(2013) 05 BOM CK 0068

In the Bombay High Court

Case No : Writ Petition No. 1101 of 2013

Forbo Siegling Movement Systems India Pvt. Ltd. and Another	APPELLANT
Vs	
Union of India and Others	RESPONDENT

Date of Decision : 10-05-2013

Acts Referred:
Constitution of India, 1950 — Article 226
Customs Act, 1962 — Section 128(1), 14

Citation : (2013) 4 ALLMR 556 : (2013) 296 ELT 443 : (2013) 21 GSTR 1

Hon'ble Judges : D.Y. Chandrachud, J;A.A. Sayed, J

Bench : Division Bench

Advocate : J.J. Bhat, with Mr. Kishan Kumar and Mr. P.K. Shetty instructed by Mr. Rajeev Ravi, for the Appellant; R. Ashokan, for the Respondent

Judgement

D.Y. Chandrachud, J.—Rule. Learned Counsel appearing on behalf of the Respondents waive service. With the consent of Counsel and on their request, the Petition is taken up for hearing and final disposal. The challenge in these proceedings is to an order of the Deputy Commissioner of Customs, GATT Valuation Cell, Mumbai dated 19 March 2013, assessing the bills of entry under Rule 9 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 read with Section 14 of the Customs Act, 1962, after making an addition to the declared value.

2. The First Petitioner is a wholly owned subsidiary of Forbo Finanz AG, Switzerland. The First Petitioner imports raw material, semi-finished goods and finished goods from its group companies located abroad. In view of the fact that its transactions of import are between related parties, the case of the First Petitioner was registered with the Special Valuation Branch in pursuance of instructions set out in a Circular dated 23 February 2001 of the Central Board of Excise and Customs. On 19 April 2012, a letter was addressed by the Deputy Commissioner of Customs, GATT Valuation Cell to the First Petitioner calling upon it to submit relevant documents failing which, it was stated, that the revenue

deposit of one percent would be increased to five percent. In response, the Petitioners submitted documents on 18 May 2012. A personal hearing was held on 5 November 2012 after which the Petitioners submitted further documents on 17 December 2012, 20 February 2013 and 25 February 2013. The Deputy Commissioner of Customs passed the impugned order dated 19 May 2013 by which the disclosed transaction value was rejected and the value of the imported goods was loaded in terms of the directions contained in the order.

3. An order passed by the Deputy Commissioner of Customs in the GATT Valuation Cell is subject to an appeal before the Commissioner of Customs u/s 128(1) of the Customs Act, 1962. The submission however, that has been urged is that the impugned order has been passed in violation of the principles of natural justice and without complying with the mandatory procedural requirements set out in Rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007. According to the Petitioners, Rule 12 mandates that when the proper officer has reason to doubt the truth or accuracy of the value declared in relation to any imported goods, the importer can be called upon to furnish further information. However, on the request of the importer, the proper officer is required to intimate to him in writing the grounds for doubting the truth or accuracy of the value declared in relation to the goods imported and provide a reasonable opportunity of being heard before taking a final decision. In the present case, it is submitted, there was a patent violation of the principles of natural justice because the mandatory requirement of disclosing the grounds for doubting the truth or accuracy of the value declared was not fulfilled and hence, the mere holding of a personal hearing would not comply with the requirement of Rule 12.

4. An affidavit in reply has been filed by the Deputy Commissioner of Customs. The contention is that Rule 12 will apply only when a buyer and seller are not related as envisaged in rule 3(1). The defence is that when the supplier and importer are related persons, Rule 12 will not apply. Moreover, the following defence is taken in paragraph 7 of the reply:

7. I further say and submit that even if Hon''ble High Court directs to issue a show cause notice, the grounds of the show cause notice will be same as mentioned in ''Discussion and Findings'' and the quasi judicial order may also be the same as mentioned in order in original dated 19.03.2013. Hence, I respectfully submit that issuance of a show cause notice may not serve the purpose of the Petitioner, as the order in original dated 19.03.2013 is an appealable and speaking order.

5. Counsel appearing on behalf of the Respondents submitted that the impugned order is subject to an appeal before the Commissioner of Customs (Appeals) and hence, a petition under Article 226 of the Constitution of India should not be entertained.

6. Section 14 of the Customs Act, 1962 inter alia provides that for the purposes

of the Customs Tariff Act, 1975 or any other law for the time being in force, the value of imported goods shall be the transaction value of such goods, that is to say, the price actually paid or payable for the goods when sold for export to India for delivery at the time and place of importation, where the buyer and seller of the goods are not related and price is the sole consideration for the sale subject to such other conditions as may be specified in the rules made in this behalf. Under the proviso, the rules can stipulate the circumstances under which the buyer and seller shall be deemed to be related, the manner of determination of the value in respect of goods when there is no sale or when the buyer and seller are related or the price is not the sole consideration of the sale and the manner in which the value declared by the importer or exporter may be accepted or rejected.

7. The Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 ("the Rules") have been framed inter alia in pursuance of the provisions of Section 14. Rule 3(1) provides that subject to Rule 12, the value of imported goods shall be the transaction value adjusted in accordance with provisions of rule 10. Rule 3(2) stipulates that the value of imported goods under sub-rule (1) shall be accepted subject to certain stipulations in the proviso. Rule 3(3) provides as follows:

3(a) Where the buyer and seller are related, the transaction value shall be accepted provided that the examination of the circumstances of the sale of the imported goods indicate that the relationship did not influence the price.

(b) In a sale between related persons, the transaction value shall be accepted, whenever the importer demonstrates that the declared value of the goods being valued, closely approximates to one of the following values ascertained at or about the same time:

(i) the transaction value of identical goods, or of similar goods, in sales to unrelated buyers in India;

(ii) the deductive value for identical goods or similar goods;

(iii) the computed value for identical goods or similar goods;

Provided that in applying the values used for comparison, due account shall be taken of demonstrated difference in commercial levels, quantity levels, adjustments in accordance with the provisions of rule 10 and cost incurred by the seller in sales in which he and the buyer are not related;

(c) substitute value shall not be established under the provisions of clause (b) of this sub-rule.

8. Rule 12 provides for the rejection of the declared value, and is as follows:-

12. Rejection of declared value - (1) When the proper officer has reason to doubt the truth or accuracy of the value declared in relation to any imported goods, he may ask the importer of such goods to furnish further information including

documents or other evidence and if, after receiving such further information, or in the absence of a response of such importer, the proper officer still has reasonable doubt about the truth or accuracy of the value so declared, it shall be deemed that the transaction value of such imported goods cannot be determined under the provisions of sub-rule (1) of rule 3.

(2) At the request of an importer, the proper officer shall intimate the importer in writing the grounds for doubting the truth or accuracy of the value declared in relation to goods imported by such importer and provide a reasonable opportunity of being heard, before taking a final decision under sub-rule (1).

Explanation - (1) For the removal of doubts, it is hereby declared that:-

(i) This rule by itself does not provide a method for determination of value, it provides a mechanism and procedure for rejection of declared value in cases where there is reasonable doubt that the declared value does not represent the transaction value; where the declared value is rejected, the value shall be determined by proceeding sequentially in accordance with rules 4 to 9.

(ii) The declared value shall be accepted where the proper officer is satisfied about the truth and accuracy of the declared value after the said enquiry in consultation with the importers.

(iii) The proper officer shall have the powers to raise doubts on the truth or accuracy of the declared value based on certain reasons which may include-

(a) the significantly higher value at which identical or similar goods imported at or about the same time in comparable quantities in a comparable commercial transaction were assessed;

(b) the sale involves an abnormal discount or abnormal reduction from the ordinary competitive price;

(c) the sale involves special discounts limited to exclusive agents;

(d) the misdeclaration of goods in parameters such as description, quality, quantity, country of origin, year of manufacture or production;

(e) the non declaration of parameters such as brand, grade, specifications that have relevance to value;

(f) the fraudulent or manipulated documents.

9. The explanation to rule 12 makes it clear that the rule does not by itself provide a method for determination of value but it provides a mechanism and procedure for rejection of declared value in cases where there is reasonable doubt that the declared value does not represent the transaction value. Where the declared value is rejected, the value has to be determined by proceeding sequentially in accordance with rules 4 to 9. In the present case, the grievance of the Petitioners turns upon an alleged non-compliance of the provisions of sub-rules (1) and (2) of rule 12.

10. Under sub-rule (1) of rule 12, when the proper officer has reason to doubt the truth or accuracy of the value declared in relation to any imported goods, he may ask the importer of such goods to furnish further information. This information sought may include documents or other evidence. If, after receiving such further information, or in the absence of a response of the importer, the proper officer still has reasonable doubt about the truth or accuracy of the value so declared, it shall be deemed that the transaction value of such imported goods cannot be determined under the provisions of sub-rule (1) or rule 3. Sub-rule (2) of rule 12, provides that at the request of an importer, the proper officer shall intimate to the importer in writing the grounds for doubting the truth or accuracy of the value declared in relation to goods imported by the importer and provide a reasonable opportunity of being heard, before taking a final decision under sub-rule (1). Explanation (ii) to Rule 12 posits an enquiry in consultation with the importer. The subordinate legislation has expressly incorporated norms requiring observance of the principles of natural justice.

11. The provisions of Rule 12 contain the procedure which the proper officer is required to follow before rejecting the declared value. In the first instance, when the proper officer has reason to doubt the truth or accuracy of the value, he may ask the importer to furnish further information including documents or other evidence. If upon a scrutiny of the information he is satisfied with the transaction value declared, then in such a case the provisions of rule 3(1) would come into operation. On the other hand, if the importer fails to supply information or if the proper officer still has reason to doubt the truth or accuracy of the value declared despite the information, sub-rule (2) requires him to intimate the importer in writing of the grounds for doubting the truth or accuracy of the value declared, on the request of the importer. The object of doing so is to enable the importer to have a fair opportunity to meet the grounds of doubt entertained by the proper officer. Rule 12(2) stipulates a requirement of a reasonable opportunity of being heard. Such an opportunity can have meaning only if the importer is apprised of the grounds on the basis of which the transaction value is doubted by the proper officer. In the absence of a disclosure of the grounds on which the doubt is entertained, the importer would not know of the case against him nor would he be in a position to explain why the doubt which the proper officer entertains as to the truth or accuracy of the value is incorrect. Hence, before the proper officer proceeds to reject the declare value, he is under a mandate to furnish the grounds in writing for doubting the truth or accuracy of the value declared by the importer. Thereupon the importer must have a reasonable opportunity of being heard to enable him to urge such submissions as he may desire in writing in regard to the grounds which are set out by the proper officer. That is the scheme.

12. In the present case, as the record before the Court would indicate, the procedure which is laid down in Rule 12 was not followed. The proper officer initially called upon the importer to submit documentary material. This was in compliance with the requirements of Rule 12(1). Upon scrutinising the material,

evidently the proper officer had reason to doubt the truth or accuracy of the transaction value declared by the importer. The proper officer was required to formulate the grounds on which he entertained a doubt in writing and to furnish them to the importer. The importer had no opportunity to call upon the proper officer to disclose the grounds because the record would indicate that after the importer submitted a letter dated 25 February 2013, the Deputy Commissioner of Customs proceeded to dispose of the case by passing the impugned order dated 19 March 2013. By failing to inform the importer of the grounds of his doubt and of allowing the importer an opportunity of being heard with reference to those grounds, there has been a clear breach of principles of natural justice.

13. We are not inclined to accede to the submission of Counsel appearing on behalf of the Respondents that the Petitioners should be relegated to the remedy of an appeal in these circumstances. There has been a clear breach of the principles of natural justice by the failure on the part of the Deputy Commissioner of Customs to follow the mandatory requirement of Rule 12. The existence of an alternate remedy of an appeal is not a bar to the maintainability of a petition under Article 226 of the Constitution where there is a breach of the principles of natural justice. Moreover, the mere existence of an appellate remedy, it is well settled, would not remedy a breach of the principles of natural justice at the original stage. We also take serious note of the statement made in the affidavit in reply to the effect that even if this Court would direct the Deputy Commissioner of Customs to issue a notice to show cause, the grounds of the notice would be the same as those contained in the impugned order and that the quasi judicial order which the authority would pass would be the same as the order in original dated 19 March 2013. This is clearly indicative of the fact that the Deputy Commissioner of Customs has a closed mind and treats a compliance with the principles of natural justice as a mere formality. Hence, while we are inclined to set aside the impugned order and remit the matter back for fresh decision after complying with the requirements of Rule 12, we direct the Commissioner of Customs to assign the case to some other officer, other than the officer by whom the impugned order is passed. We record our disapproval of the manner in which the affidavit in reply has been drafted. Counsel for the Revenue, in fact, stated during the hearing that the aforesaid addition was made by the Deputy Commissioner of Customs on his own accord, without reference to Counsel, and even suggested that the offending part may be expunged.

14. In the circumstances, we are allowing the petition by setting aside the impugned order dated 19 March 2013 of the Deputy Commissioner of Customs, GATT Valuation Cell, Mumbai. We direct that the proceedings shall be remanded back for a decision afresh. If the proper officer has doubt about truth and accuracy of the value declared by the Petitioners, the authority shall follow the procedure prescribed under Rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 by furnishing to the Petitioners the grounds on which the said doubt has been entertained. The Petitioners shall have a reasonable opportunity of submitting objections within a period of two weeks of

receipt of the grounds upon which a final decision shall be taken in accordance with law. The Commissioner of Customs shall assign the hearing to a proper officer other than the Deputy Commissioner of Customs who passed the impugned order. Rule is accordingly made absolute with no order as to costs.

