

(2015) 03 SC CK 0191
In the Supreme Court Of India
Case No : Civil Appeal No. 2610 of 2004

U.P. State Bridge Corporation Ltd.

APPELLANT

Vs

Collector of Cus.

RESPONDENT

Date of Decision : 27-03-2015

Acts Referred:

Customs Act, 1962 — Section 14, 14(1), 156, 28, 46

Customs Valuation (Determination of Price of Imported Goods) Rules, 1988 — Rule 8

Citation : (2015) 321 ELT 389

Hon'ble Judges : A.K. Sikri, J; Rohinton Fali Nariman, J

Bench : Division Bench

Advocate : Seema Jain, Dushyant K. Mahant and M.P. Vinod, for the Appellant; Ashok Panda, Senior Adv., T.C. Sharma, Sunita Rani Singh and B. Krishna Prasad, Advocates for the Respondent

Final Decision : Dismissed

Judgement

1. The Appellant herein is a public sector undertaking of the State of Uttar Pradesh and has been undertaking construction projects not only within India but out of India as well. For some contract, awarded to the Appellant in Iraq, it had purchased certain equipments/machinery of foreign origin. After the project in Iraq was over, these machineries were sent to Nepal as the same was required for completion of another contract in Nepal. The contract in Nepal was over some time in the year 1990. Since this machinery was not required in Nepal, the Appellant decided to import the same to India. For this purpose, Bill of Entry dated 16-2-1990, 28-2-1990, 22-3-1990, 11-4-1990, 16-4-1990 and 13-5-1990 were filed. In these bills of entries, the valuation was disclosed by the Appellant by adopting a formula as under:

2. When the machinery was brought to Nepal after its use for about six years in Iraq, the valuation thereby was ascertained by employing a Chartered Engineer. The Appellant, on the said value, applied the formula of depreciation for a period of three years for which it was used in Nepal. In this way, the value which was

arrived at was declared as the value of these equipments.

3. The Department did not accept the aforesaid formula for arriving at the valuation of these machineries. As per the Department, since no sale was involved, the value of the machineries had to be fixed by applying depreciation method in terms of Circular No. 493/124/86 - Cus., dated 19-11-1987. This Circular provides for the rate of depreciation that has to be applied in the first year, second year, third year and onward, etc. However, at the same time, it also mentions that the depreciation has to be subject to an overall limit of 70 per cent. By applying the circular on the purchase value of the machinery, 70 per cent, depreciation was given and the value thus arrived at was treated as the value of the machinery for the purpose of import Bill.

4. This became the reason for the show cause notice dated 23-7-90 which was issued for recovery of short-levy Under Section 28 of the Customs Act, 1962, culminating into Order-in-Original passed by the adjudicating authority demanding duty for the sum of Rs. 37,73,460/-. The Appellant challenged the said order by filing the appeal before the Commissioner (Appeals), who, however, dismissed the appeal and passed orders dated 14-8-1992 confirming the aforesaid demand. Further appeal to Customs, Excise & Gold (Control) Appellate Tribunal (hereinafter referred to as "CEGAT") yielded the same result as the CEGAT has also dismissed the appeal vide orders dated 28-5-2001 [2001 (131) E.L.T. 385 (Tribunal)] by observing as under:-

"We have heard the rival submissions. We have also perused the case records. We note that in the instant case it is only transfer of the goods from Iraq to Nepal and Nepal to India. There was no sale, therefore, the question of determination of transaction value did not arise. Only course open to the department in the instant case was to take the original value and allow depreciating which authorities below have rightly done."

5. We find that Section 14 of the Customs Act, 1962 deals with valuation of goods for the purposes of assessment. Sub-section (1) thereto, with which we are concerned in the present case, reads as under:-

"Section 14. Valuation of goods for purposes of assessment. - (1) For the purposes of the Customs Tariff Act, 1975 (51 of 1975), or any other law for the time being in force where under a duty of Customs is chargeable on any goods by reference to their value, the value of such 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 or exportation, as the case may be, in the course of international trade, where the seller and the buyer have no interest in the business of each other and the price is the sole consideration for the sale or offer for sale:

Provided that such price shall be calculated with reference to the rate of exchange as in force on the date on which a bill of entry is presented Under Section 46, or a shipping bill or bill of export, as the case may be, is presented

Under Section 50."

6. The reading of the aforesaid provision manifests that the valuation of the imported goods is to be arrived at by ascertaining the price at which such or like goods are ordinarily sold or offered for sale for delivery at the time and place of importation or exportation. Therefore, the method to be employed, as per the aforesaid provision, is to ascertain as to how much would be the price of such goods if they are to be ordinarily sold or offered for sale.

7. In exercise of powers contained Under Section 156 of the Customs Act, Customs Valuation (Determination of Price of Imported Goods) Rules, 1988 have also been framed. In those cases, where it is not possible to determine the price at which such goods are ordinarily sold or offered for sale, Rule 8 provides for residual method and stipulates that the value shall be determined using reasonable means consistent with the principles and general provisions of the said Rules as well as provisions of Sub-section (1) of Section 14 of the Customs Act as already reproduced above.

8. It cannot be denied that one of the reasonable method consistent with the principles of valuation would be the depreciation method. In order to ensure that in employing the method of depreciation the authorities do not take divergent views and apply a uniform method, circular dated 19-11-1987 has been issued which has been relied upon by the authorities in the present case. The circular reads as under:-

"Subject: Valuation of second-machinery and fixation of Scale of depreciation.

1. The question of prescribing a fixed scale of depreciation to be allowed for valuation of imported second-hand machinery has been under consideration of the Ministry. This is considered necessary so as to avoid dispute in the valuation of imported second-hand machinery and consequent delays in their clearance.

2. It has been decided that depreciation may be allowed for arriving at the assessable value of second-hand machinery on the following scale:-

3. It may be pointed out that under the Import Policy, importers of second-hand machinery are required to produce a certificate from a professional independent chartered engineer or any equivalent institute in the country of supply of the machinery. This certificate, inter alia, indicates the currency, C.I.F. value of the machinery, if purchased now, year of manufacture of the machinery and the sale price of the suppliers besides present condition of the machinery and nature of reconditioning or repairs, if any, carried out. This information if otherwise found acceptable would enable the officers to determine the original value of the machinery for purpose of allowing depreciation on the scale mentioned above. The cost of reconditioning done to the machinery (which would be available in the Chartered Engineers certificate) may be added to the depreciated value for the relevant year in which reconditioning was done. The depreciation will be calculated on the original value of the machinery under import.

4. The above instruction would apply to import of second-hand machinery, including machinery being imported by project exporters.

5. Please acknowledge receipt of this letter."

9. In the present case, we find that no efforts were made either by the Department or even by the Appellant to ascertain the price at which the imported machineries could generally be sold or offered for sale. Had that been done, same would have been in consonance with the provisions of Section 14(1) of the Customs Act. It appears that both the parties proceeded on the basis that such price is not ascertainable and therefore resorted to the method of depreciation. Even the Appellant did so, though the basis of this exercise as adopted by the Appellant was erroneous. For six years period, i.e., when the machinery was used in Iraq and thereafter, it was brought to Nepal, its value as on that date was ascertained. Thus, for that period, it took into consideration the value which was fixed by the Chartered Engineer. Thereafter, for remaining three years, when it was in Nepal and brought to India, depreciation method is adopted.

10. In such circumstances, we do not find any error in applying the circular dated 19-11-1987 in the instant case. We, thus, do not find any merit in this appeal and the same is, accordingly, dismissed.