(2005) 03 MAD CK 0070

In the Madras High Court

Case No : Writ Petition No. 6634 of 2005

Texon (India) Pvt. Ltd. APPELLANT

Vs

Govt. of India RESPONDENT

Date of Decision : 21-03-2005

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (2006) 203 ELT 557

Hon'ble Judges : Prabha Sridevan, J

Bench : Single Bench

Advocate : S. Murugappan, for the Appellant; V.T. Gopalan, Addl. Solicitor General Assisted by T.S. Sivagnanam, S.C.G.S.C., for the Respondent

Judgement

Prabha Sridevan, J.—This writ petition is filed seeking to issue a writ of mandamus, directing the respondents to make appropriate changes in the Electronic Data Interchange System to enable filing of the documents in accordance with the actual transaction value as per the provisions of Customs Act, 1962.

2. When the matter came up for hearing, by consent, the main writ petition itself is taken up for final disposal.

3. It is admitted by both the parties that the Customs Department is introducing complete computerisation. According to the petitioner, the respondents should make appropriate changes in the Electronic Data Interchange System (EDI System in short), to process the documents in accordance with actual transaction value, as per the provisions of the Customs Act, 1962.

4. Learned Additional Solicitor General, appearing for the respondents submitted that the actual transaction value, as per Section 14 of the Customs Act, 1962, can be entered in the documents prepared as per the EDI System. The system, it appears, was originally introduced in 1999 and thereafter updated in 2003 and again in 2004.

5. In the counter filed by the respondents, it is stated that some of the importers had indulged in systematic suppression of the actual transaction value in the manual system and they had declared the value at which they had sold the imported goods to the local buyers before the goods are taken out from the bonded warehouse for home consumption. Therefore, the respondents have attempted to eliminate the possibilities of such suppression.

6. According to the learned Additional Solicitor General appearing for the respondents, the present EDI System of the Customs Department contains all the details necessary regarding the transaction value. According to him, the relief actually sought for has already been granted and the petitioner cannot ask for inclusion of other details which are not warranted.

7. Rule 4 of the Customs Valuation (Determination of Price of Imported Goods) Rules, 1988, read as follows :-

"4. Transaction Value : (1) 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 of these rules.

(2) The transaction value of imported goods under sub-rule (1) above shall be accepted :

Provided that -

(a) the sale is in the ordinary course of trade under fully competitive conditions;

(b) the sale does not involve any abnormal discount or reduction from the ordinary competitive price;

(c) the sale does not involve special discounts limited to exclusive agents;

(d) objective and quantifiable data exist with regard to the adjustments required to be made, under the provisions of rule 9, to the transaction value;

(e) there are no restrictions as to the disposition or use of the goods by the buyer other than restrictions which -

(i) are imposed or required by law or by the public authorities in India; or

(ii)limit the geographical area in which the goods may be resold; or

(iii) do not substantially affect the value of the goods;

(f) the sale or price is not subject to same condition or consideration for which a value cannot be determined in respect of the goods being valued;

(g) no part of the proceeds of any subsequent resale, disposal or use of the goods by the buyer will accrued directly or indirectly to the seller, unless an appropriate adjustment can be made in accordance with the provisions of Rule 9 of these rules; and

(h) the buyer and seller are not related, or where the buyer and seller are related, that transaction value is acceptable for customs purposes under the provisions sub-rule (3)below;

(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 similar goods;

(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 9 of these rules and cost incurred by the seller in sales in which he and the buyer are not related;

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

8. learned counsel for the petitioner referred to the decisions in Garden Silk Mills Ltd. and Another Vs. Union of India and Others, and Hyderabad Industries Ltd. Vs. Union of India and Others, and submitted that the transaction value should include the value at which the importer had sold the goods to the buyer before they are exbonded. According to the learned counsel, the Act recognises sales, before completion of importation or in bond before Customs clearance and so, the EDI System should provide for inclusion of these details.

9. The decision in 2000 (115) E.L.T. 593 (S.C.) cited supra, relates to high seas sales transaction and therefore, the Supreme Court referred to the inclusion of services charges in the sale consideration. The petitioner is unable to show how and why a high seas sales transaction is similar to sale of goods in bond. The definition of " transaction value" refers to the price actually paid when sold for export and not to the price at which the importer sold the goods before exbonding.

10. In Garden Silk Mills Ltd. and Another Vs. Union of India and Others, cited supra, the question that came up for consideration related to import duty and the Supreme Court held that the taxable event is reached when the goods reach the Customs barrier and the Bill of Entry for home consumption is filed. In that context, the Supreme Court observed that the value for the purpose of assessing import duty would be determined with relation to "the time when physical delivery to the importer can take place, which can be only after the bill of entry,

inter alia, for home consumption is filed. The Supreme Court also held that it is not possible to agree with the submission that the moment the goods entered the territorial waters, the import is complete. Hence the Supreme Court held that the import of goods into India would commence when the goods cross into the territorial waters but continues and would be completed when the goods has become part of the mass of the goods and taxable being reached at the time when the goods reach the customs barriers. I do not see how this decision can help the petitioner to support their case that the EDI System should include details of the buyers to whom the goods are sold before they are exbonded and that value should be taken into account while declaring the transaction value.

11. More recently, in Commissioner of Customs, Mumbai v. Bureau Veritas, AIR 2005 S.C.W. 993, the Supreme Court observed thus :-

"The ambit and method of Rule 4 was elaborately dealt with by this Court in M/s. Eicher Tractors Ltd., Haryana Vs. Commissioner of Customs, Mumbai, .

It is true that the Rules are framed u/s 14(1-A) and are subject to the conditions in Section 14(1). Rule 4 is in fact directly relatable to Section 14(1). Both Section 14(1) and Rule 4 provide that the price paid by an importer to the vendor in the ordinary course of commerce shall be taken to be the value in the absence of any of the special circumstances indicated in Section 14(1) and particularised in Rule 4(2).

Rule 4(1) speaks of the transaction value. Utilisation of the definite article indicates that what should be accepted as the value for the purpose of assessment to customs duty is the price actually paid for the particular transaction, unless of course the price is unacceptable for the reasons set out in Rule 4(2). "Payable'' in the context of the language of Rule 4(1) must, therefore, be read as referring to ''the particular transaction'' and payability in respect of the transaction envisages a situation where payment of price may be deferred."

12. According to the respondents, the particulars required for determining the transaction value are calculated under the EDI System and nothing further needs to be included in Rule 4 of the said Rules.

13. Therefore, it is clear that the transaction value as per Rule 4 is the price paid by the importer to the vendor. Learned counsel for the petitioner would submit that if the name of the purchaser from the petitioner is not reflected in the documents submitted as per the EDI System, then the purchaser will face hardship. I do not see how we are concerned with that so long as the EDI System takes into it all the particulars necessary for assessing the transaction value as per Rule 4 and Section 14.

14. Learned counsel for the petitioner further submitted that as long as the manual system was in operation, he could introduce the name of his purchaser and it is only after the EDI System has been introduced that it is not possible to feed the name into the computer. It is again repeated that so long as the EDI

System provides for all the details required to be recorded for the purpose of declaration of the transaction value, for recording any additional detail as per the petitioner''s wish, a mandamus cannot be issued. In these circumstances, I am unable to accept the petitioner''s case for issuance of a mandamus.

15. Learned counsel for the petitioner produced a xerox copy of the public notice issued by the Customs Department regarding changes effected in the EDI System procedures. The petitioner has also given several representations, including one dated 30.9.2004, expressing the difficulties of the petitioner. The respondents are directed to consider the said representation dated 30.9.2004 and pass orders within two weeks from the date of receipt of copy of this order and dispose of the same in accordance with law.

16. Learned counsel for the petitioner submitted that at least until their representation his considered, they must be permitted to file the documents according to the manual system. This direction also cannot be issued in view of the fact that since the main prayer is not granted, no such direction can be given in favour of the petitioner.

17. With the above observations, this writ petition is disposed of. No costs. W.P.M.P. No. 7287/2005 is closed.

