in the denial of natural justice.

12. In view of the above discussion, it is held that the impugned order has been passed in violation of the principles of natural justice and on that

ground alone the impugned order is liable to be set aside. Accordingly the writ petition is allowed and the impugned order is set aside and the

matter is remanded for fresh consideration of the respondent in accordance with law.

13. The learned Counsel appearing for the petitioner submitted that the respondent has relied upon a notification issued by the Reserve Bank of

India in support of his findings and the copy of the same has not been furnished. Liberty is granted to the petitioner to submit a representation to the

respondent for furnishing a copy of the said notification and any other document, which they may require. On such representation, the respondent

shall furnishing copies of documents, wherever permissible and if not feasible to supply copies the petitioner shall be afforded opportunity to peruse

such documents. After this procedure is completed the respondent shall receive any further representation to be made by the petitioner as well as

documents relied on by them and thereafter the respondent shall fix a date for personal hearing and proceed in accordance with law.

14. The entire adjudication shall be completed within a period of 12 weeks from the date of receipt of a copy of this order. It is needless to state

that the petitioner shall co-operate in the adjudication to be conducted by the respondent.

15. It is submitted that pursuant to interim orders granted by this Court, the respondent has not been loading any amount to the original invoice

value. Till the completion of the adjudication by the respondent as ordered above, such status-quo shall continue and no loading shall be effected

by the department till the adjudication is completed. In result, the Writ Petition is allowed and consequently, connected miscellaneous petition is

also closed. No costs.