(1996) 03 SC CK 0167

In the Supreme Court Of India

Case No : Civil Appeal Nos. 6121-22 of 1995

Nirav International APPELLANT

Vs

Collector of Customs, Madras RESPONDENT

Date of Decision : 27-03-1996

Acts Referred:

Customs Valuation (Determination of Price of Imported Goods) Rules, 1988 — Rule 10

Citation : (1997) 90 ELT 13 : (1997) 10 SCC 722

Hon'ble Judges : S. Saghir Ahmad, J;B.P. Jeevan Reddy, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. These appeals are preferred against the judgment of Customs, Excise and Gold (Control) Appellate Tribunal dismissing the appeals preferred by the appellant. In view of the order we are proposing to make herein, it is not really necessary to state the facts in detail. Suffice it to mention that the appellant imported in September/October, 1991 certain goods declared as disperse dyes blue/red. There were two consignments. They were declared to be of China origin but the appellant did not file the requisite details as required by Rule 10 of the Customs Valuation Rules, 1988. There were certain other defects also. On being tested, the goods were found to be synthetic organic dye stuff (disperse dye) in the form of coloured powder with the shade similar to colour index (C.I.) disperse blue 165/red 343. The authorities also found that the valuation was mis-declared. Ultimately, the adjudicating authority, Collector of Customs, Madras found that the invoice filed and value declared were not prima facie eligible for acceptance as transaction value of the Valuation Rules. He held that the goods have been mis-declared with respect to value. Accordingly, he determined the valuation of the imported goods at DM 62.5 per kg. CIF. He ordered the goods to be confiscated but allowed their redemption on payment of fine of Rupees two lacs and imposed a penalty of Rupees one lacs. In respect of the other consignment, similar orders were passed but redemption fine was fixed at

Rupees four lacs and penalty was fixed at Rs. 1.25 lacs. In the appeals preferred by the appellant, a number of questions were raised which need not be adverted to at this stage. The appellant inter alia relied upon an order of the Collector of Customs (Preventive) Bombay being Order No. 2 of 1994, dated January 14, 1994 in respect of identical goods imported by the appellant himself. It was pointed out that according to the adjudication order passed by the Bombay Collector, the value was determined at U.S. $ 3.4 per kg. which is far below the value determined by the Collector of Customs, Madras. It was also pointed out that on number of questions, the Bombay Collector has accepted the case of the appellant. The Tribunal opined that so far as valuation was concerned, the Bombay Collector's order is not relevant inasmuch as he merely went by a concession made by the counsel for the importer. Regarding other aspects dealt with in the said order, no opinion was expressed. Para 15 which deals with the said question reads as under :

The appellants have relied upon the order passed by the CC (Prev.) Bombay in their own case. In the case decided by the CC (Prev.) in his Order No. 2/94, dated 14-1-1994 on the facts and circumstances of the case before him, the charges of mis-declaration regarding the true identity and country of origin of the goods imported had not been established. In so far as the valuation was concerned, the adjudicating authority in that case had rejected the declared value. He relied upon a contemporaneous import to ascertain the assessable value of identical product. The adjudicating authority spoke to the party's counsel who had no objection in taking the higher value for finalisation of the assessment. Obviously, such proceedings are of no relevance to the proceedings before us.

Sri Salve, learned Counsel for the appellant, submits that it is a rather curious and anamolous situation where identical goods imported by the appellant himself have been differently valued and contradictory findings are recorded by the two Collectors, viz., Collector of Customs, Madras and Collector of Customs, Bombay. He submits that the Revenue has not chosen to question the Bombay Collector's Order which has accordingly become final and that even if it is not binding upon the Tribunal, the findings recorded therein cannot be said to be not relevant. It would have been a different matter, Sri Salve contends, if the Tribunal had looked into the Bombay Collector's order and disagreed with the findings recorded or the value determined, as the case may be.

2. We cannot say that the submission of Sri Salve is without force. It is true that the Tribunal has to decide the matter in accordance with law and that it is certainly not bound by the order of the Collector. At the same time, it appears appropriate that the Tribunal looks into the order of the Bombay Collector and say whether it agrees with or disagrees with the findings recorded.

3. In this view of the matter and without expressing any opinion on the merits of the case, we set aside the order of the Tribunal under appeal herein and remit the matter to the Tribunal for a fresh disposal of the appeal in accordance with

law and in the light of the observations contained herein.

4. The appeals are accordingly allowed. There shall be no order as to costs.

5. Counsel for the appellant says that pending these appeals, this Court had passed an interim order dated October 9, 1995 directing the release of the goods on certain conditions and that order may be kept alive. Since we are disposing of these appeals, the order cannot be kept alive any further. However, it would be open to the appellant to apply to the Tribunal for such appropriate directions as it thinks fit according to law.