

**Shimnit Machine Tools and Vs. Commr. of Cus.**

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**Court :** Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

**Decided On :** Aug-24-2006

**Reported in :** (2006)(109)ECC274

**Judge :** J Balasundaram, Vice-, A T K.K.

**Appellant :** Shimnit Machine Tools and

**Respondent :** Commr. of Cus.

**Judgement :**

1. The above appeals arise out of the order of the Commissioner of Customs, Nhava Sheva, enhancing assessable value of Button Cells and Battery Cells imported by M/s. Shimnit Machine Tools and Equipment Ltd. (hereinafter referred to as the Importer) under 4 Bills of Entry and confirmed differential duty demands as a result thereof, confiscating of the imported goods under Section 111(m) of the Customs Act, 1962, and since the goods were not available for confiscation, imposing a penalty of Rs. 36,72,659/- under Section 114A in respect of goods covered by 3 Bs/E and penalty of Rs. 28,66,741/- under Section 112(a) in respect of the 4th consignment and imposing penalties of Rs. 10 lakhs and Rs. 5 lakhs respectively on the Director of the importer company and Shri Sandeep G. Singhvi under Section 112(b) of the Customs Act. He has enhanced assessable value of goods covered by Bills of Entry No. 003784, dated 20-8-97 to Rs. 32,65,071 as against the declared Clf value of Rs. 7,68,492; assessable value of goods covered by Bs/E No. 4004, dated 29-8-97 and 1423, dated 11-9-97 to Rs. 74,97,100/- as against the declared CIF value of Rs. 3,28,418/- and Rs. 2,78,495/- and

assessable value of goods covered by B/E No. 351, dated 6-10-97 has been enhanced to Rs. 63,88,640/- as against the declared value of Rs. 43,371/-. The goods covered by the 1st and 4th Bs/E are Maxell Brand Battery Cells while the goods covered by 2nd and 3rd Bs/E are Golden Power Brand Battery Cells.

2. The finding of under-valuation of goods is based upon statements of the Director of the Importer and of the 3rd appellant who is Director of a company called M/s. Suncrown Impex Pvt. Ltd., export declaration filed in Hong Kong with the Hong Kong Customs and Excise department, investigation report of the 1 Hong Kong Customs and proforma invoice and quotation showing higher value.

3. We have heard both sides. We find that in respect of 3 Bills of Entry, the declared values were enhanced and these were finally assessed. The value of Maxell brand batteries covered by Bill of Entry No. 3784, dated 20-8-97 was loaded to Rs. 10,14,842, value of Golden Power Brand Button Cells covered by Bill of Entry No. 4004 dated 29-8-97 was enhanced to Rs. 14,04,000/- and value of Button Cells covered by Bill of Entry No. 1423, dated 11-9-97 was enhanced to Rs. 11,96,000/-. The loading was done on the basis of evidence of contemporaneous import data available with the department and after detailed examination of the goods. Since the Bills of Entry were finally assessed after enhancement of value, there can be no further loading of value as held by the Tribunal in the case of *Informatika Software v. CC(P)*, Kolkata 1997 (73) ECR 348, and *Lord Shiva Overseas* particularly on the basis of quotations/letters/price lists. No export declaration of the supplier is available with the department in respect of Maxell Brand Batteries. The loading on the basis of proforma invoice signed by Nitin and Sanghvi and issued to SANSHO, Japan cannot be relied upon as it is well-settled that value cannot be loaded on the basis of proforma invoice. The export declaration in respect of Golden Power Brand Battery Cells are unsigned photocopies and hence the presumption about their genuineness under Section 139 of the Customs Act is not available to the department in the light of the decision in *East Punjab Traders* 1997 (89) E.L.T. 11 S.C. . Further the declarations are after a gap of about 20 days after the departure of the vessel carrying the goods and further invoices filed with the Hong Kong Customs have not been placed on record.

Further, there are other discrepancies viz that in respect of export declaration form dated 3-9-97, the country of origin has shown as Japan, whereas, the invoice and the Bs/E show China as the country of origin. As regards Bill of Entry No. 351, dated 6-10-1997 in respect of Maxell Brand Button Cells, two Bills of Entry No. 3713, dtd. 3-4-98 and 7681, dated 26-5-98 were produced by the importers before the Commissioner along with supporting invoices. These imports were directly from the manufacturer. However the values shown in those two invoices and Bills of Entry which the importers urged should be accepted for determining value of goods covered by Bill of Entry No.351, dated 6-10-1997 was rejected on the ground that the said two Bills of Entry was provisional. However, there is no evidence that on finalization of assessments, higher value was fixed and in fact by Order No. S/9/177-GATT/98 GVC, dated 31-3-1998, the Asstt. Commissioner of Customs, GATT Valuation Cell, Mumbai has held that the appellant M/s. Shimnit Machine Tools and Equipments Ltd. was not related to M/s.

Maxell and goods imported from Maxell be assessed on merits under Rule 4(1) of the Valuation Rules on the basis of prices shown in Schedule A to the said order which are the same prices shown in the two Bills of Entry Nos. 3713 and 7681, herein above referred to and relied upon by the appellants.

4. In the absence of any contemporaneous imports and in the light of the above, the value of goods cannot be loaded. The transaction value being available and the situation envisaged under Rule 4 of the Customs Valuation Rules being absent, the declared value is required to be accepted particularly when there is no evidence of any contemporaneous imports on identical or similar goods at the same level at a higher value.

5. In the light of the above, we set aside the enhancement of values and penalties imposed under the impugned order and allow the appeals.

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