(1991) 05 CAL CK 0047

In the Calcutta High Court

Case No : Matter No. 3892 of 1990

Samar Dutta APPELLANT

Vs

Collector of Customs RESPONDENT

Date of Decision : 15-05-1991

Acts Referred:

Constitution of India, 1950 — Article 226
Customs Act, 1962 — Section 49

Citation : (1992) 60 ELT 375

Hon'ble Judges : Ruma Pal, J

Bench : Single Bench

Advocate : Dipak Deb, Bdr-at-Law and Hasmukh Kundalia, for the Appellant; Chandra Nath Mukherjee, for the Respondent

Judgement

Ruma Pal, J.—The petitioner carries on the business of Automobile parts and components. The petitioner placed an order on a supplier in Singapore for supply of 2,500 sets Service Kit and one Carton containing 1,000 pcs. of Nozzles (hereinafter referred to as the said goods). The service kit are described with reference to Code Numbered 7135-110 and 7135-114. The Nozzles are described with reference to Code Number 6389. A letter dated 21st September, 1990 from the foreign supplier confirms the order and the price F.O.B. Singapore at the rate of 0.45 Singapore Dollars per set of Service Kit and 0.90 Singapore Dollars per piece of Nozzle. On 20th October, 1990 the said goods were air-freighted to Calcutta from Singapore. In the invoice the price has been mentioned as 0.45 Singapore Dollars per set of service kit C.I.F. Calcutta and 0.90 per unit of Nozzle in Singapore Dollars C.I.F. Calcutta. The Bill of Entry was filed together with copies of the Air-way Bill, Insurance Policy, Certificate of Origin, Invoice and packing list as well as the transferable REP Licence and the proforma invoice. By letter dated 1st November, 1990 the foreign supplier wrote to the petitioner stating that the invoice wrongly mentioned the price CIF whereas it should have been F.O.B. The letter was handed over to the Customs Authorities.

2. The petitioner moved this application on 21st December, 1990 under Article 226 of the Constitution challenging the refusal on the part of the respondents to process the Bill of Entry and to release the goods. The application was moved upon the notice to the respondents. An interim order was passed to the following effect:

"The petitioner is given liberty to shift the goods from the Airport to the bonded Warehouse u/s 49 of the Act and the petitioner shall bear the transport, loading and unloading charges and any miscellaneous charge of minor importance. The respondents shall be at liberty to proceed with the adjudication but the adjudication shall not be given effect to without leave of the court. No payment of any duty at this stage arises and the matter shall come up one week after the Christmas holidays as "for Orders".

3. In the petition, the petitioner had relied upon the Bills of Entry and Invoices dated 28-3-1989,25-6-1990 and 20-6-1990 in respect of identical goods. On the basis of the said annexed Bills of Entry it is contended that the price at which the petitioner had imported the said goods could not be said to be an undervaluation.

4. It is contended by the petitioners:

(i) That the Customs Authorities having cleared other identical goods at the same or lower prices, were bound to permit release of the said goods at the same rate. The petitioner has relied upon the decision in Ghanshyam Chejra Vs. Collector of Customs, in this connection.

(b) Kajaria Exports Ltd. and Ors. v. Collector of Customs and Ors. reported in 1986 (1) CLJ 231.

(c) Trident Television Private Limited Vs. Collector of Customs, .

(ii) The respondents were obliged to issue a detention certificate for their failure to deal with the matter within a reasonable period. It is contended by the petitioner that although liberty was given to the respondents by the order dated 21-3-1990 to proceed with the adjudication, no steps whatsoever have been taken by the respondents for doing so. It is submitted that no explanation whatsoever has been given for the failure to assess the said goods. It is submitted that the respondents even filed their affidavit in opposition much later than the date specified. The petitioner has relied upon the decision in Metal Distributors Ltd. Vs. Union of India, in this connection.

5. The respondents have filed an affidavit. The affidavit is affirmed on 10th April, 1991. In the said affidavit, although the order of Yusuf, J. has been noted, it does not appear that the adjudication proceedings have even been commenced. The only reason disclosed as to why the value as declared by the petitioner in respect of the goods in question is not acceptable has been stated in paragraph 3(c) of the affidavit which reads :

"Preliminary investigation revealed that the goods are grossly undervalued. It was found from the manufacturer''s price list that the price of overhaul kit of the same part No. I.E. 7135-110 is ? 6.18 (Rs. 231.75) per piece and that of overhaul kit No. 7135-114 is ? 6.75 per piece. The price of the nozzle is ? 12.35 (Rs. 424/-) per piece. As such it appeared that the goods have been undervalued to the tune of Rs. 9.75 lakhs. .

I crave leave of this Hon''ble Court to rely upon and refer to the aforesaid catalogues at the time of hearing of this writ application, if necessary."

6. At the hearing the respondents produced -

(1) a Recommended Retail Price list of Lucas CAV from which it appears that the overhaul kit code numbers 7135-110 is priced at ? 6.18 per unit, overhaul kit code number 7135-114 is priced at ? 6.75 each. As far as the nozzle is concerned the exact corresponding code number does not appear from the said price list. However, the respondents are relying upon the nozzle of Lucas CAV manufactured bearing part No. 5650300 which is priced at ? 12.35 per unit.

(2) a quotation dated 27-4-1989 from which it appears that the code No. 5650300 corresponds to No. 6389 nozzle as imported by the petitioner. The price stated for such nozzle is ? 3.50 per unit. The overhaul kit model 7135-114, is quoted at ? 3.09 per unit.

(3) a quotation of Lucas in which Lucas has quoted the price for the said nozzle at ? 3.30 per unit and the overhaul kit model 7135-114 at ? 2.90 per unit.

7. The decision of Kajaria Exports as well as Ghanshyam Chejra (supra) have been considered and followed in the decision of Trident Television (supra). Therefore for the purpose of this application I am confining myself to the statement of the law as contained in the judgment in Trident Television. The first principle which is relevant for the purpose of this application as stated in the said judgment is that a higher quotation would not by itself without there being any other material or evidence justify the inference of under invoicing.

8. In this case the quotations are not backed up by any invoice. Furthermore the second quotation relied on by the respondents contains an endorsement to the following effect:

"This invoice may be subject to adjustment for charges of labour/material etc."

9. As observed by the learned Judge in Trident Television a quotation by itself cannot prove the price because a quotation is subject to negotiation, arid depends upon various factors all of which may not be generally applicable.

10. While I agree with the view expressed in Trident Television that if the Customs Authorities accepts a particular rate, the same becomes a precedent for future clearances, I consider that the receipt of any evidence subsequent to such acceptance of the earlier rates can justify the Customs Authorities taking a different stand in respect of a subsequent consignment. I hasten to add that in order to take a different stand the Customs Authority must show that the

evidence is relevant and that subsequent to the receipt of the evidence, the Customs Authorities have not cleared similar goods at the earlier rates.

11. On the materials produced in this case by the Customs authorities I cannot even prima facie uphold the claim of the Customs Authorities that the goods in question were undervalued.

12. In this case there is no such subsequent evidence. The price list is only recommendatory. Secondly the price list relates to the retail sale of the items contained therein. That the prices are not fixed and would be much less when sold on a wholesale basis would be evident from a comparison of the prices quoted in the two quotations relied on by the respondents and the price list.

13. Therefore in the absence of any reasonable evidence subsequent to the clearance of the goods in respect of which Bills of Entry have been annexed to the petition, there is prima facie no justification for the respondents to reject the value declared by the petitioner in respect of the goods in question.

14. For the reasons as aforesaid and particularly taking into account the unreasonable and unexplained delay on the part of the respondents in commencing adjudication proceedings, I dispose of the writ petition by the following order :

(1) Subject to the petitioner''s furnishing an ITC bond in favour of the Collector of Customs for the differential duty as claimed the customs authorities will release the consignments in question to the petitioner within 72 hours thereafter.

(2) If no adjudication proceedings are commenced by 31-5-1991 the bond will stand discharged immediately thereafter. It is made clear that by "commencement of the adjudication proceedings" is meant "the issuance of a show cause notice and service of the same on the petitioner or his advocate-on-record."

(3) The adjudication proceedings must be completed by 30th June, 1991. However if the petitioner asks for any adjournment the date for concluding the hearing will be proportionately extended.

(4) If the. adjudication proceeding is decided in favour of the petitioner, the bond will stand discharged after a period of 7 days unless the Customs authorities are able to secure the order staying the final order from the Appellate authority.

(5) If the adjudication proceeding is decided against the petitioner, the respondents will be at liberty to enforce the said bond after a period of 7 days from the date of the final order and subject to any order that may be obtained by the petitioner from the Appellate Court.

15. In view of the delay in assessing the consignment in question the Customs Authorities will issue wharf rent exemption certificate for the period commencing from three weeks after the date of the arrival of the consignment in question until the same were warehoused u/s 49 of the Act.

16. The Writ petition is disposed of accordingly. There will be no order as to costs.

Stay of operation of the order is prayed for and the same is refused.

All parties to act on a signed copy of the operative part of the judgment on usual undertaking.

