

Micro Electronics Vs. Collector of Customs

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jan-31-1989

Reported in : (1989)(24)LC179Tri(Delhi)

Appellant : Micro Electronics

Respondent : Collector of Customs

Judgement :

1. This appeal is directed against the adjudication order No.34/85-PREV. dated 2.8.1985 (issued on 6.9.85) passed by the Collector of Customs (Preventive), West Bengal, ordering the confiscation of seized goods under Section 111(d), (m) and (p) of the Customs Act, 1962 with an option to redeem the same on payment of redemption fine of Rs.50,000/- in lieu of confiscation and also to pay duty at the appropriate rate on the revised value.

2. Factual backdrop: The appellants M/s Micro Electronics, Calcutta, inter-alia carries on business of manufacturing video cassettes in their factory at Calcutta, duly registered as a small scale Industrial Unit with the Directorate of Industrial, Cottage & Small Scale Industries, Govt. of West Bengal, Calcutta. They are duly licenced under the provisions of Central Excises and Salt Act, 1944. It was the case of the department that on the secret information that the appellants illegally imported 5000 pcs. of complete Vedio Cassettes in the name of M/s Bharat Laxmi Trading Co. Ltd., Calcutta and M/s East Asia Skin Corpn., Calcutta in the guise of assembling of the component parts and also that they imported full Video Cassettes including jackets, catalogues, tapes fitted with spools, screws and

leaflets which are required to make complete video cassettes, the office-cum-factory of the appellants was searched on 24.11.84 resulting in recovery of 600 pcs. of Video Magnetic tapes valued at Rs. 60,000/-.

The said goods as well as some incriminating documents which were found during the search were seized. Besides notices (detention orders) under Section 110 of the Customs Act, 1962 were also issued covering 5 cases of Video Cassettes without tapes lying at the godown of M/s Bengal Bond, Calcutta; 3 cases Video Cassettes tapes and 1 case of Video Magnetic tapes lying at the godown of M/s Kilburn & Co., Calcutta and one case of Video Magnetic tapes and 300 pcs. of Video cassettes without tapes lying at the factory of the appellants. During the investigation M/s N.N. Bosc & Nephew, authorised Customs House Clearing Agents presented 4 (four) Bills of Entry in the Customs House, Calcutta under Section 46 of the Customs Act, 1962 by declaring the names of the concerned importers as:-Sl.No. Imp.

Bill of Importer's Line No.B/LNo. Vessel's Declara Deptt.

Entry No. name & name & tion in the Sl.No. & and date address Rot. No. B/E date1.

1154 Cash I- M/s 72 SCA 16 M/V Parts of dated 1270 Micro dated Oriental V/Casse- 18.8.84 dt.28/29.9. Electro - 29.6.1984. Crown ttes, V/ 84 (goods nics, 5/5, R/No. Magnetic cleared). Clive 349/84.

tapes in Row, reel on Cal.-I hub.2.

1067 Cash I-M/s East 73 SCA 17 -do- Video 934 dated Asia Skin dated Cassettes 22.8.1984 Corpn., 29.6.1984.

without (Goods 20, tape, cleared) Terette comp.

Bazar St., parts of Cal-73 Video Cassettes3. 1079 B/E M/s 74 SCA 18 -do- Vedio dated under Micro dated Magnetic 28.9.84 process - Electro- 29.6.1984.

tape in goods not nics, 5/5, reel on cleared.

Clive hub, parts Row, of Vedio Cal-1.

Cassettes.4 871 dated W/R. M/s East 75 SCA 19 -do- Vedio 18.10.84 B/E. Asia Skin dated cassettes No. 4964 Corpn., 29.6.84 without dated 20, tape.

15.11.84.

Terette Goods Bazar St., The goods covered by Sl. Nos. 1 and 2 above were cleared for home consumption on payment of duty on the basis of the declaration made therein. The goods covered by Sl. No. 3 were warehoused in the Bengal Bonded Warehouse, Strand Road, Calcutta and the last Bill of Entry under Sl. No. 4 was under process in the Appraising Deptt., Custom House, Calcutta. M/s Micro Electronics showed their names as importers for the goods imported through M/s Bharat Laxmi Trading Co. Ltd. Other two Bills of Entry were shown in the name of M/s East Asia Skin Corpn.

as importers.

3. During the investigation the cargo was also examined and it was found that M/s Micro Electronics imported 5000 pcs. of Video Cassettes without magnetic tape with 5000 pcs. hubs, 25,000 pcs. screws, 10,000 pcs. steel guide rollers, 5000 pcs. plastic jackets covered by another plastic papers, 5000 stickers, 5000 pcs. catalogues marked AKAI Video Cassettes VE 18 made in Japan (i.e. a hub, 5 screws, 2 steel guides, one plastic jacket, one catalogue, one sticker, with one Video Cassette without tape) under importation through M/s East Asia Skin Corpn. under line Nos. 73 & 75 and case Nos. 1 to 10 ex. M.V. Oriental Crown, Imp.

Rot. No. 349/84. Accordingly they imported 5000 pcs. Video Magnetic tapes through M/s Bharat Laxmi Trading Co. Ltd., under Line Nos. 72 & 74 and case Nos. 11 to 14 ex. M.V. Oriental Crown, Imp. Rot. No.349/84. All the components parts including the screws, catalogue and all other accessories required for making complete Video Cassettes without any indigenous parts whatsoever were imported by M/s Micro Electronics. The declared weights of 5 cases of Video Cassette without tape were 140 kgs. gross and 100 kgs. nett., whereas the ascertained weight of 1 case was 110 kgs. nett only. Accordingly, the ascertained

weight of 10 cases of Video Cassettes without tape is 1100 kgs. against the declared weight of 200 kgs. M/s Micro Electronics in connivance with the alleged importers M/s Bharat Laxmi Trading Co. Ltd. and M/s East Asia Skin Corpn. imported undeclared goods viz. catalogues, screws, stickers, jackets covered by another plastic paper and hence the declared weight did not agree with the ascertained weight. The importers M/s Micro Electronics in connivance with M/s East Asia Skin Corpn. failed to declare the aforesaid goods in the Bills of Entry.

They also failed to declare the value of the catalogue, jackets, stickers, screws which amounted to Rs.15,000/- for 5,000 pcs. of Video Cassettes without tapes (i.e. Rs. 2/- on a jacket, 0.50 p. for a catalogue, 0.25 p. for a sticker, Rs. 1.25 for 5 pcs. of screws imported with a cassette). The total comes to Rs. 3/- per pcs. X 5000 pcs. of cassettes equivalent to Rs. 15,000/- and defrauded the Government revenue leviable thereon -hence the goods are liable to confiscation under Section 111(m) of the Customs Act, 1962 for deliberate misdeclaration of the goods and value thereof.

4. As a sequel thereof a show cause notice calling upon the appellants to show cause as to why the subject goods be not confiscated and penalty be not imposed was issued. M/s Bharat Laxmi Trading Co. Ltd., and M/s East Asia Skin Corpn. were also issued show cause notices to show cause as to why the subject goods be not confiscated and penalty be not imposed as they lent their names and licences for importation of the subject goods. A show cause notice was also issued to M/s N.N. Bose & Nephew, authorised Custom House Clearing Agents to show cause as to why their agency licence not be cancelled for contravention of Custom House Agents Licencing Regulations, 1965 as they failed to discharge their obligation as Custom House Agents as stipulated under the aforesaid regulations. Replies to the show cause notices were filed and after the usual adjudication proceedings the Adjudicating Authority while dropping the charges under Section 112 of the Customs Act relating to the penalty, ordered for the confiscation of the seized goods with an option to redeem the same on payment of redemption fine of Rs. 50,000/- in lieu of confiscation and payment of duty at the appropriate rate on the revised value. Hence the present appeal by the appellants only.

5. We have heard Shri V. Sridharan, C.A. the learned authorised representative of the appellants and Shri V.M. Doiphode, learned SDR for the respondent.

6. At the outset Shri V. Shridharan, submitted that the instant appeal relates to the importation of the 4 consignments out of which 2 consignments were cleared for home consumption under Section 47 of the Customs Act. Likewise in respect of the third consignment the Bill of Entry was assessed on October 19,1984 and the goods covering the said Bill of Entry were thereafter removed to the Bengal Bonded Warehouse, Calcutta. On these established facts Shri V. Shridharan submitted that once the goods were so cleared under Section 47 of the Customs Act there was no scope for issuing a show cause notice. As such a step would amount to revision of the order passed under Section 47 which can only be done under Section 130 of the Customs Act. To buttress his arguments he cited the leading case of Jain Shudh Vanaspati Ltd. v.Union of India, 1982 ELT 43 (Del.) wherein it was held that the order passed under Section 47 of the Customs Act attains finality and once the goods are cleared by the Customs Authorities after physical verification and check-up under Section 47 of the Customs Act, issuing of show cause notices for confiscating or imposing the penalty amounts to reviewing of the Order under Section 47 of the Customs Act. However, the Delhi High Court itself has carved out an exception to the said proposition of law laid down by the Court itself to the effect that such finality can be disturbed where the department successfully shows that there was fraud or deliberate suppression. This judgment was followed by this Tribunal in the case of M/s Ajay Exports v. Collector of Customs, 1986 (26) ELT 873 and also in Parker Leather Export Co. v.Collector of Customs, 1987 (29) ELT 53. The same view was also taken in the case of Oswal Woollen Mills Ltd. v. Union of India, 1984 (18) ELT 694 (Tribunal). A single Judge of the Punjab & Haryana High Court also took the same view in the case of Industrial Cables v. Union of India 1986 (25) ELT 33. A Division Bench of the Bombay High Court relying upon the judgment of the Delhi Court rendered in the case of Jain Shudh Vanaspati Ltd. v. Union of India, supra also took the same view in Union of India v. Popular Dyechem, 1987 (28)ELT 63. Refuting the contention raised by Shri V. Shridharan the learned SDR cited case of Laxminarayan v. Collector of Customs, AIR 1961 Cal. 616; Sheikh Mohammad v. Assistant Collector of Customs, AIR 1970 Cal.134; Assistant Collector of Customs

v. U.I. Minerals Ltd. AIR Collector of Customs and Central Excise v. Hindustan Motors, AIR 1975 Cal. 368 and Euresian Equipments & Chemicals v. Collector of Customs, AIR 1980 Cal.188. In the case of Laxminarayan v. Collector of Customs, supra it was held that illegal importation of goods constitutes an offence under Section 167(8) of the Sea Customs Act and, therefore, the Customs Authorities were competent to impose personal penalty, even though the imported goods were removed out of customs barriers in pursuance of an Order of clearance under Section 89. In the case of Sheikh Mohammad, supra it was held that unlawfully imported goods, even though cleared for home consumption upon payment of customs duty were liable to seizure and confiscation under Section 110(1) of the Customs Act,1962.

In the case of Collector of Customs and Central Excise v. Hindustan Motors, supra it was held that if any goods are imported in violation of provisions of Section 3 of the Imports & Export (Control) Act, the goods so imported would be deemed to be imported in violation of the provisions of the Customs Act,1962 and, therefore, the Customs Authorities were within their right to issue the show cause notice for confiscation. In Assistant Collector, Customs v. U.I. Minerals Ltd., supra it was held that clearance under Section 51 of the Customs Act cannot exonerate the exporter from penal proceedings under Section 114 of the Customs Act. In Euresian Equipments & Chemicals v. Collector of Customs, supra it was held that an order by the proper officer permitting clearance and loading of the goods under Section 51 of the Customs Act does not exclude the applicability of Sections 113 & 114 of the Customs Act as the export goods incur the liability to confiscation under Section 113 of the said Act.

7. We have considered the arguments. In the instant case a show cause notice was issued to the appellants inter-alia alleging that the appellants were guilty of mis-declaration, mis-representation of facts and also for defrauding the Government and ultimately these charges were found established by the Adjudicating Authority vide his impugned order. Thus applying the exception carved out by the Hon'ble Delhi High Court in the case of Jain Shudh Vanaspati Ltd. v. Union of India, supra we hold that no exception can be taken for issuing the show cause notice for confiscating and imposing the penalty in the instant case.

At this stage the case of N.Devidas and Company v. Collector of Customs, Bombay decided on 25.2.87 [since reported in 1987 (29) ELT 247 by this Tribunal] may also be cited with advantage. In that case also the same contention that when the goods were cleared under Section 47 of the Customs Act for home consumption, imported goods cannot be confiscated under Section 111 by way of issuing show cause notice, was raised. Repelling the contention the Tribunal held that - "7. Confiscation is an act of appropriation of private property for State or Sovereign use and usually been the result of the doing by the owner of some prohibited act. The seizure and appropriation of property as a punishment for breach of the law whether municipal or international was held to be confiscation in (1947) Ch. 629 (Frankfurter v. W.L. Exner). A proceeding for confiscation is one in rem rather than one in personam - like e.g. penalty under Section 112 of the Act - one in relation to the goods rather than in relation to the person in any way concerned (AIR 1974 S.C. 859 - Collector of Customs v. Boomull). Once their value had been misdeclared, they are impressed with the character of misdeclared goods and, consequently, offending goods which could, even after clearance, be confiscated. Liability to confiscation, declared in Section 111 of the Act, regardless of clearance. Hence the power to search premises (S.105) or conveyances (S.106) or inspect places of storage of notified goods (S.106A) and the power of seizure (S.110).

If the goods cease to be liable for confiscation after clearance, these powers would be rendered nugatory." 8. In view of the above we reject the contention raised by Shri V.Sridharan on behalf of the appellants and proceed to decide the case on merits.

9. Shri V. Sridharan on merits contended that all the goods in question under the 4 consignments were lawfully and validly imported by M/s East Asia Skin Corpn. and M/s Bharat Laxmi Trading Co. Ltd., and were lawfully and validly purchased by the appellants from the said parties on High Seas sale basis as would appear from the High Seas sale agreements executed between the appellants and the said parties separately. As such there were no contravention whatsoever of any of the provisions of law in respect of the said goods. Elaborating the arguments he submitted that the goods imported under the 4 different consignments were

"spares" and, therefore, were validly imported in terms of para 186(9) of the Import & Export Policy April 1983-March 1984 and all these 4 consignments should have viewed separately and as they were spares they could not be said to constitute as complete video cassettes as done by the Adjudicating Authority and drew our attention to the findings recorded by the Adjudicating Authority in para 17 which runs thus - "(17) Goods imported under the four consignments are nothing but complete video cassettes in S.K.D. condition and hence the same are not spare parts as defined in Chapter-2 under Serial No.II of the Import Policy, and hence the assessment under the aforesaid goods under serial No. 186(9) of the Policy was erroneous. Thus the 2nd shipment was seized alongwith other goods wrongly classified and/or cleared by M/s Micro Electronics or others."Union of India v. Tarachand Gupta & Bros., AIR 1971 SC 1558 wherein it was held that the mere fact that the goods imported were so complete that when put together would make them motor cycles and scooters in C.K.D.condition, would not amount to a breach of a licence or entry 295 of Sec.II of Para IV of Schedule-I of the Import Trade Control Policy for the period July-Dec.1956. He also cited the case of Collector of Customs v. Mitsunoy Electronic Works, 1987(30) ELT 345 wherein a Division Bench of the Calcutta High Court also took the same view. In that case it was argued for the Customs Authorities that if all the consignments covered by all the Bills of Entry in the case of three Export Houses are assembled together, there will be complete T.V. sets and as such their import was prohibited. Repelling the contention their Lordships held that "such a course, however, cannot be adopted to find out whether individual licence covers the goods imported. It is a sheer coincidence that all the consignments have arrived at a time. One has to look into the respective licence. The writ petitioners may have purchased all the articles covered by all the licences but that cannot be a ground for withholding the goods alleging that complete T.V. sets have been imported. We are, therefore, unable to accept this contention."Girdharilal Bansidhar v.Union of India, AIR 1964 SC 1519 which was distinguished by the Hon'ble Supreme Court in the case of Union of India v. Tarachand Gupta, supra.

Shri Doiphode also cited the case of McDowell & Co., (1985) 59 STC 277 to emphasise that the intention of the parties should also be looked into or the purposes of deciding the controversy in hand.

12. We have considered the arguments and find that in the facts and circumstances of the case the contention raised by Shri V. Shridharan has no force. The Adjudicating Authority has, as stated above, held that the goods imported under the four consignments were nothing but complete video cassettes in SKD condition and, therefore, the same were not spare parts as defined in Chapter 2 under Serial No.II of the Import Policy. We find no reason to differ from this finding. The case of Union of India v. Tara Chand Gupta & Bros., supra cited by the learned counsel for the appellants is distinguishable on the facts of that case. The said case of Tara Chand Gupta related to import of parts or component parts to manufacture Motor-cycle and Scooters. It was not a case of import of spare parts imported for repairs and replacing. One can understand import of component parts in convenient lots which, by clubbing would give a complete article in SKD or CKD condition. This is what happens under a screw driver technology where a local manufacturer does not add any indigeneous parts whatsoever. But we cannot understand import of complete articles in CKD/SKD condition for servicing, replacement/repair market. For replacement and repairs, the particular part or parts which go bad have only to be substituted by new spares.

There is no question of substituting the complete article by a new one.

That would not be a case of repairs and a complete article imported cannot be called "spare part". Thus, while the analogy of Tara Chand's case, supra may be applicable to cases of import of parts or component parts by actual users/manufacturer, the same analogy would not appear to hold good for import licence for 'Spares'. For the same reasons the case of Collector of Customs v. Mitsuny Electronic Works, supra is also not apt to the present case. After rejecting the said contention we now proceed to examine as to whether the imported goods were 'spares' and, therefore, permissible under paragraph 186(9) of the said policy.

13. From the impugned order we find that on examination of the cargo it was found that 5000 pcs. of Video Cassettes without magnetic tape with 5000 pcs. hubs, 25000 pcs. screws, 10000 pcs. steel guide rollers, 5000 pcs. plastic jackets

covered by another plastic papers, 5000 stickers, 5000 pcs. catalogues marked AKAI Video Cassettes VE 180 made in Japan (i.e. "a hub, 5 screws, 2 steel guides, one plastic jacket, one catalogue, one sticker, with one Video Cassette without tape) were imported and the Adjudicating Authority held that the said goods could not be imported in terms of para 186(9) of the said Policy and held as follows - "(16)...The licences produced at the time of assessment under Serial No. 186(9) of the Import Policy of AM 83 are not valid to cover the importation of magnetic tapes on hubs which fall under S. No. 561 and Sl. No. 20 of Appendix 3 of Import and Export Policy April 83 - March 84. Under the said policy the above goods (i.e.

magnetic tapes) cannot be allowed to be cleared under item 186(9) wherein it has clearly been stated that the items appearing in the Appendices 3, 6, 8, 15 and 30 shall not be allowed under the Additional licences." As regards the other items the Adjudicating Authority held the importation as illegal holding as follows :- "(18) The jackets imported alongwith empty video cassettes fall under the category of packing materials under Chapter 17 Serial No.138/1 of the Policy and hence the packing materials cannot be imported by any one other than actual users. In this case neither M/s Bharat Laxmi Trading Co. Ltd. nor M/s East Asia Skin Corpn. are the actual users of the subject goods and they cannot import the packing materials. On the contrary, M/s Micro Electronics are not allowed to import the hardware and packing materials (i.e. screws and jackets) which were required to be indigenously made according to the condition laid down by the Directorate of Cottage & Small Scale Industries, West Bengal. They also failed to declare the stickers, jackets and screws on the Bills of Entry although these were imported alongwith the empty cassettes without tapes. They also failed to pay duty thereon....." 14. Attacking the said findings Shri V. Sridharan contended that the magnetic tape and hubs were spares and, therefore, the importation was valid in terms of para 186(9) of the said Import Policy. In reply Shri Doiphode supported the impugned order.

15. We have considered the arguments. The import of spares of the items falling under certain Heading Nos. of schedule 1 to the Imports (Control) Order, 1955 was permissible at the relevant time in terms of para 186(9) of the aforesaid Policy

subject to the restrictions that items appearing in the Appendices 3, 6, 8, 15 and 30 shall not be allowed. The said para reads as follows :- "(9) Additional Licences will also be valid for import of spares of the items falling under following Heading Nos. of Schedule 1 to the Imports (Control) Order, 1955:- .

The import of these spares shall be subjected to the condition that (i) the c.i.f. value of the spares imported shall in all not exceed Rs. two lakhs per Export House, within the value of the Additional Licence, and (ii) items appearing in the Appendices 3, 6, 8, 15 and 30 shall not be allowed. The value limit of Rs. 2 lakhs will be Rs. 5 lakhs in the case of export houses referred to in sub-para (5) above."

16. Spare has been defined in para 5(11) of the said Policy as follows :- "(11) 'Spare' means a part or sub-assembly or assembly or substitution, i.e. ready to replace an identical similar part or sub-assembly or assembly, if it becomes faulty or worn out, and includes an accessory (or attachment) in the same regard." 17. Electronic items such as Audio Cassette without tape (c-o), video magnetic tapes in hubs etc. appears at S.No. 561 in Appendix 3 of the said Import Policy. As such in our view the Adjudicating Authority was right in holding that these could not be imported in terms of para 186(9) of the said Policy.

18. At one stage it was also argued by Shri V. Sridharan that the import licence of M/s Bharat Laxmi Trading Co. Ltd. was issued under the Import Policy for 1982-83 and under the relevant provisions the said licence continued to be valid for import of goods mentioned in para 186(9) of the Import Policy for 1982-83. According to him the Video Magnetic Tapes on hub were not covered by Appendices 3, 6, 8, 15 and 30 of 1982-83 Import Policy. In a nutshell his submission was that under 1982-83 Import Policy the importation of magnetic tapes on hub in question was permissible. Hence the question as to whether these goods were permissible under Import Policy for April 1983-84 or not was irrelevant. In reply it was contented by the learned SDR that for an Import to be valid, it should not only be in accordance with the import licence for the policy year in which it was issued but also in accordance with the provisions of the policy in force at the time of import. We have considered the submissions and are of the view that it is not necessary for us to consider this contention in view of our findings that the four imported consignments in question were nothing but complete Video cassettes in SKD

condition and hence the same were not "spare parts" as defined in the Import Policy and further that neither M/s Bharat Laxmi Trading Company Limited nor M/s East Asia Skin Corpn. were the actual users of the subject goods and consequently cannot import the spares under Chapter 17 Serial No. 138/1 of the Policy.

19. As regards the import of screws, jackets and stickers Shri V.Sridharan contended that the same are always supplied by the foreign suppliers alongwith plastic cases without any extra charge. He also submitted that the screws are also covered Under the description video cassette (c-o) without tape and parts thereof. To support his contention he relied upon the clarification given by the Chief Controller of Imports & Exports in his letter dated 17th Dec. 1982 containing clarification of itemwise Import Policy for 1982-83. He further submitted that stickers/steel guide rollers/catalogues are also supplied free by the Foreign Suppliers and there was no question of any separate import thereof. Likewise he also submitted that plastic jackets are supplied without any extra charge with the video cassettes without tape (c-o). We have considered the submissions. As regards screws the Adjudicating Authority had held that the same could not be imported in terms of para 186(9) of the said Policy because screws will attract Sl. No. 509 which speaks of "Mild steel wood screws/machine screws". Likewise jackets imported alongwith empty video cassettes fall under the category of packing materials under Chapter 17 Sl. No. 138(1) of the Policy and hence the packing materials cannot be imported by anyone other than the actual users and since in the instant case neither M/s. Bharat Laxmi Trading Co. Ltd., nor M/s. East Asia Skin Corpn., were the actual users of the subject goods they could not import the packing materials. The Adjudicating Authority had further opined that on the contrary the present appellants were not allowed to import the hardware and packing materials (i.e. to say screws and jackets) which were required to be indigenously made according to the condition laid down by the Directorate of Cottage & Small Scale Industries, West Bengal and further there was a failure to declare the stickers, jackets and screws on the Bills of Entry although these were imported alongwith the empty video cassettes without tapes and also failed to pay duty thereon. On consideration we find no reason to differ from the findings recorded by the Adjudicating Authority.

20. By the impugned order the Adjudicating Authority had also revised the value and demanded the appropriate duty on the revised valued findings as follows - "18...They also failed to declare the stickers, jackets and screws on the Bills of Entry although these were imported along with the empty cassettes without tapes. They also failed to pay duty thereon.

The value declared for the goods under importation did not cover the value of the jackets valued at Rs. 2/- per piece, Catalogue at Rs. 0.50P per piece, Stickers at Rs. 0.25P per piece and Screws at Rs.1.25 per 5 pieces imported alongwith an empty video cassette without tape. The total declared net weight of the 10 cases of Video cassettes without tapes is 200 Kgs. whereas the ascertained nett weight is 1100 Kgs. The importer, M/s. Micro Electronics deliberately misdeclared the weight. They also failed to supplement the manifest before clearance of the goods. The excess weight appears to be partially for non-inclusion of the weight of the jackets, screws and stickers and hence they misdeclared the correct weight of the subject consignments. The value of the complete video cassettes per piece is Rs.75/-(c.i.f.) whereas they declared Rs.11.00 per piece (c.i.f.) empty video cassettes and Rs.22/- (c.i.f.) for magnetic tapes on hubs. They also failed to declare the value of the jackets, stickers and screws for the purpose of assessment and hence they failed to pay duty on the correct assessable value."

21. Attacking the aforesaid demand of duty Shri V Sridharan submitted that the Adjudicating Authority erred in holding that the value of the complete video cassettes has to be taken as Rs. 75/- per piece.

Because, there was no import of complete video cassettes in the instant case and there was or could be no question of the value of the imported goods being determined on the basis of the value of complete video cassettes. Further in any event nothing whatsoever has been stated in the impugned order as to how and on what basis the said value of Rs. 75/- per piece has been sought to be taken and adopted by him and therefore the valuation made by the Adjudicating Authority is only arbitrary and illegal. During the pendency of the appeal the appellants moved an application to produce certain invoices (listed at Sl. Nos.

41, 43, 44, 49, 50, 51 and 52 of the paper book) evidencing purchase of video cassettes without tapes to indicate the prices at which video cassettes without tapes were being sold in the course of international trade and sought out permission to produce the same by way of additional evidence. In the application for seeking permission to produce the said documents by way of additional evidence it was contended by the appellant that while passing the impugned order, the Adjudicating Authority arbitrarily without granting any opportunity to the appellants and without any evidence recorded its findings that the complete video cassettes per piece is valued at Rs. 75/-. On these prepossession it was submitted by the appellants that the aforesaid documents would be necessary for a proper disposal of the issue. At this stage it may be stated that during the course of the hearing of the appeal while challenging the valuation made by the Adjudicating Authority the aforesaid documents which the appellants in their application earlier sought to produce by way of additional evidence were not referred to may be due to inadvertence. On consideration of the arguments we feel that no opportunity was given by the Adjudicating Authority on the point of valuation to the appellants and the aforesaid documents are relevant for determining the valuation. As such we think it proper to set aside the valuation made by the Adjudicating Authority of the complete video cassettes at Rs. 75/- per piece and remand the case for re-determining the value.

22. In the result we confirm the confiscation of the seized goods with an option to redeem the same on payment of redemption fine of Rs. 50,000/- in lieu of confiscation but set aside the demand of duty at the appropriate rate on the revised value directing the Adjudicating Authority to value the goods afresh after giving proper opportunity to the appellants and demand the duty accordingly.

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