Amforge Industries Ltd. Vs. Cc

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jan-09-1998

Reported in : (1998)(75)LC558Tri(Mum.)bai

Judge : R T Lajja, S Kang

Appellant : Amforge Industries Ltd.

Respondent : Cc

Judgement :

1. These are two appeals: one filed by M/s. Amforge Industries Ltd., Bombay (hereinafter referred to as 'AIL'), and the other filed by the Revenue, both being aggrieved with the same order in original dated 10.5.1989, passed by the Collector of Customs, Bombay. As both the appeals arise out of the same order-in-original, they were heard together and are being disposed of by this common order.

2. AIL had imported the machinery which they declared as 'used'. For Import Trade Control (ITC) purposes, the machinery imported was claimed to be covered by the Open General Licence (OGL). On examination of the consignment by the customs, it was found that in addition to the machinery declared, one additional machine - Material Handling Equipment - had also been imported. This machine - Material Handling Equipment had not been declared in the import documents. The machines imported being more than 7 years old were not found eligible for import under OGL. The value was also alleged to be mis-declared. The matter was adjudicated by the Collector of Customs, Bombay, who imposed redemption fine

of Rs. 15.5 lakh and a penalty of Rs. 10 lakh. The AIL had contended that the machine not declared was an accessory of the other machine - hammer - and was required to be assessed along with the hammer. They also challenged the age of the machines being more than 7 years old and had pleaded that the old machines had been re-built and overhauled into new machines and that the age of the machines so re-built, overhauled should be reckoned from the year when they were so re-built/overhauled. They also questioned the authenticity of the documents relied upon by the adjudicating authority. It was pleaded that the declared value was correct and that there was no justification for imposing the redemption fine and penalty.

2.2. In the appeal filed by the Revenue, it had been pleaded that the gravity of the offence warranted imposition of higher fine and penalty.

Total value of the offending goods came to about Rs. 1.30 crore and the total duty liability came to over Rs. 1 crore.

3. The matter was fixed for hearing on 13.10.1997, when Shri A.Hidayatullah, Senior Advocate, with Shri Sheerazi, Advocate, appeared for the AIL. The Revenue was represented by Shri S.N. Ojha, JDR.4. Shri A. Hidayatullah, Senior Advocate, stated that according to the Department the machines imported were more than 7 years old, while the appellants had produced the certificates from Independent Chartered Engineer that the machines were not more than 7 years old and that they had been subsequently reconditioned. The evidence relied upon by the Department was suspicious. He submitted that the machines might have been originally manufactured earlier, but they were reconditioned in the year 1981-82. The Material Handling Equipment was not declared separately as it was an accessory for the machinery-hammers. No proper enquiry had been made by the Department and the declared value was correct. There was no case for imposing redemption fine and penalty.

4.1. In so far as the appeal filed by the Revenue was concerned, he submitted that it was time barred. The adjudicating authority had given reasons for imposing the redemption fine and the penalty in para 31 of his order. He submitted that there was no ground for imposing the fine and penalty and in no case there was any

justification for increasing the quantum of fine and penalty. He also pleaded that the relationship between the suppliers and the importer was no ground for any suspicion.

5. In reply, Shri S.N. Ojha, JDR, referred to the show cause notice and stated that there was mis-declaration by the appellants at each and every stage. The Material Handling Equipment was not declared.

Accessory had to be charged separately. Reconditioning was not a process of manufacture. The certificate from the Chartered Engineer had been arranged. The goods were imported in violation of the ITC Policy provisions. The valuation had been arrived at correctly as per the rules. The amount of fine and penalty were low as compared to the gravity of the offence.

6. We have carefully considered the matter. The three main issues involved in both these appeals relate to the following: 7. The AIL had imported the following machines from M/s. Solitaire International Inc., USA, under commercial invoice dated 14.10.1987: (1) One Horizontal Boring, Drilling, and Milling Machine - used, spindle diameter 8" Floor Type "Ingersole" make.

(2) One horizontal upset forging machine - used size 7 1/2" capacity, "National" USA make.

(3) One drop forging double acting pneumatic hammer-used "Chambersburg" make capacity 25,000 pounds.

They had also imported spare parts for drop forging hammer and upset.

In addition, durable containers used were also imported.

7.1. The Bill of Entry was completed under second check procedure subject to examination of the consignment in the docks. On examination, it was found that in addition to the machines declared in the Bill of Entry, the importers had also imported one another machinethe Material Handling Equipment consisting of Chambersburg Handling Cabin and Arm having independent functions. It was fitted with 20 horse power motor and was having independent Hydraulic Control

System. It could work independently with any compatible machine.

7.2. In the record note on discussions between AIL and Solitaire International Inc., USA. - discussions held on April 20, 21, 22 and 23rd, 1987, the equipment to be purchased was listed in para 4. In para 7, it was recorded as under: It was suggested that at the time of auction (scheduled for May 19 - 21) JBS should look for Material Handling Equipment viz. chains, sprockets, bearings etc. available new in stock.

7.3. Shri Suresh Laud, Vice-President, AIL, in his statement dated 21.7.1988 had stated that the material handling equipment was a special accessory imported along with the main equipment of forging hammer. The value of the Material Handling Equipment had been shown separately in the seized documents and the price had been shown as 50,000 US dollars FOB (refer 145 of the seized file marked AF-7). The Material Handling Equipment was meant to more the heavy job from one place to another.

When very heavy materials were required to be moved for processing, placement, storage etc., the Material Handling Equipment was used. From the furnace the hot job is to be moved for hammering through such material handling equipment. The equipment had an arm which could move radial, forward, upward, downward etc. It is fixed to the foundations and its arm reaches the object and moves it to the desired location.

8. The Material Handling Equipment was an independent equipment. It was not a part of the equipment whose purchase was finalised in the meeting with Mr. Robert C. Levy held at Harvey on 21.4.1987. Paras 4 to 7 from the record note on discussion between AIL and Solitaire International Inc., are extracted below: 4. The meeting with Mr. Robert Levy was held at Harvey on April 21, 1987 and after due discussions, the purchase of the following equipment was finalized.

5. Quotations on the above equipments - 2 copies each - were handed over for Amforge. These quotations are based on the above package price, cost of dismantling, cleaning and painting, packing and surface transportation to Calumet City Harbour.

6. The necessary Proforma Invoice - 2 copies each - for the above equipment with detailed specifications were handed over to Amforge.

7. It was suggested that at the time of auction (scheduled for May 19-21), JBS should look for Material Handling Equipment viz. chains, sprockets, bearings, etc. available new in stock.

The other items viz. Die Sinking Cutters (3, 5 and 7) and Big Ball Nose roughing cutters should also be looked and bid for at the auction.

It is also seen that there is no reference to the Material Handling Equipment in the visit report to the USA and West Germany dated 18.3.1987.

8.1. The adjudicating authority after analysing the evidence on record had held that the Material Handling Equipment was an independent item of purchase and that it had to be treated separately for purposes of the declaration to the customs and the assessment. The charge regarding non-declaration of the Material Handling Equipment was found sustainable by him.

9. The appellants had pleaded that the Material Handling Equipment was an accessory and thus there was no need for its separate declaration in the import documents. The accessory unless specifically so mentioned in the relevant tariff entry could not be considered as a part of the machine of which it was an accessory. The machine could work without the accessory. If the machinery could not work with any particular item, then it was a part of that machinery and not an accessory. In the case of CC, Bombay v. Perfect Machine Tools Co. Pvt. Ltd., , the Supreme Court had held that an accessory/attachment could not be treated as a part of a machine (refer para 7 from that judgment). The Material Handling Equipment was not a part of the Hammer. How the subject is placed on the anvil was an independent activity and the Hammer does not cease to be a Hammer even when no subject item is placed on the anvil for hammering.

9.1. The value of the accessory for the same reasoning, unless specifically so mentioned and included in the value of the machine, could not be considered as a part of the value of such machine.

10. In view of the above discussion, we agree with the findings of the adjudicating authority on this score that the Material Handling Equipment was required to be declared and that it was a separate machinery and that the charges as levelled in the show cause notice with regard to this item were sustainable.

11. As regards the age of the machines, the clearance of the impugned machines as second-hand machines was claimed against entries Nos. 62, 41 and 3 of item 1, Part-B, appendix 1, read with condition No. 2 of appendix' 6 of Import Policy A.M. 1985-88. As per provisions of para 64 of the Import and Export Policy A.M. 1985-88, importers were required to produce to the customs authorities at the time of clearance of second-hand machinery, a certificate from the professional Chartered Engineer in the country from which its import was made inter alia showing year of manufacture, present condition of the machinery and its expected residual life. OGL No. 2/87 dated 1.4.1987 permitted the import of the capital goods of the description specified in appendix-1, Part-B of the Import Policy 1985-88. The import of the second-hand machinery which was older than 7 years and had less than 5 years expected residual life, were not permitted for import under OGL as capital goods covered by appendix-1, Part-B of A.M. 1985-88. The appellants had admitted that the year of manufacture of the machinery imported uas beyond 7 years, but had argued that the calculated from the year of their rebuilt/overhauling, it could be taken that the machinery were not older than 7 years. The year of manufacture is a question of fact and the manufacture could not be equated with repairs, re-conditioning etc. The goods had been referred to in the invoices as "used". The year of manufacture had not been given. The certificates, all dated 14.9.1987 and almost identically worded from the professional Chartered Engineer indicated the year of manufacture of the machines as the year 1981 and 1982. It had been admitted by the appellants as under: Significantly in respect of none of these hammers the year of manufacture has been shown. It may be seen that the year of manufacture is shown in respect of certain other equipments. It is because these hammers had first been modified from 25,000 lbs. to 35,000 lbs. and subsequently completely rebuilt and re-conditioned in 1981-82." (reply dated 14.11.1988 to the show cause notice dated 4.10.1988 at page 177 of the paperbook).

11.1. In the visit report to USA and West Germany dated 18.3.1987 filed by Shri Satish Mehta, Representative of AIL, the year of manufacture of hammer DPC-2384 had been shown as 1943; of hammer DPC-2383 as 1943; of hammer IS-2380 as 1951; of hammer IS-2381 as 1951. It had been mentioned that the Hydrotel Die Sinking Machine (Model DK No. 28" x 120) had been re-built in 1978 and that Hydrotel Die Sinking Machine Model EM No. 28" x 120 had been re-built in 1976. The hammer maintenance records also indicate that the machines were more than 7 years old. This position had also been admitted in the various statements of Shri Suresh Laud - Vice-President, AIL. In his statement dated 14.7.1988, he had stated as under: Mr Dinesh Seth informed me that all the above equipments were refurbished in the year 1982. He further informed that all the three machines were built originally 12 to 15 years prior to 1982. I also learnt that such equipments (models) have not been built by the original manufacturers later than 1969. However, since the equipments were refurbished and suited our requirements both financially and in manufacturing capability, we accepted the offer.

11.2. He added that "I would like to state that the requisite Chartered Engineers certificates were arranged by Mr. Dinesh Seth for the purpose of production to customs in India." 11.3. In his further statement dated 21.7.1988, Shri Suresh Laud in answer to question No. 3 referred to as under: Please refer to my earlier statement on 14.7.1988 wherein at page 3 I have stated that, none of the machines imported by us have been built by the original manufacturers later than 1969. However, during inspection I did not come across any bottom plates or engravings showing year of manufacture. Mr. Dinesh Seth had also informed me "that these machines are 12 to 15 years old as already stated by me earlier.

12. According to the certificate dated 20.10.1988 issued by Mr. James D. Caton, Manager of Sales, Lackson Division, WYMAN GORDON CO., the hammers were manufactured in 1947 and 1951 and the critical and fundamental parts were reconditioned or replaced from time to time except the bottom anvils. In his opinion, the hammers re-built were as good as new with regard to efficiency and performance.

12.1. Being "as good as new" in the year 1981 is not the same as the year of manufacture being 1981 when the machinery had been originally manufactured much earlier. The appellants had pleaded that after re-conditioning, the year of manufacture should be taken as the year of re-conditioning. They submitted in reply to the show cause notice that "it is our contention that a rebuilding of a machine means a remanufacture of the machine with the result that the machine acquires a new lease of life". They had equated rebuilding with repairs/replacements of parts. The expression used in the import policy is the year of manufacture. The year of reconditioning, repair, overhauling etc. could not be taken as the year of manufacture. As the expression is categorical and there is no ambiguity, the year of manufacture is with regard to the original year of manufacture, manufactured by the manufacturers of the machine.

12.2. The appellants had contended that the age of the machine should be reckoned from the date of rebuilding. This argument has no validity.

13. In the case of Shriram Refrigeration Industries Ltd. v. Collector of Central Excise, Hyderabad, the Tribunal had to examine the meaning of the expressions 'Remake and Reconditioning'. We can do no better than to extract paras 6 and 7 from that order. Paras 6 and 7 from that order are extracted below: 6. This brings us to the question as to what is repair and what is manufacture and where exactly the line is to be drawn between the two. The Central Excise Act and the Rules do not define repair/reconditioning/remaking. These words have, therefore, to be interpreted in their popular sense as commonly understood. The impugned order, in its paragraph '6', gives the following meanings of these words as taken from "The Concise Oxford Dictionary" (Third Edition): (c) The word "remake" is recorded to mean to make once more or again "often with the implications that previous doing was deficient or erroneous or now requires alteration or improvement...." (d) The word "repair" is recorded to mean 'restore to good condition renovate, mend by replacing or refixing parts'.

When the Government of India amended Rule 173H on 26.6.1976, simultaneously, by their letter dated 2.7.1976, the Government clarified: It may, however, be noted that remaking, refining, reconditioning or subjecting the goods

to any other similar process will not amount to manufacture if the goods are subsequently cleared after rectification of defect in the same form in which they were retained or brought in the factory.

The above clarification was circulated for information to the public by the Collector by means of a Trade Notice dated 20.7.1976. These contemporary expositions of the meaning of Sub-rule (2) of Rule 173H let it be known that if the goods were cleared after rectification of defect in the same form in which they were brought into the the factory, the activity would not amount to manufacture.

7. On the point as to what is the meaning of manufacture as contrasted to repair, guidance is also available from two judgments of the Hon'ble Supreme Court. Though both these judgments were in the context of Section 106 of the Transfer of Property Act (the point at issue being whether certain premises were used for manufacturing purposes or not), still they are relevant to the issue before us for the reason that the Hon'ble Supreme Court applied the same popular meaning of 'manufacture' to the provisions in the Transfer of Property Act, as applicable in the Central Excises Act.

The first of these two judgments Allenburry Engineers Private Ltd. v. Ramakrishna Daltnia and Ors. was by a Bench of five Supreme Court Judges. In this case, certain premises were used for storage, reconditioning and resale of army disposal vehicles. The reconditioning activity was quite of an extensive nature and involved replacement of parts, including bodies of the vehicles. Some of the new spare parts required were manufactured in the premises. Applying the same popular meaning of 'manufacture' as applied to the Central Excises Actbringing into existence a commercially distinct articlethe Supreme Court held that the premises were not used for manufacturing purposes and that the reconditioning process, including manufacture of new spare parts, carried on in the premises was one of repairs which itself was incidental to the dominant activity of storage and resale of vehicles undertaken in the premises. We quote certain relevant portions from this Constitution Bench judgment of the Supreme Court:In South Bihar Sugar Mills v. Union of India the Act with which the Court was concerned was the Central Excises and Salt Act, 1944, which furnished no special definition of the word

'manufacture'. The question canvassed there was whether carbon dioxide, one of the constituents of kiln gas produced as one of the processes necessary for refining sugar, could be said to have been manufactured, quite apart from the manufacture of sugar itself. This court held that what was produced was kiln gas, a compound of different gases and not carbon dioxide, though it was one of the different gases which made up kiln gas and therefore did not attract item 14H in the Schedule to the Act. Since the Excise duty was leviable under the Act on manufacture of goods, the Court explained the connotation of the word 'manufacture'. In so doing, the Court said that the word 'manufacture' implied a change, but that a mere change in the material was not manufacture. There must be such a transformation that a new and different article must emerge having a distinctive name, character or use. This was also the meaning given to the word 'manufacture' in Union of India v. Delhi Cloth & General Mills....

In all these cases the statute of the notification concerned did not furnish any artificial meaning to the expression 'manufacture' and the Court applied, therefore, the ordinary meaning as commonly understood to that expression....

According to him, Allenbury & Co. Ltd. had in 1948 purchased disposal vehicles which were stored for sale in the premises in question. The vehicles were in a damaged condition when they were purchased. In some cases chassis were missing or they were bent or broken; most of the parts were broken and missing. These used to be repaired and then sold. The Company had put up a workshop where these vehicles were repaired, reconditioned and painted before they were sold. The repairs, according to him, involved in some cases making of new bodies and new parts. For that purpose, the appellant company had to have in the workshop lathes, drill machines, welders etc. and had employed some 200 to 500 workmen....

Even if the evidence of Jain were accepted in toto, and we were to find that some spare parts were being manufactured for repairing or reconditioning the vehicles, the dominant purpose of the lease would still have to be regarded as one for storage and resale of the vehicles and not for manufacturing purposes. Manufacturing of spare parts would then be merely incidental to the main purpose

of disposal of these vehicles as without repairing or reconditioning them, such disposal could hardly have been possible. In our opinion, the appellants failed to establish that the dominant purpose of the lease was manufacturing purpose...P.C. Cheriyan v. Mst. Barfi Devi was by a Bench of three Supreme Court Judges. Reiterating that "The broad test for determining whether a process is a manufacturing process, is whether it brings out a complete transformation for the old components so as to produce a commercially different article or commodity", the Supreme Court held that the premises used for retreading of tyres could not be held to have been used for manufacturing purposes. However, in paragraph 11 of this judgment, the Supreme Court added: In some enactments, for instance in the Excise Act, the term "manufacture" has been given an extended meaning by including in it "repairs", also.

13.1. In the case of Metro Tyres Ltd. v. CCE, Chandigarh 1995 (61) ECR 355 (Tribunal), it was held that the resale of old serviced goods with new guarantee cards does not amount to manufacture of new products.

Para 7 from that decision is extracted: 7. Therefore, the activity should result in completion of a manufactured product. A manufactured product has always to be construed in terms of any goods in the Section or Chapter notes of the Schedule to the Central Excises and Salt Act, 1985 sicshould be Central Excise Tariff Act, 1985. Therefore, the activity of processing should result in manufacture and every manufacture should result in production of goods, which should be marketable or capable of marketing and should be specified in the Section or Chapter notes of the Schedule to the Central Excises & Salt Act, 1985 (sic). This aspect of the process resulting into manufacture and in production of the goods has been gone into, time and again by Hon'ble Supreme Court of India (See Union Carbide India Ltd. v. Union of India , which follows Union of India v. Sethi Cloth Mills Ltd.South Bihar Sugar Mills Ltd. v. Union of IndiaCollector of Central Excise v. Kutty Flush & Furniture Co. (P) Ltd. ; Bhor Industries Ltd. v. Collector of Central gone into a great detail on the definition of "manufacture" as in the case of Collector of Central Excise, Bombay v. S.D. Fine Chemicals (P) Ltd. detailed discussion has held that "manufacture should result in new and different article having a distinct name, character and use".

Unfortunately, the Learned Collector has missed this fundamental aspect of the matter and has gone on to hold that repairing of old fans and resale by new guarantee card, amounts to manufacture of a new goods. The Learned Collector has also ignored, catena of citations on the point relied by the Counsel and has failed to even refer to the same in the order. The Tribunal has time and again held the process of repairing of transformers does amount to manufacture 1982 (10) ELT 794.

13.2. In the case of Cochin Co. v. Commissioner of Income Tax, , the Supreme Court had made the following observations in the income tax case with regard to the reconditioned machines.

The word 'new' is not defined in the Income-tax Act. According to the Shorter Oxford Dictionary, the word 'new' means 'not existing before; now made, or brought into existence, for the first time'. In the context of the language of the statute, particularly in its application to a machinery, we are of the opinion that the expression 'new' must be construed in this sense and in contradistinction and antithesis to the word 'used'. According to the statement of the suppliers there is no room for doubt that the machines were used after they were first made. Subsequently, the machines were taken into parts and were reassembled after replacing worn out parts and after incorporating the latest modifications. But the question still remains whether the two machines, after being reconditioned, were entirely different from the old machinery and whether the latest improvements incorporated into them made the machines substantially new within the meaning of the sub-section. In other words, the question is whether the reconditioning of the two 'Jackstone Junior Frosters Mark II' in this case was reconstruction or substitution of the entire machinery, meaning by entirety not necessarily the whole but substantially the whole subject matter of the machinery. The question of law arising in this case must be tested in the background of this principle, but having heard learned Counsel for the parties, we are not satisfied that the statements in the case are sufficient to enable us to decide the question of law raised therein. In its order dated July 1, 1959, the Appellate Tribunal has, for instance, stated that 'what had really happened was that machines of an anterior date are stripped and re-built incorporating the latest available technical improvements'. It is not

mentioned in the Tribunal's order or in the statement of the case what exactly were 'the latest available technical improvements' which were incorporated into the reconditioned machines. It is also not specified what were the dates on which the machines were first manufactured, for what period they were previously used, what were the latest technical improvements incorporated in the machines, what is the nature and cost of these improvements in relation to their nature and total cost and so on. In the absence of this material it is not possible to decide the question whether the two machines were 'new' within the meaning of Section 10(2)(via) of the Income-tax Act.

14. As the machines in dispute were originally manufactured much earlier, earlier than 7 years as stipulated in the import policy, it is the year of their manufacture which had to be taken for the purposes of the import policy. The fact that the machines as originally manufactured were reconditioned subsequently will not change their year of manufacture.

15. The adjudicating authority had held that while the hammers and upset forging machines were not eligible for import under OGL, he had given benefit of doubt with regard to the horizontal boring, drilling and milling machine. In the facts and circumstances of the case, we do not find any material to interfere with the view taken by the adjudicating authority in this regard.

16. As regards the question of valuation, various documents recovered as a result of search and seizure, revealed that the Chartered Engineer's certificates were not independent, the correct age of the machines had been confused and the correct age of manufacture was much earlier than the year shown. The documents recovered refer to the value of the goods imported. The adjudicating authority for the reasons recorded in the order-in-original had based his findings with regard to valuation on the hand written documents containing the value of the items at page 145 of the seized file with certain adjustments as discussed by him in pages 36 & 37 of his order. He had arrived at the valuation independently after rejecting the valuation as adopted by the Directorate of Revenue Intelligence. On the various aspects of valuation, the adjudicating authority had ordered as under: (a) I order that the base price noted for the various machines etc.

in terms of the hand written note/chit on page 145 of the said seized file be taken as the base for arriving at the build-up prices.

(b) I order that the interest charges of 35,000 U.S. dollars be distributed over all the machines and the parts/spares on pro rata basis with reference to their base value. This is because the interest is being paid on the auction purchase prices by M/s Solitairs.

(c) The reconditioning charges as certified in the Chartered Engineer's certificate may be accepted in view of the fact that there is clear reference to such cost being verified by the Chartered Engineer from JBS. Besides, the cost indicated for such operation in the hand written chit (page 145) has been explained as an estimation.

(d) I order that the total prices as per the three proforma invoices be accepted for total pricing of the goods contained in each invoice.

(e) The difference between the total value as per (d) above on the one hand, and the respective aggregate values as per (a), (b) & (c) above on the other, would cover all other expenses incurred by Solitairs including their profits for making up the FOB price indicated in the invoice.

(f) I order that the differential cost as per (e) above in respect of each proforma invoice be distributed on pro-rata basis among the goods covered by each invoice.

(g) This leads to the ascertained break-up of the FOB value as per table annexed. (Annexure I) (h) I reject the valuation adopted by the DRI for the reason that they had tried to apportion the dismantling charges even on the 'spares', which is not logically admissible. Further, I find that the proposition to accept as the starting point the base price of each and every item as per the said hand written chit and also the price namely the proforma invoice totals, is acceptable, as fair and proper.

(i) The table annexed to this order gives the FOB value and further build-up till the assessable value which should be adopted as a guideline in conjunction with various other orders/directions contained in this order for the purposes of finalisation of the assessment.

(j) During the course of considering the import of "material handling facility", 1 held that the said item is an independent machine and is to be treated separately for purposes of assessment.

I also hold that the same had not been declared by the importers for purposes of Customs clearance. In the circumstances, it is necessary to fix its assessable value for levy and collection of Customs duties due on its import into the country. I have gone through the Catalogue and literature of the product and also the examination report of the goods and the comments offered by the Assistant Collector (Docks) on various aspects including the value estimated by him on the basis of his study and experience for purposes of assessment.

I observe that even the DRI while framing allegations in the Show Cause Notice had relied mainly on the hand written chit. In the said 'chit', there is a reference to the cost of 'Material handling facility' at US $ 50,000/-. In the light of my observations on valuation of other machines, spares, etc., in this order, I hold that value of the 'material handling facility' could be built up taking US $ 50,000/- as the base value. Working on this basis, the value for purposes of assessment of this item comes to Rs. 10.57 lakh approximately, which is directed to be adopted with marginal modifications for the purpose of assessment. The detailed build up particulars is in the enclosed annexure-I.17. As the value is based on the documents of the importers themselves and as the basis on which the Directorate of Revenue Intelligence had proposed the valuation had been rejected and as various adjustments had been made to arrive at the fair value as will be seen from the part of the order, extracted above, we consider that there is no infirmity in the view taken by the adjudicating authority in this regard also.

18. The Revenue in their appeal had pleaded that in the facts and circumstances of the case, the quantum of penalty and redemption fine was not commensurate with the gravity of the offence. The duty evaded had been arrived at Rs. 14.83 lakh and a consolidated penalty of Rs. 10 lakh had been imposed on AIL. For various contraventions of the law, a redemption fine of Rs. 15.50 lakh had also been imposed. The Revenue had referred to the total value of the offending goods which came to around Rs. 1.28 crore. The adjudicating authority had dealt with the

different facets of the allegations. His appreciation of the evidence on whose basis the allegations had been sought to be substantiated is also detailed. Keeping in view the nature of the goods and the nature of the transactions involved in these proceedings, we do not find any justification to interfere with the view taken by the adjudicating authority.

19. In the case of Jain Exports Pvt. Ltd. v. UOI, 1993 (44) ECC 189 (SC) : 1993 (48) ECR 225 (SC), the Supreme Court had observed in para 6 of their judgment that the quantum of the redemption fine would depend on the facts and circumstances of each case and no hard and fast rule could be laid down in that behalf and that the fixation of the quantum of the redemption fine will depend on the totality of the facts and circumstances of the case. In the case of Gaekwar Mills Ltd. v. The State of Gujarat, 1976 (37) STC 129 (Guj), AHD, the Gujarat High Court had observed that as what should be the quantum of penalty in a particular case is purely a question of discretion to be exercised having regard to the circumstances of each case. In the case of N.Nagendra Rao & Co. v. State of Andhra Pradesh, 1984 (55) STC 243, AP, Hyderabad, the Andhra Pradesh High Court had observed that in determining the quantum of penalty, the conduct and the attitude of the assessee are relevant.

20. Some other issues have also been raised which we consider that they had been adequately dealt with by the adjudicating authority. There is no challenge to classification. The assessments had been made on second check basis under Section 17 of the Customs Act, 1962, extracted below: (1) After an importer has entered any imported goods under Section 46 or an exporter has entered any export goods under Section 50 the imported goods or the export goods, as the case may be, or such part thereof as may be necessary may, without undue delay, be examined and tested by the proper officer.

(2) After such examination and testing, the duty, if any, leviable on such goods shall, save as otherwise provided in Section 85, be assessed.

(3) For the purpose of assessing duty under Sub-section (2), the proper officer may require the importer, exporter or any other person to produce any contract, broker's note, policy of insurance, catalogue or other document whereby the duty

leviable on the imported goods or export goods, as the case may be, can be ascertained, and to furnish any information required for such ascertainment which it is in his power to produce or furnish, and thereupon the importer, exporter or such other person shall produce such document and furnish such information.

(4) Notwithstanding anything contained in this section, imported goods or export goods may, prior to the examination or testing thereof, be permitted by the proper officer to be assessed to duty on the basis of the statements made in the entry relating thereto and the documents produced and the information furnished under Sub-section (3); but if it is found subsequently on examination or testing of the goods or otherwise that any statement in such entry or document or any information so furnished is not true in respect of any matter relevant to the assessment, the goods may, without prejudice to any other action which may be taken under this Act, be re-assessed to duty.

21. It could not be said in the light of the provisions of Section 17 of the Customs Act, 1962 that prior to the examination of the goods, the assessments were to be deemed to be completed. In this connection para 25 of the adjudication order is relevant.

22. Taking all the relevant facts and circumstances into account, we do not fine any merit in both these appeals. Both the appeals are rejected. Ordered accordingly.