

Sigma Electronics Vs. Collector of Customs

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Sep-19-1996

Reported in : (1997)LC929Tri(Delhi)

Appellant : Sigma Electronics

Respondent : Collector of Customs

Judgement :

1. M/s. Sigma Electronics, Jaipur, M/s. Sagar Electronics and M/s.

Vikas Watch Manufacturing Company are engaged in the manufacture and assembly of various items including Electronic Calculators, Digital Electronic watches and Modules thereof, Electronic clocks etc. for which purpose they imported various items such as BC Micro Motors, Button cells, Modules of Digital watches, Metal Bezels fitted with glass and Metal straps, components of clock movements.

2. The Directorate of Revenue Intelligence had gathered intelligence to the effect that contraband goods are being smuggled by mis-declaration and under-valuation by one Shri Vasudev Moolrajani, in the names of the above-mentioned firms. Enquiries by the department at the declared address of M/s Sigma Electronics and M/s. Sagar Electronics had revealed that no company existed at the given addresses. Therefore, on receipt of intelligence that few shipments consigned to the firms had landed at Air Cargo Complex, Delhi, officers of the DRI intercepted the same on 6-11-1992 and 7-11-1992. The goods declared as components of

Alarm clocks on examination, were found to be DC Micro motors of Mabuchi make of different volts. Similar consignment of DC Micro motors had been transhipped to Jaipur prior to the arrival of the above consignment. Further enquiries by the DRI revealed that Vasudev Moolrajani had no firm by the name of Vikas Watch Manufacturing Company at Jaipur. On a visit to this premises, Shri Vasudev Moolrajani was found to be available there and his statement under Section 108 of the Customs Act, 1962 was recorded on 7-11-1992 in which he stated inter alia that he owned nine companies in the name and style of: The consignment transhipped from Delhi to Jaipur was examined and found to contain DC Micro motors mis-declared as components of Alarm clocks.

Examination of other packages imported by Sh. Vasudev Moolrajani revealed Button cells, digital clocks etc. and since it appeared that ITC provisions had been contravened and that the consignment was heavily under-valued, the goods were placed under seizure on 9-11-1992.

Further goods were examined on 12-11-1992 at ICD, Jaipur and found to consist of DC micros, bezels etc. declared to be components of Calculators, Graphic Electrodes and Catheters, declared to be life-saving Medical equipment namely, Cardiac Patches. These goods were also placed under seizure.

3. A show cause notice dated 5-5-1992 was issued to all the three firms and to Shri Vasudev Moolrajani proposing confiscation of the consignments on the ground of mis-declaration and under-invoicing and proposing imposition of penalty for smuggling of contraband.

4. Shri Vasudev Moolrajani appeared before the Collector on 13th May, 1993 and the Adjudicating authority by his order dated 31-5-1993, rejected the appellants' plea that there can be no ITC violation until the filing of the bill of entry on the ground that import had already taken place before filing thereof and no import licence had been produced by the appellants; rejected the appellants' contention "that there can be no mis-declaration prior to the filing of the bill of entry; held that calculations are admissible for the purpose of valuation and upheld the charges in the Show Cause Notice. He loaded the prices of the various items; also denied the benefit of Customs Notification No. 41/85 to certain goods confiscated the various

items with option to redeem them on payment of fines of different amounts and imposed a penalty of Rs. 6 lakhs on M/s. Sigma Electronics, Rs. 5 lakhs on Shri Vasudev Moolrajani, Rs. 75,000/- on M/s. Sagar Electronics and Rs. 25,000/- on M/s. Vikas Watch Manufacturing Co. The unit prices for the various items were finally approved as per Table below : Comparative statement of FOB prices of various goods covered by Order No. 11/93

Item	Unit price	Unit price	Actual unit
Unit price declared by ascertained price as finally importer/ by the per the approved by supplier department report of Collector, H.K. Customs Customs1.			

2.

3.

4.

5.D.C. H.K.\$ 0.75 -US \$ 0.85 Ann. II to US \$ 0.85Micro- US \$ 0.86 letter dated (Para 67motors 8-9-1993 US r.w.) page \$ 0.88 + handling 40 of theCalcula- H.K. \$ 3.12 -US\$1.75 Actual FOB-HK\$ 7.025 US (sic)tors SI. Nos. 11 & 12 of Ann. I to letter dated 14-5-1993 Digital HK\$3.71 Price list of SI. No. 13 & 14 of Anne.

US \$ 1.30clocks Wattari Ind.

II to letter dated 14-5- (sic) para US \$ 1.30 1993 (read with invoice 77Cardiac HK \$ 0.07 - US \$ 0.15 SI. No. 13 of Ann. 1 to US \$ 0.15patches (page 278) letter dated 14-5-1993 (para 81or Gra- (See invoice No. r.w.p. 40)phics- mentioned in Para 79 ofelectro- Collector's order)des HK\$1.20Foley ba- HK \$ 0.25 Rs. 14.21 - SI. No. 14 of Ann. I to the Rs.14.21loon ca- US \$ 0.52 letter dated 14-5-1996 (para 89thetors HK\$ 3.223 r.w.p. 40)Button HK \$ 0.04 -HK\$1.5 SI. No. 3 of Ann. III to HK \$ 1.5Cells letter dated 8-6-1993 (para 93Watch HK \$ 0.37 -HK\$2.35 See invoice Nos. on HK \$ 2.00modules HK \$ 0.40 -HK\$2 page 93 of paper book.

(page 40) (for those Annexure to letter dated with big 8-6-1993.

display) Annexure - I with button Cells and lensesAlloy HK \$ 0.85 Invoice 323/ Annexure - II, Letter Rs. allegedmetal 92-HK\$12 dated 14-5-1993 in SCN dt.bezel Invoice 298/ HK \$ 14.00 - S.No. 12 p. 107 (see 92 - HK \$ 6.5 HK \$ 7.9 S. No. 6

page 40. of Invoice 285/ HK \$ 7.9 S. No. 3 Collrs.

92 - HK \$ 6.6 HK \$ 13.0 S. No. 6 order) Invoice 303/ Annexure V letterLeather HK \$ 0.30 HK\$1.4 Ann. V-S.No. 3 - letter HK \$ 1.4strap dated 8-6-1993 (p. 40) combined price withIntegra- HK \$ 1.00 US \$ 1.23 - all Ann. II to letter dated US \$ 1.23ted HK\$1.15 gold 14-5-1993 - all goldbracelet US \$1.03-all S.No. 1-HK\$ 11.00 US \$ 1.Q3cases steel Quota- S.No.2-HK\$11.00 - all steel tions P. 132 S. No.4- HK\$11.00 (p. 40) P. 137 P. 138 S.No. 15-HK\$ 11.00 5. At the appeal stage, both the Revenue and the appellants filed applications seeking to adduce additional evidence under Rule 23 of the CEGAT (Procedure) Rules, 1982. The additional evidence consisted of documents such as catalogue of one of the items imported, invoices and Bills of entry relating to similar items imported by other parties and clarification obtained from the Directorate of Industries and Department of Electronics. The Department objected to the introduction of these documents on the ground that the bills of entry and invoices relating to different periods are not contemporaneous documents. These documents were allowed to be taken on record subject to arguments of evaluation of their evidentiary value during the course of the hearing of the main appeals. The Department sought permission to bring on record the following two documents: (1) Report dated 14-5-1993 of Hong Kong Customs (issued by the Deputy Head of Trade Standards Investigation Bureau, Honk Kong) forwarded to the Indian Customs alongwith two enclosures; (2) Report dated 8-6-1993 forwarded by the Hong Kong Customs to Indian Customs alongwith the enclosures.

The appellants objection to these documents was that the reports were not utilised by the department during the original adjudication proceedings even though they were available and till date, the documents on which the reports are based, have not been disclosed to the appellants. Similarly, the statement of the foreign suppliers had not been given to the appellants. The learned DR appearing for the Revenue stated that he was not in a position to supply the original documents in view of the International understanding between India and Hong Kong and the conditions subject to the Hong Kong Customs had supplied the information and documents to Indian Customs viz. the prohibition on the use of these documents in legal proceedings and the consequent claim to privilege. After hearing both sides

in detail we considered that the documents were relevant for the purpose of these proceedings and that there were sufficient reasons why they could not be utilised earlier but could be pressed into service at this stage. At the same time, we agreed with the learned Counsel for the appellants that principles of natural justice and fair play were also required to be observed. Looking to the totality of the facts and circumstances, we allowed the documents to be taken on record; however, the evaluation of the evidentiary value of the documents was left to be considered during the course of hearing of the appeals.

6. At the stage of hearing of the appeals, the Counsel for the appellants had submitted a written resume giving the details of various items, the action taken by the Collector in respect of them and their submissions in respect of them. A similar chart was also submitted by the Departmental Representative. After the conclusion of the hearing, both the sides requested that they would like to file further written submissions. Accordingly, both the sides filed detailed written submissions.

7. We have carefully considered the submissions made by both the sides during the hearing as well as in their written comments. Before we deal with the position relating to individual item(s), we would like to give our findings on the following general issues.

7.1 At the original adjudication stage, a request was made that certain witnesses should be produced for cross examination. The Collector did not allow such cross examination. In the written comments, the Departmental Representative has laid considerable stress on the point that cross examination is not a must in these proceedings and in support of this plea, he has cited various judgments. We do not consider it necessary to deal with the judgments because the learned Counsel for the appellants did not press this point. We are therefore, not expressing any views on the question whether or not cross examination should have been allowed.

7.2 It is contended by the Counsel for the appellants that no penal action could be taken in respect of the consignments for which no Bills of entry have been filed. On the other hand, it has been submitted on behalf of the Revenue that the acts

and omissions of either the assessee or the department cannot be considered in isolation; the data on the invoices constitutes an integral part of the declaration on the Bill of entry; moreover, the appellants had themselves organised the procurement and shipping of the goods at Hong Kong and they were aware of what was being shipped and what was the price mentioned in the invoices. When the appellants had made wrong declarations on the Bills of entry in respect of 26 consignments, a change of heart could not be expected in respect of the remaining 14 consignments.

We have carefully considered the rival contentions. Section 111(m) of the Customs Act reads 'any goods which do not correspond in respect of value or any other particulars with the entry made under this Act or, in the case of baggage, with the declaration made under Section 77 in respect thereof. The term 'entry' is defined in Section 2(16) as 'entry' in relation to goods means an entry made in a 'Bill of entry'.

If a Bill of entry has not yet been filed, the question of goods imported not corresponding with the goods entered in the Bill of entry cannot arise. We are, therefore, of the view that in cases where a bill of entry has not been filed, Section 111(m) would not be attracted.

However, the position is somewhat different in respect of the contravention under Section 111(d). This Section provides for confiscation of any goods which are imported contrary to any prohibition imposed by the Customs Act or any other law. If it is found on examination of the goods that the goods are prohibited for import and inspite of notice to the importers, an import licensee or some other authority for importation is not produced, the goods would be liable to be confiscated under Section 111(d) even though a Bill of entry has not been filed. In the present case, a show cause notice was issued and no licence has been produced by the appellants till date.

Therefore, non-filing of a Bill of entry could not be taken as a defence in respect of any contravention under Section 111(d) of the Customs Act.

7.3 The Collector has confiscated certain items under Section 111 (f) of the Customs Act on the ground that they were not declared in the manifest. The Counsel for the appellants contends that the manifest is prepared in general terms and is not intended to give detailed description of the goods imported. Moreover, there is no column in the import manifest for declaration of value. The manifest is prepared by the shipping agents. There is nothing to show that any instructions were given by or on behalf of the appellants to the owner or the shipping agents of the carrier. He also stated that if there was any mis-declaration calculation in the manifest, the primary responsibility was that of the Carrier namely Shipping Corporation of India, which is a public sector undertaking. The Collector has not imposed any penalty on the Shipping Corporation of India and therefore, taking any penal action against the appellants would not be legal, just or proper. On the other hand, it has been argued on behalf of the Revenue that the appellants had entered into a criminal conspiracy with the foreign supplier and by virtue of that conspiracy, the goods were differently described in many cases so as to get them wrongly classified or to obtain benefit of exemption or to avoid submission of import licence.

Added to this, the values were grossly understated to evade duty of customs. Thus the wrong manifestation of goods was the handiwork of the appellants themselves and not the Shipping Corporation of India who made the declaration on the basis of the facts made available to them by the suppliers who were acting on behalf of the appellants.

We have carefully considered the submissions made by both the sides. We do not find any evidence on record to show that any instructions were given by or on behalf of the appellants to the Shipping Corporation of India in respect of the declarations to be made in the import manifest.

The Import Manifest (Aircraft) Regulations, 1976 provide that every import manifest shall cover all the goods carried in the Aircraft and consist of, inter alia, a cargo manifest in Form HI. The cargo manifest shall be delivered in separate sheets in respect of (a) cargo to be landed (b) unaccompanied baggage (c) goods to be transhipped and (d) same bottom or retention cargo. Import Manifest

(Vessels) Regulations, 1971 also provide for submission of a cargo declaration in Form III. The manner of declaring cargo is also the same as in the case of Import Manifest (Aircraft) Regulations, 1976. Form No. III of Cargo Manifest for air has columns for 'number of packages' and 'nature of goods'.

Form III of Cargo declaration for vessels have columns 'number and kinds of packages i.e. cases, cartons, bag, bales, pieces' and description of goods; there is no column in either of the two forms requiring declaration of value. The description of goods is also given broadly, such as machinery, electronics, articles of goods etc. and precise description of goods contained in each consignment which may comprise a large number of packages does not appear to be a requirement. The Collector has not specified in his order as to what is the deficiency in the declarations made in the import manifests. We do not therefore, see any justification for confiscating the goods under Section 111(f) of the Customs Act. We agree with the Counsel for the appellants that the primary responsibility for declaration in the manifest is that of the owners or the agents of the vessel or the aircraft and if they are exonerated, it would not be appropriate to confiscate the goods under Section 111 (f) of the Customs Act particularly when there is no evidence to show that the declarations in the manifest were made under the instructions of the appellants.

7.4 The Hong Kong Customs have furnished 2 reports to the D.R. I. one is dated 14-5-1993 and the other is dated 8th June, 1993. The report dated 14th May, 1993 has two annexures. Annexure I relates to Sea Shipments exported to India by CNS Fortune Trading Limited on 17-8-1992 and 19-9-1992. This annexure gives the date of export, Bill of lading number, name of the importer in India, description of goods exported and quantity thereof, suppliers' invoices number and date, purchase price, commission given, correct FOB value, false invoice number and value in such false invoice, export declaration number and FOB value declared on export declaration. Similar details are given in Annexure II which relates to Air Shipments exported to India by CNS Fortune Trading Ltd. between 24-9-1992 and 23-10-1992. For one consignment there is a footnote which says that 'over statement is owing to the misunderstanding in the communication between the Indian buyers and Hong Kong exporter'. For 3 consignments there is a footnote

which reads 'the over statement is owing to typing error'. The main body of the letter dated 14-5-1993 speaks of verification done by the customs department. This letter refers to a 5% reward commission. It also speaks about a certain payment of US \$ 40,000/- by Shri Vasudev Moolrajani. This letter further says, 'correct goods values were given on all export declarations except those under Serial No. 10 and 12 shipments. Over valuation on the export declaration of these two shipments were attributable to typing error and misunderstanding in the communication between the Indian buyers and the Company. There was, however, no malpractice involved. At the end of the letter, it is stated that 'a statement has been obtained from a Director of the Company, Mr. C.J. Sujan to confirm the above findings'. The second letter dated 8th June, 1993 is more detailed and refers to the supplies made by several companies to the supplier of the present goods namely CNS Fortune. At the end of this letter, the following statement has been made, "in the respect of 5 declarations lodged for the consignments, four are correct and one incorrect. The incorrect export declaration was a genuine mistake of the company which wrongly quoted the US dollar for the Hong Kong dollar in the amount declared. No legal action will be taken against the above (C) and (E) companies since the value discrepancies on the export declarations resulted from genuine mistakes". The first letter dated 14th May, 1993 (without annexures) was delivered to the appellants on the last day of hearing before the Collector. The second report dated 8th June, 1993 was given to the appellants after the adjudication was over and in the context of High Court proceedings. The second report has also been produced at the appeal stage. It has been submitted on behalf of the Revenue that the report of the Hong Kong Customs and Excise Department is clear, certain, firm and unambiguous and it proves the charge of undervaluation and manipulation resorted to by the appellants beyond any doubt. It has also been submitted that the appellant has not been able to adduce any evidence to the contrary. Reliance has also been placed by the Revenue on the decision of the Tribunal in the case of Orson Electronics Pvt. Ltd. v. Collector of Customs, Bombay reported in 1996 (82) E.L.T. 499 (Tribunal).

On the other hand, Counsel for the appellants has urged that the first report was available before the Collector and he did not utilise it for the purpose of valuing the

goods. In fact the Collector has observed that since the annexures have not been supplied by the department, he did not take cognizance of the details therein (paragraph 50 of the Collector's order). Further, in paragraph 51 of the order, the Collector has stated that 'as to what value should be adopted for assessment, the S.C.N. relies upon the quotations annexed thereto'. The Counsel further submitted that the department has not filed any appeal before the Tribunal challenging this finding. Even at the appeal stage, the department has not filed any cross objections seeking enhancement of the values on the basis of these reports. The Counsel also submitted that the primary evidence on the basis of which these reports are alleged to have been prepared have not been disclosed and therefore, it was impossible for the appellants to rebut the allegations contained in these reports. The Counsel also pointed out that in the case of Orson Electronics Pvt. Ltd. (supra) relied upon by the department, the primary evidence namely the export declarations and export invoices were furnished to the appellants and therefore, the decision of the CEGAT in that case, has no relevance to the present proceedings. He also submitted that the statement of Shri B.J. Sujana referred to in the reports, has neither been furnished to the appellants nor submitted to the Court. Copies of the so called true invoices and the statements of the various suppliers have also not been furnished. In these circumstances, it was impossible for the appellants to rebut the contents of the two reports. He challenged the veracity of the reports and the details contained therein.

During the arguments on the department's application for additional evidence (viz. the two aforesaid reports), the Counsel for the appellants insisted upon the production of primary material on the basis of which these reports were prepared. The learned Departmental Representative stated that he was not in a position to supply the original documents in view of the International understanding between India and Hong Kong and the conditions subject to which the Hong Kong Customs had supplied information and the documents to the Indian Customs viz. the prohibition on use of these documents in legal proceedings. Accordingly he claimed privilege. Countering these submissions the Counsel for the appellants, argued that there are certain principles governing claim of privilege and in this respect he invited attention to the Supreme Court judgment in the case of Shri S.P. Gupta reported in AIR 1982 SC 149 and Shri R.K. Jain v. Union of India

reported in 1993 (65) E.L.T. 305 (SC). After hearing these arguments, we allowed the reports to be taken on record. However, we had left the question of the evidentiary value to be considered at the time of the hearing of the appeal.

We have carefully considered this aspect of the matter. The aforesaid reports undoubtedly raise suspicion about the correctness of the declared values and the conduct of the appellants. However, at the same time, we notice that in the case of Orson Electronics Pvt. Ltd. (supra), the department had given copies of the primary material namely export declarations and the export invoices to the appellants and the department had not claimed any privilege in respect of those documents.

There is considerable force in the argument of the Counsel for the appellants that in the absence of primary material, they are denied the opportunity of challenging the correctness of the reports. We are also faced with another problem. The Collector has specifically stated that he does not rely upon these reports for valuing the goods. The Department has not filed any appeal against this finding of the Collector. On the other hand, even at the appeal stage, it has not been seriously contended that the department wishes to utilise this information for the purpose of revision of values arrived at in the impugned order. Undoubtedly, the values given in the an-nexures to the reports are at variance with the values determined by the Collector. In these circumstances, we find little use for these reports in the present proceedings. We therefore, propose to consider the question of valuation on the basis of other evidence available on record, which has been relied upon by the Collector in this order.

8. We find that the department has relied upon a number of quotations for establishing undervaluation. The appellants have also referred to certain quotations. The learned Departmental Representative argued that the quotations were admissible in evidence and could be relied upon for proving undervaluation. In this connection, he relied upon the decision of the Supreme Court in the case of Sharp Business Machines Pvt. Ltd. v. Collector of Customs reported in 1990 (49) E.L.T. 640 (SC) and the case of Collector of Customs v. Sanjay Chandiram reported in 1995 (77) E.L.T. 241 (SC) and the Tribunal's decision in the case of

Gapp's Industries reported in 1992 (60) E.L.T. 305 (Tribunal). On the other hand, the Counsel for the appellants referred to the Supreme Court decision reported in the Court Room Highlights in 1996 (84) E.L.T. A47 and various other decisions of the Tribunal to the effect that quotations alone cannot form the basis for proving undervaluation. We are of the view that quotations can be relied upon if they are found to be genuine, reliable, relevant, contemporaneous and relate to the sale of comparable goods meeting the requirements of Section 14 of the Customs Act and the Customs Valuation Rules, 1988. Therefore, evidentiary value of each quotation has to be considered on its own merits.

9. We now deal with the individual items of import, in respect of valuation, ITC contravention and the rate of duty.

The appellants have claimed benefit of ITC Public Notice 32/92-97 which provides that components of consumer durables can be imported by actual users. According to the appellants, they manufacture alarm clocks and they have also a certificate from the Director of Industries, and since they are actual users, and are eligible to claim the benefit of Public Notice 32/92-97. They have also stated that DC Micromotors imported by them are suitable for use in alarm clocks. The case of the department is that the predominant use of the DC Micromotor is for the manufacture of tape recorders and that the micromotors imported are not suitable for use in alarm clocks, having regard to their operating voltage and the net weight. In this connection the department relies upon the specification given on page 123 of the paper book which shows the rated voltage as DC 1.5 v. The appellants have however, clarified that the details given on page 190 of the paper book clearly show that there are different voltage applicable and the voltage is flexible upto 12 v. It is also evident that the voltage of 1.5 v is for the buzzer but the bell uses a motor of 12 voltage. It has been argued by the department that the net weight of alarm clock varies from 25 g to 70 g. whereas, the net weight of DC Micromotor itself is 100g. On the other hand, the appellants' claim that the specifications on page 127 are for buzzer type clock movements and are not relevant for the goods in question.

According to them, on page 190 specification of alarm clock movements having both a buzzer and bell are given and the DC Micromotors imported are clearly suitable for those movements. We are unable to come to any conclusion on the basis of these considerations because in the first place, the Collector has not considered them and secondly, complete facts have also not come out. We would therefore, prefer to rely upon the letter of M/s. Mabuchi Industries Co. Ltd. (manufacturers of DC Micromotors) dated 6-9-1993 wherein they have clarified that Mabuchi micromotors can be used for audio and visual equipments, information equipments and automatic equipments. They have further stated "It can also be used in alarm clocks for operating the bell". Therefore, use of DC micromotors in alarm clocks cannot be ruled out. However, the case of the department is that the deciding factor is the predominant or ordinary use and in this connection, it relies upon the observations of the Supreme Court in the case of Union Carbide India Ltd. v. State of Andhra Pradesh reported in 1995 (76) E.L.T. 489 (SC). We agree with respect that the predominant or ordinary use is relevant for the purpose of classification but it is not important if the only question to be considered is whether or not the importer is an actual user.

Here, since the manufacturers have confirmed that these DC micromotors can be used for alarm clocks for operating the bell, and since the appellants manufacture alarm clocks, we are inclined to hold that the appellants can be considered actual users in relation to the import of DC micromotors for use in the manufacture of alarm clocks. It is also noticed that the appellants had offered to demonstrate the use of these DC micromotors in their alarm clocks before the Collector. In these circumstances, we hold that the benefit of PN 32/92-97 cannot be denied to the appellants for the import of DC micromotors. As regards classification, there is no dispute that DC micromotors are classifiable under Heading 85.01 and are also eligible to the benefit of Notification 62/88-Cus., dated 1-3-1988 as amended. The dispute is whether Sl. No. 2 or Sl. No. 2A applies. The department submits that Sl. No. 2 is applicable whereas the appellants claim that Sl. No. 2A is applicable. Both the serial numbers cover DC micromotors of voltage rating not exceeding 13.5 volts and output not exceeding 2 - watts. The difference between two serial numbers is that Sl. No. 2 is for DC micromotors for audio cassette recorders or player whereas Sl. No. 2A is for DC micromotors for other uses. Here the DC

micromotors are for the manufacture of alarm clocks. Therefore, in our opinion, they will fall in SI. No. 2A of the aforesaid Notification.

9.2 As regards the valuation of this item, the department has relied upon 2 quotations on page 122 and 124 of the paper book. The quotation on page 122 purports to be from the manufacturer M/s Mabuchi Industries Co. Ltd. Hong Kong. This fax is not on the letter-head of Mabuchi and is unsigned. It also does not indicate to whom this fax is addressed.

The request letters in response to which this fax has been sent, have also not been produced. We do not therefore, think that it would be safe to rely upon this quotation for valuation of DC Micromotors.

9.3 The quotation at page 124 from M/s Great Wave Development Ltd. dated 15-3-1993 is for a value of US \$ 0.86 per pc. As against this, the appellants have produced another quotation dated 10-8-1992 from the same company, namely Great Wave Development Ltd. for US \$ 0.30 per pc.

to US \$ 0.45 per pc. The quotation dated 10-8-1992 is a stock offer.

Both the quotations appear to be in the same handwriting. We do not know whether there has been such a price variation between 10-8-1992 and 15-3-1993. Since the imports have taken place in October, 1992, the quotation of August 1992 on page 123 appears to be more contemporaneous. However, if there had been no variation in prices between 10-8-1992 and 15-3-1993, in that case both the quotations of M/s Great Wave Development Ltd. would appear to be unreliable. We therefore, do not think that there is sufficient evidence to fix the values at US \$ 0.85 per pc. We therefore, find no basis for enhancing the value from HK \$ 0.75 per pc to US \$ 0.85 per pc.

9.4 As regards the charge under Section 111(f) is concerned, we have already held that the goods are not liable to confiscation under that Section.

The Collector has held that the goods imported are calculators in C.K.D. form, they are consumer durables falling in the negative list, therefore their import is unauthorised. The Department has relied upon the opinion of the Addl Director,

Department of Electronics dated 10-2-1993 in which he has stated that "On examination of the sample, prima facie it appears to be a complete kit of calculator and there are no missing components like resistors or capacitors. However, it is advisable if ERTL (North), Okhla, New Delhi STOC Lab under this Department may be contacted for confirmation. Import of populated PCB is in any case under the negative list of Exim Policy 1992-97 and requires an import licence from the office of the Director General of Foreign Trade (page 130 of the paper book). The appellants contended that the opinion itself suggested confirmation from a lab. They also stated that resistors and capacitors are missing and cross-examination of the officer of Department of Electronics was not allowed. We do not see much force in the contention of the appellants. They have already stated that they are not pressing their grievance regarding cross-examination. They have also not categorically disclosed as to what parts are missing. In our opinion, the advice given by the Department of Electronics shows that the goods imported appears to be calculators in CKD form. In any event, the goods contain populated PCBs which require an import licence for their importation. We therefore, uphold the finding of the Collector that calculators in CKD form are liable to confiscation under Section 111(d).

10.1 As regards valuation, the entire case of the department is based on the quotation of M/s Oam International which appears at page 132 of the paper book. We notice that this quotation suffers from several infirmities. In the first place, items 2 and 3 have been blanked out.

Secondly, this quotation does not appear to be relevant as it shows either domestic prices in Hong Kong or prices in Hong Kong or prices for export of goods to a country other than India. M/s Oam International is based in Hong Kong and the quotation is addressed to M/s Engineering Services located in Hong Kong. It is understood how such a quotation gives FOB prices when it apparently pertains to a domestic sale.

It appears that this quotation has been used by the department not only in the present case but in several other cases. The CEGAT by its Order Nos. 899-900/96-A, dated 13-3-1996 held the quotation to be unreliable and rejected it. In

paragraph 7 of the order, the CEGAT has observed "that Collector (Appeals) in this context was correct in accepting the plea of the respondents that blanking out of items 2 and 3 from this quotation would create reasonable doubt about its authenticity and validity as evidence against the respondents". The Department contends that the CEGAT decision is contrary to the decision of Bombay High Court in the case of Satellite Engineering Ltd. v. Union of India and Ors. reported in 1983 (14) E.L.T. 2177 where the names of the intending importers had been blanked out. We have perused the judgment of the Hon'ble Bombay High Court and we are of the view that the decision is not applicable to the quotation of M/s Oam International where a part of the description of goods themselves have been blanked out. We have given our serious consideration to this point and we feel that this quotation does not inspire confidence and it should therefore, not be relied upon. For these reasons, we do not agree with the Collector's finding that the value of the calculators are to be enhanced.

Each sub-assembly of calculators contained a solar cell. The Department has alleged that these solar cells were neither manifested nor declared in the invoice. This allegation does not have much force because the solar cell was not separately imported, but was assembled in the calculator. Therefore, confiscation of solar cells under Section 111(f), 111(1), 111(m) is not justified. However, since the calculators have been held to be liable to confiscation under Section III(d) the Solar Cells are also liable to confiscation.

The Department has alleged that the goods have been misdeclared as 'components of digital clocks' whereas they are digital clocks in CKD condition, based on the examination report and the personal opinion of the adjudicating officer based on the examination of the samples by him. The Collector has observed that 5,000 pieces of metal contact and 5,000 pieces of reflector have not been found in the packages when examined together. The goods are however invoiced, implying that they have been short landed. The absence of the same in no way proves that the item is not a CKD digital quartz clock. The Collector has therefore, confiscated this item under Section 111(d) of the Customs Act.

Whether it is a case of short-shipment or short landing, the facts remains that the goods as imported, are not complete digital clocks in CKD condition. We are not of the view that in such technical matters the Collector's personal opinion regarding the nature of the goods can be taken as a definite evidence. In the case of Western Transformers and Equipment Pvt. Ltd. v Collector of Central Excise, Jaipur reported in 1995 (78) E.L.T. 513 (T), the CEGAT did not rely upon the personal observation of the adjudicating officer and in this connection, referred to two decisions of the Supreme Court in Koisan Kumar-Singh v.State of Manipur reported in 1986 (25) E.L.T. 145 (SC) and Pritam Singh v. State of Punjab reported in AIR 1956 SC 415. We are therefore, inclined to hold that the goods imported cannot be considered as complete digital clocks only on the basis of the said examination report and the personal observation of the Collector, when admittedly 5000 pieces of metal contact and 5000 pieces of reflector are missing.

12.1 As regards valuation, the entire case of the Department is based on the price list of M/s Wattary Industries. The Collector has enhanced the value from HK \$ 3.71 per set to US \$ 1.30 per set. A copy of the quotation of M/s Wattary Industries Ltd. has been enclosed with the written submissions filed by the Department.

On a perusal of this price list, we find that whereas prices are indicated in the last column against each item of goods in respect of 'Big Digit Clock in front buttons' the price is not legible, but an asterisk has been given and some prices are shown below the columns.

The date of the quotation (price list) is not indicated and it is also difficult to make out whether this quotation is for comparable goods.

We therefore, do not find sufficient evidence for enhancing the value of the goods from HK \$ 3.71 per set to US \$ 1.30 per set.

The main question for consideration is whether what has been imported is an electrode or not. The quotation of Medicotest (Page 134 of the paper book) - the manufacturer gives the price of electrodes which is much higher than the declared price of the appellants. During the hearing, the Department showed samples of the goods imported and reliance was also placed on pages 442-443 of the book 'How

Things Work Vol -1'. The appellants produced extracts from Mosby's Medical Dictionary which shows that electrodes include leads. On the basis of the material produced, we could not get a clear idea as to whether or not cardiac patches are complete electrodes. However, in paragraph 79 of his order, the Collector has observed that on examination of the goods, it was found that the description given in the wrapper was graphic electrodes. That being so, we uphold the finding of the Collector regarding valuation of this item.

During the hearing the Counsel for the appellants, conceded that the goods were not eligible to the benefit of Notification No. 201/81-Cus.

He, however, claimed exemption from additional duty under Notification No. 339/86-C.E., dated 11-6-1986. In support of this claim, he relied upon the judgment of the Calcutta High Court in the case of Fitwell Fastener (India) Pvt. Ltd. v. Collector of Customs reported in 1993 (68) E.L.T. 50 (Cal.). Although the appellants had not claimed the benefit of Notification No. 339/86 at the original stage, we extend the benefit of this Notification because the appellants had claimed exemption from additional duty at the original stage, though under a different notification and the exemption is available on merits.

14.1 Concerning valuation, the show cause notice relied upon the price list of Sanko Trading Co. The Collector has observed that 'the department has relied upon the price list of Sanko Trading only to cast doubt upon the invoice price and to show that it is not logically possible for the goods to be valued at 0.25 HK \$ each as declared in invoice 92/250, dated 16-9-1992'. We fail to appreciate this half-hearted approach. If reliance is placed on this price list, then logically the value should be determined accordingly. We have perused this price list which is at page 135 of the paper book. We find that it is unsigned. Moreover, this price list is stated to be valid upto the end of September 1989. Therefore, it is not even contemporaneous and we do not think that this price list can be relied upon for any purpose.

Realising this weakness, the Department has determined the value under Rule 7 of the Customs Valuation Rules. For this purpose, the Department has relied upon a letter from the All India Institute of Medical Sciences (AIIMS) for Catheters of

Bardia make. This letter states that the Hospital stores has purchased Bardia Foley Catheters size 12 to 20 at the price of Rs. 39 per Catheter from M/s Clinical Control System.

The Department also relies upon Interpretative Note (2) to Rule 8 which provides for flexibility with regard to the application of Rule 4 to 7.

A Catalogue of Bardia was also produced at the time of hearing. Rule 7 provides that the value of imported goods shall be based on the unit price at which the imported goods or identical or similar imported are sold in the greatest aggregate quantity. In the letter of AIIMS, the quantity of goods purchased is not indicated. The sale invoice of M/s Clinical Control System, New Delhi from whom the Institute purchased the catheter has also not been produced. It is therefore, not possible to say that this transaction represents a sale in the greatest aggregate quantity. The price indicated is not the price of imported goods in question and there is nothing to show that Bardia Catheters are identical or similar to the unbranded catheters imported by the appellant. There is also no indication in the show cause notice as to the basis on which the margin of profit of 10% and expense of 15% was determined. Rule 7 envisages deduction of general expenses in connection with sales in India imported goods of the same class or kind and also deduction for usual cost of transport, insurance and associated costs incurred within India. It is not clear from the show cause notice, whether these costs of transport etc. have been deducted.

Further, the rule envisages a maximum gap of 90 days between the date of importation and the date of sale. No doubt, interpretative note to Rule 8(2) provides for a reasonable flexibility in the application of the method. But if one looks at the examples given in Rule 8(3), it would appear that the flexibility is with regard to the definition of similar or identical goods or with regard to the time gap of 90 days.

Moreover, even if flexibility is applied, some adjustment in value on account of flexibility has also to be made. Therefore, we are not satisfied that all the conditions of Rule 7 have been met and that Rs. 14.21 can be taken as a reasonable price under Rule 7 or Rule 8 of the Valuation Rules.

ITC Circular 12/92-97, dated 3-9-1992 (page 285) states that there existed certain doubts about the importability of items listed therein, including button cells. It has been clarified that button cells do not fall under the category of the negative list of imports and therefore, can be freely imported without a licence. On 21-10-1992, Public Notice No. (A/92-97) was issued, which listed button cells as one of the items for import under the Scheme of Special Imports Licence. In the case of *Union of India v. Shree Ganesh Steel Rolling Mill Ltd.* reported in 1996 (84) E.L.T. 3 (SC) the Supreme Court has held that the power of clarification under para 20 of the Policy cannot go to the extent of amending the Policy. We do not think that the clarification given by ITC Circular 12/92-97 has the effect of amending the policy. This circular clearly provides that it seeks to clarify the position only.

We therefore, held that the import of button cells shipped prior to 21-10-1992 is valid and the importation of button cells shipped after that date is unauthorised.

15.1 As regards valuation, the Collector has enhanced the value in respect of one consignment of button cells containing Renatta brand on the basis of the price quoted for Maxell brand button cells in the quotation of M/s Oam International Hong Kong. We have already held that the quotation of M/s Oam International is neither authentic nor reliable. The enhancement of the value on the basis of this quotation is not justified.

The case of the Department is that the goods imported are complete watches modules and are not covered by PN 32/92-97. We do not find any substance in this argument because the appellants are registered as a SSI unit for the manufacture of complete watches of which watch modules are a part. The appellants being actual users are therefore, eligible to the benefit of the said Public notice and therefore, the importation cannot be held as unauthorised.

16.1 As regards valuation, reliance has been placed on the quotation of M/s Oam International and another quotation of M/s Sangam Electronics.

We have already rejected the quotation of M/s Oam International. The quotation of M/s Sangam Trading Co. is also unsigned. Moreover it is difficult to say whether that quotation is for comparable goods. This aspect has been examined in detail in

Order Nos. 899-900, dated 13-3-1996 in which the Tribunal has accepted the price of Hong Kong Dollar 0.35 per pc. The declared value in the present case is Hong Kong \$ 0.37 per piece. Following the aforesaid decision of the CEGAT, we hold that no case of undervaluation has been established. However, in the absence of a certificate from the competent authority viz.

Department of Electronics, the benefit of Notification No. 345/85, dated 2-12-1985 is not admissible to the appellants.

The question for consideration is whether benefit of Notification No.41/85, Cus., dated 28-2-1985 is available to the appellants. This notification exempts parts of digital, digi, digiana, electronics wrist watches and similar combination type wrist watches from payment of duty in excess of 60%. For getting the benefit of this notification, a certificate from the Directorate of Industries of a State is required.

Such a certificate was issued by the Directorate of Industries, Rajasthan, Jaipur. Initially this certificate was issued on 22-6-1992 and by mistake also referred to another Notification No. 345/85-Cus.

Thus this certificate was issued for two Notifications namely 41/85 and 345/85. Realising that the Joint Director, Industries was not competent to issue a certificate under Notification No. 345/85-Cus, the certificate was partially modified and made valid only under Notification No. 41/85-Cus. Since both the unamended and amended certificates were valid under Notification 41/85-Cus., the appellants are entitled to the benefit of exemption under this Notification.

17.1 Concerning valuation, the Department has relied upon 3 quotations (i) quotation of M/s Oam International (ii) Quotation of M/s Rich Mal and (iii) Quotation of M/s Shui Hing. We have already rejected the quotation of M/s Oam International. The quotation of M/s Shui Hing is in some foreign language and an english translation has not been provided. The quotation of M/s Rich Mal is for plastic watch case band and parts. In fact this quotation is for one set only. It is contended by the appellants that the goods are not comparable and the quantity is too small for any comparison of price. The appellant has further contended that the Department's own evidence contradicts the value of HK \$ 8-12 as determined by

the Collector. In quotation of M/s Sangam Trading Co., the price of metal case with plastic belt has been shown as HK \$ 0.88 per set which matches with the appellants' declared price of HK \$ 0.85 per set. We find force in these contentions and hence do not think that there is sufficient justification for enhancing the value.

17.2 As regards the import of excess quantity, referred to in paragraph 96 of the Collector's order, we are not able to find out whether any Bill of entry has been filed for these goods. If the excess goods are not entered in the Bill of entry, they are liable to confiscation under Section 111(m) of the Customs Act, 1962. If however a Bill of entry has not been filed, then Section 111(m) would not be attracted.

Although in the submissions by the Department as well as in the order of the Collector there is a reference to some quotation, the same does not appear to be on record. We cannot therefore, uphold the valuation as held by the Collector.

Regarding ITC aspect, in view of the clarification given by the Deputy Director General of Foreign Trade (page 189), we hold that the goods are eligible to the benefit of Public Notice PN 32/92-97. The leather straps have been imported separately and not alongwith watch cases.

We hold that since 235 pieces of watch lenses have been found in excess, the same are liable for confiscation.

This item consists of bezel fitted with glass and metal straps. The case of the Department is that these constitute watch cases which are in the negative list. As regards bezel fitted with glass, the issue is settled in favour of the appellants by two decisions of this Tribunal - (1) Collector of Customs v. India Watch Parts Manufacturers (page 192 of the paper book) and (2) Collector of Customs v. Sagar Electronics (Order Nos. 141-143/94-NB, dated 13-3-1996). We do not think that the addition of metal strap would make any difference because, even with metal straps, the goods cannot be regarded as watch cases. There is no evidence that the backs of cases detained by the Department in Foreign Post Office or elsewhere are compatible with the bezels imported in these consignments. We therefore, hold that importation of this item cannot be held as unauthorised and the

goods are not liable to confiscation under Section 111(d) of the Customs Act, 1962.

20.1 As regards valuation, the Department has relied upon three quotations : We have already dealt with them in relation to the item 'alloy metal bezel fitted with glass' and our finding in relation to that item would equally apply here. Accordingly, the charge of undervaluation is not sustainable.

20.2 Turning to the question of exemption under Notification Nos. 41/85 and 126/92, the benefit has been denied on the ground that Integrated Bracelet cases are not eligible to benefit under this notification and also that the certificate issued by the Directorate of Industries is null and void. We find that Notification 41/85 exempts not only parts of watches but also SKD packs and CKD packs. In these circumstances, we do not think that the benefit of the exemption can be denied to the integrated bracelet cases. We have already held that the certificate issued by the Director of Industries is valid for Notification No.41/85. Notification No. 126/92 relates to auxiliary duty and the benefit of this notification depends upon the applicability of Notification No. 41/85. Since the goods merit exemption under Notification No. 41/85, they are also eligible to the benefit of Notification No. 126/92.

The charge of mis-declaration becomes technical in the light of our aforesaid findings: Watch cases are in the negative list and are therefore, liable to confiscation under Section 111(d) of the Customs Act, 1962. However, since no Bill of entry has been filed, the confiscation under Section 111(m) cannot be sustained. Confiscation under Section 111(f) is also not sustainable in view of the reasons mentioned earlier.

The appellants have not addressed any arguments with regard to this item and the confiscation is therefore, upheld. The appeals are disposed of in the above terms.

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