

(1997) 09 KL CK 0028

In the High Court Of Kerala

Case No : Original Petition No. 14674 of 1994-V

Karn Vir Mehta

APPELLANT

Vs

Collector of Customs

RESPONDENT

Date of Decision : 11-09-1997

Acts Referred:

Customs Act, 1962 — Section 111, 113, 14, 14(1)
Customs Valuation (Determination of Price of Imported Goods) Rules, 1988 — Rule 3, 4, 4(2), 5, 6

Citation : (1998) 97 ELT 42 : (1998) 1 ILR (Ker) 437

Hon'ble Judges : K.G. Balakrishnan, J; B.N. Patnaik, J

Bench : Division Bench

Advocate : K.M.R. Menon, for the Appellant; George C.P. Tharakan, Sr. C.G.S.C., for the Respondent

Final Decision : Allowed

Judgement

B.N. Patnaik, J.—The petitioner challenges the Order No. SIB/11/95-Cus., dated 3-4-1996 passed by the Commissioner of Customs, Custom House, Cochin-9 (Ext. P14). By this order, the goods in question were held liable to be confiscated under Sections 111(d) and (m) of the Customs Act, 1962. However, the goods being not available for confiscation, the revised differential duty of Rs. 9,96,212/- and a penalty of Rs. 5 lakhs were imposed and the petitioner was called upon to pay the same.

2. The petitioner is the proprietor of a firm called M/s. Shine Star Industry, New Delhi. It is a small scale industrial unit. He is engaged in the business of assembling photocopying machines by importing some reconditioned components of photocopying machines from Singapore under a valid licence. Earlier, he had imported similar articles through the Cochin Port from M/s. Drumkin Impex, Singapore. On submission of the Bill of Entry dated 21-7-1994 (Ext. P2), duty was assessed at Rs. 1,80,411 /- on the basis of the transaction value and the consignment was cleared. In respect of the next consignment of

identical goods, which is the consignment in question, exported by M/s. Drumkin Impex as per the purchase order of the petitioner (Ext. P3) which arrived at the Cochin Port, the petitioner filed the Bill of Entry (Ext. P5) on 14-9-1994. An open examination was conducted in which the entire consignment was examined in detail. A copy of the invoice issued by M/s. Drumkin Impex, a copy of the purchase order and all other relevant documents were produced and ultimately the goods were cleared. There is also an official endorsement as "passed out of custom charge" under the signature of the competent officer dated 20-9-1994. The legitimate customs duty of Rs. 3,66,769/- was paid and the goods were released. Thereafter, the goods were taken out of the customs area and while they were being loaded in a vehicle for transportation, the officers of the Directorate of Revenue Intelligence (for short, DRI) prevented removal of the goods on the ground that the DRI has ordered stoppage of the goods. No written order was served on the petitioner at any time and the reason for stoppage of the goods was not disclosed. However, on the basis of an interlocutory order dated 2-12-1994, passed by this Court in C.M.P. No. 25764 of 1994, the goods were released on furnishing a bank guarantee to the extent of the equivalent amount of the duty.

3. A show cause notice was issued to the petitioner later by the Commissioner of Customs (Ext. P11) to which he gave a reply (Ext. P12). It is contended that without properly appreciating the relevant evidence adduced by the petitioner, the Commissioner of Customs rejected the explanation and passed the impugned order.

4. Respondent No. 3 - Assistant Director of Revenue Intelligence, Calicut - in the counter-affidavit has stated that the petitioner imported photocopier parts through the Cochin Port declaring it to be reconditioned components of photocopiers by claiming the value on the basis of invoice furnished along with the Bill of Entry. The Customs Authorities relied on the invoice furnished by the petitioner and assessed the duty and gave out of charge order. In the meanwhile, the DRI received information that the petitioner had shown very low value for assessment and accordingly required the Customs Authorities to detain the goods. DRI was able to ascertain that the petitioner imported component parts of Cannon 270 and 305 models Photocopiers which are later models to Cannon 250. The cost of models 270 and 305 are three times more than 250 model. As such the actual value of the components of the Photocopier imported by the petitioner was found to be much more than what has been shown in the invoice. Since there was mis-declaration with regard to the value furnished by the importer in the Bill of Entry, the goods are liable for confiscation under Sections 111 and 113 of the Customs Act, 1962. A copy of the invoice of similar parts of M/s. Copy Kits Trading Pvt. Ltd., Singapore imported by another importer is produced as Ext. R3(c) along with the counter-affidavit dated 28-11-1994. Since the goods imported by the petitioner was not assessed with the actual duty payable on the same, it is contended that he was intending to defraud the exchequer to the tune of more than 300% of the duty. Hence the DRI passed the detention order for

further investigation with a view to initiate confiscation/penalty proceedings under the Customs Act.

5. The Commissioner of Customs held that the proforma invoice of M/s. Copy Kits Trading Co. Ltd., Singapore is for the reconditioned components of photocopier machines model NP 270 and it was issued to another trader, namely, M/s. International Trading Business Machines, Madras. The prices indicated in the proforma invoice are the prices of identical goods. Since the identical goods are being sold at Singapore at a much higher price, the declared value appears to be a manipulated price and is not the correct price. Relying on the decision of the Supreme Court in Sharp Business Machines Pvt. Ltd., Bangalore Vs. Collector of Customs, Bangalore, he Commissioner of Customs held that there is no bar against relying on quotations for the purpose of increasing the assessable value if the declared value is found to be a manipulated one. Since the proforma invoice of M/s. Copy Kits Trading Co., is for identical goods and since it is issued from Singapore from where the imported goods also have been despatched, there is every justification to enhance the value on the basis of this quotation. The identical nature of the goods was proved by an expert named Shri K.P. Gopalakrishnan, an employee of M/s. Copy Tech Sales and Services (P) Ltd., Lissy Junction, Ernakulam, which undertakes repair works of Cannon Photocopiers. Thus, on the basis of a quotation for similar goods from another firm of Singapore and on the basis of the expert opinion given by Sri Gopalakrishnan, the Commissioner of Customs came to the conclusion that the invoice produced by the petitioner showed much lesser value than the actual price.

6. Learned Counsel for the petitioner contended inter alia that no opportunity was given to the petitioner to cross-examine Shri Gopalakrishnan to test his competence as an expert and as such there was miscarriage of justice in relying on the statement of Shri Gopalakrishnan that the goods imported are similar to the goods mentioned in Ext. R3(c) which relate to Cannon Photocopier models 270/305. The next contention is that the quotation relied upon by the department is only a proforma invoice under which no transaction of sale and purchase of similar goods took place. That was also not a contemporaneous document evidencing transaction of similar goods. Further, it is argued that similar goods imported by the petitioner through the Cochin Port as per Ext. P2 Bill of Entry was duly inspected and assessment of duty was made on the basis of the invoice issued by M/s. Drumkin Impex, Singapore. Moreover, the invoice dated 16-6-1994 (Ext. P12) of Rany Business Machines Pvt. Ltd., of Singapore in respect of similar such goods which were imported through Bombay Port was assessed with duty on the basis of the invoice price. Therefore, there is no justification to discard the evidence furnished by the petitioner in proof of the correctness of the price mentioned in the invoice.

7. The short question that arises for consideration in this case is whether, on the facts and in the circumstances of the case, the impugned order can be sustained

in law.

8. Ext. P12(b), dated 6-12-1994 is the true copy of the opinion of Shri Gopalakrishnan which was submitted to the Assistant Director of Intelligence, Calicut. He has stated that he is working in the service section of M/s. Copy Tech, Lissy Junction, Ernakulam which deals in Cannon Photocopiers. He came to the Q-6 shed of Ernakulam Wharf of Willington Island and examined the photocopier parts which came from abroad in 92 cases in the name of M/s. Shine Star Industries, New Delhi and were found to be photocopier parts of Cannon NP 270/305 models. These parts can be assembled into photocopiers. All the components required for assembling the said models are available in the said cases. The goods examined by him were those covered by the Bill of Entry No. 3326, dated 14-9-1994. But the Commissioner without ascertaining the credentials of Shri Gopalakrishnan accepted his version as true. It is evident from the impugned order that the petitioner had requested the Commissioner to give him an opportunity to cross-examine Shri Gopalakrishnan before his opinion was accepted. Admittedly, no such opportunity was given to him. There is nothing on record to show as to on what basis Shri Gopalakrishnan claims to be an expert on photocopier machines. He seems to be an employee doing some repair works of photocopiers of various models of Cannon Company in a retail shop called Copy Tech, Lissy Junction, Ernakulam. No document, much less any reliable evidence, has been produced to show that Shri Gopalakrishnan has the requisite qualification and experience to be designated as an expert in the field. As such, it is difficult to believe that he is a competent person to give his opinion as to the quality of the goods in question. Denial of the opportunity to the petitioner to cross-examine Shri Gopalakrishnan inspite of his request, is an act of violation of the principles of natural justice. No finding, therefore, can be based on the hearsay opinion evidence of a person whose credibility as an expert has not been duly established.

9. According to the Customs Valuation (Determination of Price of Imported Goods) Rules, 1988 and Section 14(1)(A) of the Customs Act, the value of the imported goods shall be the transaction value. It is only if the transaction value cannot be determined, then the value can be determined by proceeding sequentially through Rules 5 to 8. Rule 4 provides that 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. Rule 4(2) specifically says that the transaction value of imported goods under Sub-rule (1) shall be accepted except in the situation covered by the proviso to Rule 4(2). Rule 5 provides that transaction value of identical goods must be ascertained and that should be taken for the purpose of assessment. Rule 5(3) says that in applying that rule, if more than one transaction has taken place, the lowest of such value shall be used to determine the value of the imported goods. If such determination is not possible under Rules 3, 4 and 5, the transaction value of similar goods should be ascertained under Rule 6, and failing Rule 6, deductive value has to be fixed under Rule 7. Rule 8 provides for residual

method. Rule 8(2)(v) provides that no value shall be determined for "minimum customs values" and Sub-rule (vi) prohibits fixation of arbitrary or fictitious values. It, therefore, follows that assessment can only be on the basis of value fixed with reference to the price paid for goods actually imported into the country and not on notional or fictitious basis.

10. In *Sai Impex v. Collector* 1996 (84) E.L.T. 47, while upholding the observation of the CEGAT, the Supreme Court held that when manufacturer's invoice is available and genuine, it is the best evidence of the price of imported goods and in that case there is no need to go to other contemporaneous imports of identical or similar goods. The transaction value cannot be discounted and enhanced on the basis of mere quotations or offers. There must be evidence of contemporaneous imports of identical or similar goods at higher value. In *Sharp Business Machines Pvt. Ltd., Bangalore Vs. Collector of Customs, Bangalore*, the company which imported components and consumables for plain paper copiers had declared the value of the consignments to be Rs. 99,612/- under the Bill of Entry and invoice. But, a different value of similar goods was shown in the quotations of the same supplier. The quotations were produced by the company itself. In that context, it was held that the company cannot dispute the correctness of the prices in the quotations. The petitioner has produced no other material to show that the value mentioned in the invoices was the correct market value of goods imported at the relevant time. There was, therefore, nothing wrong if value for the purpose of customs duty is determined on the basis of quotations, specially when the supplier has been the authorised agent of the manufacturer and the prices given in the quotations were based on the prices given by the manufacturer. Thus, there cannot be a question of supplying the components on a lesser price than given by the manufacturers themselves. As per Section 14 of the Customs Act, value of the 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, in the course of international trade where the seller and buyer have no interest in the business of each other and the price is the sole consideration for sale or offer for sale.

11. In the case on hand, the facts are clearly distinguishable. The Commissioner of Customs relied upon the proforma invoice said to have been issued by a different company in Singapore. Proforma invoice is nothing more than a tentative statement of the seller for sale of the goods at the price mentioned therein. Until the buyer accepts it and enters into the actual transaction of sale and purchase, there can be no presumption that the goods must have been sold at that price. Such quotations or proforma invoices are not relevant evidence in the absence of an actual import in pursuance of the quotation. They are in the nature of offer and there is scope for negotiation to fix the final price for the import of the goods. Hence, no reliance can be placed on such quotations.

12. It has not been shown that there was actual transaction of import of similar or identical goods on the basis of the quotation Ext. R3(c), dated 8-11-1994.

Hence, that quotation cannot be taken as a relevant piece of evidence to assess the value of the goods in question. On the other hand, value of identical goods imported earlier is to be accepted as the proper value, as it is not shown that there was any fluctuation in the price between the first import and the later import. Ext. PI which relates to the earlier import of identical goods, has not been reopened. By Ext. P12, identical goods were imported through Bombay Port. In view of the fact that Ext. R3(c) cannot be taken as the basis for assessing the value of the goods in question, there was no valid reason to reject the documents produced by the petitioner evidencing contemporaneous transaction in respect of identical goods.

13. For the reasons stated above, we find that the Commissioner of Customs has committed an illegality in relying on irrelevant evidence by ignoring the relevant evidence on record. The order (Ext. P14) also suffers the vice of the violation of principles of natural justice.

14. In the result, the impugned order (Ext. P14) is set aside. The Original Petition is allowed. No costs.