

Puja International Vs. Collector of Customs

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jan-18-1994

Reported in : (1995)(76)ELT69TriDel

Appellant : Puja International

Respondent : Collector of Customs

Judgement :

1. The first three appeals are filed by the M/s. Puja International and its partners and remaining appeal No. C/2344/91-A is filed by the department against the common impugned order dt. 19-6-1990 passed by the Additional Collector of Customs, New Delhi.
2. Hence these appeals are clubbed together and are being disposed of by this common order.
3. These appeals involved question having a relation to the value of the goods for the purpose of assessment and dispute is in respect of valuation. M/s. Puja International imported from Singapore a consignment of 320 pieces of tube & fin type of cooling coils with expansion valve and 600 pieces of 12 volts D.C. motors for car air conditioners. In the bill of entry the value declared by them was at Singapore \$ 25 per piece for cooling coils with expansion valve and Singapore \$ 18 per piece for motor. According to the department the value declared by them for the goods was very low. It was ascertained that in case of import of cooling unit assembly by M/s. Subrose Ltd., New Delhi, the value of the cooling unit was

declared yen 7052 per piece (FOB) which was approximately equal to Singapore \$ 100 pieces and in the case of a quotation obtained from Singapore the value was seen to be Singapore \$ 60 and Singapore \$ 20 respectively for cooling coils and motor. Based on this information, show cause notice was issued as to why duty should not be assessed in the case of cooling coils. Taking value at Singapore \$ 60 per piece and the duty on motor taking the value as Singapore \$ 20 per piece. After considering the reply to the show cause notice and hearing submissions made by the party, the Additional Collector who adjudicated the proceeding held that the value declared for imported cooling coils is not acceptable. He ordered that CIF value of Singapore \$ 60 per piece cooling indicated in the show cause notice was reasonable and should be adopted for assessment of cooling coils. He held that there is no sufficient ground to enhance the value declared for the motor in the absence of the import of similar goods at higher price. On the charge of misdeclaration in case of cooling coils, he ordered for confiscation under Section 111(m) of the Customs Act by giving option to redeem the goods on payment of redemption fine of Rs. 5 lakhs. He also imposed penalty of Rs. one lakh on M/s. Puja International and imposed one lakh each on partners Sh.

V.C. Chorasias and Sh. L.V. Vyas. Aggrieved by the order in respect of valuation of cooling coils with expansion valve and consequent fine & penalty, the parties have filed appeals and similarly in respect of valuation of motors feeling aggrieved by the said order the department has also come by way of appeal. Hence, these four appeals.

4. We have heard Sh. L.P. Asthana, the learned Advocate for the assessee and department was duly represented by Smt. C.G. Lal, the learned SDR.5. Shri L.P. Asthana, the learned Counsel submitted that at the time of issue of show cause notice the department relied upon the evidence of an import made by M/s. Subrose Ltd., New Delhi and quotations of M/s.

Precision Auto Air Conditioning (P) Ltd., Singapore. Quotations is not a proof nor can be relied upon as it was fabricated by the trade rivals in this case and same has been confirmed by the letter issued from M/s.

Precision Auto Air Conditioning (P) Ltd. Furthermore, this quotation was discarded by the Adjudicating Authority during the adjudication proceedings observing that there is no evidence on record of actual import of similar goods [sic] at higher price while accepting the transaction value in the case of motors. But he erred in relying upon the import made by M/s. Subrose as similar goods. The goods imported by M/s. Subrose Ltd. were neither identical goods nor similar goods. The goods imported by M/s. Subrose Ltd. are altogether different since they imported customs built evaporators of Japanese origin (serpentine type) and are used in Maruti Car. The appellants imported cooling coils from Singapore of Malaysia origin and they are not fit for Maruti Car. He also demonstrated both the items to show that they are altogether different in nature. He said that in the appeal filed by the department, the department has chosen to produce note sheet from the file SIS dt. 2-5-1989 to show that detailed enquiry has been done with reference to imports and quotations from M/s. Precision Auto Air Conditioning (P) Ltd., Singapore were got verified through D.R.I.office at New Delhi, from the First Secretary at Hongkong. Note sheets indicate intention to make enquiry, but no such enquiry has been done and however if any, was not revealed to the party. Further quotation from M/s. Precision Auto Air Conditioning (P) Ltd. was not verified by the First Secretary at Hongkong as it was stated and mere 'seen' does not amount to 'verification' as it was observed by the Tribunal in the case of Malwa Vanaspati & Chemical Co. Ltd., Indore v. Collector of Central Excise, Indore, reported in 1988 (35) E.L.T. 693, that remarks, 'seen' written below the memorandum of approval by the Assistant Collector not tantamount to approval of classification. Further Department wanted to introduce the proforma invoice issued by M/s.

Uniden Systems, Singapore to appellants by way of additional evidence which was recovered from M/s. M.M. Enterprises in connection with search. Documents seized in the premises of third party cannot be used against the appellants and in support of his contention he referred to the decision of the Supreme Court in the case of K.T.M.S. Mohammed and Anr. v. Union of India, reported in 1992 (40) ECC 352 (SC). The document seized with third party cannot be accepted as such and even if the department wanted to rely upon the document it should be accepted in to as the price therein confirms the price of the imported goods.

Quotations cannot be relied upon as it was not followed by import and import made by M/s. Subrose Ltd. cannot be compared with that of imports made by the appellants as they are not identical goods and quantity imported by M/s. Subrose Ltd. is also not known. On the other hand, sufficient evidence was produced by the appellants to show that similar imports were made by others at similar price but same was rejected by the Adjudicating Authority without valid reasons. In support of his contention that invoice value cannot be discarded without valid reason and burden lies on the department to prove undervaluation with contemporaneous evidence and comparison of value of goods should be same in respect of physical characteristics, quality, reputation, country of origin and timing of import, he referred to the number of decisions including following decisions :-Vellore Roller Flour Mills Pvt. Ltd. v. Collector of Customs - 1991 (56) E.L.T. 659P.A.C. Systems Pvt. Ltd. v. Collector of Customs -1992 (58) E.L.T. 131Satya Vijay Exports Pvt. Ltd. v. Collector of Customs -1991 (51) E.L.T. 457 He submitted that at the time of importation it was a proprietary concern and penalty cannot be imposed on proprietary concern and proprietor since proprietor and proprietary concern are not different entities as it was held in the case of Hasmukh Dalpatrai Ganatra and Anr. v. Collector of Customs, reported in 1989 (30) E.L.T. 782 and in the case of V.K. Thampi v. Collector of Customs and Central Excise, Cochin, reported in 1988 (33) E.L.T. 424. Referring to the decisions of the Supreme Court in the case of Sanwat Khan and Anr. v. State of Rajasthan, Akbar Badruddin Jiwani v. Collector of Customs, reported in 1990 (47) E.L.T. 161 (Supreme Court), he submitted that suspicion cannot take place of proof and penalty cannot be imposed in the absence of mens rea.

6. Arguing for the Revenue Smt. C.G. Lal submitted that this is a case of underinvoicing and misdeclaration since the country of origin was not mentioned at the first instance and subsequently claimed goods of Malaysia as against Japan. Country of origin has become clear from the proforma invoice and since the value declared by the appellants was very low, detailed enquiry was conducted as can be seen from the notesheets and based upon the evidence that similar goods were imported at point of time the value was enhanced. She said that imports made by M/s. Subrose Ltd. are not identical goods, not they are used as supportive evidence and taking into consideration country of origin, nature, value

and quantity of goods i.e. 320 pieces as against 70 pieces sufficient allowance was given while determining the value of the imported goods in this case as it was held in the case of Sarin Sons v. Collector of Customs, reported in 1993 (67) E.L.T. 418. She argued that quotation of M/s. Precision Auto Air Conditioning (P) Ltd., Singapore is the main evidence which has to be relied upon in view of the fact that the then Assistant Collector (SIB) observed that the price quotation issued by M/s. Precision Auto Air Conditioning (P) Ltd., Singapore has since been verified and authenticated by the Consular department Embassy of India, "Hongkong" and this has to be accepted as evidence under Section 35 of the Evidence Act. She cited the decision of Supreme Court in the case of Harpal Singh and Anr. v. State of Himachal Pradesh, reported in [AIR] 1981 Supreme Court 361 wherein it was held that entry made by the concerned official in discharge of his official duties and certified copy of that entry is an admissible [evidence] under Section 35 of the Act and examination of that official is not necessary. She also referred to the decision in the case of Collector of Customs, New Delhi v. Shri Kewal Kishore Malhotra reported in 1989 (41) E.L.T. 89 (Tribunal) She said that quotation furnished by foreign supplier itself is sufficient to be the basis for determining the assessable value of imported goods and she referred to the following decision in support of her contention :-Sharp Business Machines (P) Ltd. v. Collector of Customs - 1990 (49) E.L.T. 640 (S.C.);Gapp's Industries Inc. v. Collector of Customs - 1992 (60) E.L.T. 605 (Tribunal);Muchhala Consultants v. Collector of Customs - 1993 (64) E.L.T. 146 (Tribunal);Popular Exports (P) Ltd. v. Collector of Customs - 1993 (67) E.L.T. 695 (Tribunal).

7. She said that actual value cannot be proved with mathematical precision relying upon the decision in the case of Poonam Plastic Industries v. Collector of Customs, reported in 1989 (39) E.L.T. 634 and also referred to the decision of the Supreme Court in the case of Collector of Customs and Ors v. D. Bhoormutt, reported in 1983 (13) E.L.T. 1540 (S.C.). She submitted that evidence relied upon by the party was duly considered and rejected by the Additional Collector and in the facts and circumstances of the case the penalty was justified and there was no evidence to show that it was a proprietary concern at the time of importation and on the other hand, Sh. L.V. Vyas signed the documents as partner of the concern.

8. We have considered the matter. We find that the goods imported by M/s. Subrose Ltd. are cooling unit assembly whereas the goods imported by the appellants are cooling coils with expansion valve. On going through the facts and on seeing the items imported by M/s. Subrose Ltd. with reference to nature, type, quality and use, the items imported by M/s. Subrose Ltd. are neither identical goods nor similar goods and cannot be said to be a contemporaneous evidence. It is well settled that burden lies on the department to prove undervaluation with contemporaneous [evidence] and comparison [of] value of the goods should be same in respect of physical characteristics, quality reputation, country of origin and timing of importation. In the facts and circumstances of the case, the value of the goods imported by M/s.

Subrose cannot be compared with that of goods imported by the appellants in determining the value of the goods. Other evidences relied upon by the department in determining the value are quotations from supplier and proforma invoice procured from M.M. Enterprises during search. Proforma invoice refers to a country of origin but confirms the price of invoice value. This piece of evidence is favourable to the party and there is force in the argument advanced by the appellants' Counsel that document as such should be accepted as a whole and not in part. Next remains quotations from supplier which was heavily relied upon by the department during the course of arguments.

Quotation from the foreign supplier as such cannot be discarded if it was genuine and issued by the supplier and followed by imports. In the instant case issuance of quotation is not free from doubt. Sufficient evidence was not brought on record to show that the document [was got] verified by the Consular Department, Embassy of India at Hongkong when it was specifically challenged that it was shown but the authenticity of the document was not verified and in view of the categorical denial of such quotations from the supplier. Note-sheet placed on record indicates intention of the department to make enquiry but that itself is not sufficient to arrive at the conclusion that detailed enquiry has taken place in the absence of actual enquiry as it was rightly pointed out by the appellants' Counsel. Assessable value cannot be determined on the basis of mere assumption and presumption. Suspicion however grave but it will not substitute positive proof, sufficient cogent

evidence must be brought on record to reject transaction value. The cases referred to by the learned SDR including M/s. Sharp Business Pvt.

Ltd. (Supra) with reference to issue of valuation on the basis of quotations are not applicable to the facts of this case since the correctness of valuation itself is under challenge in this case. In view of discrepancy with reference to issuance of quotation from the supplier and in the absence of detailed enquiry brought on record, benefit of doubt should be given to the party. We do not find any justification in rejecting the transaction value. Accordingly, the value of the goods has to be determined based on invoice price.

9. With these observations, the appeals filed by the parties are allowed with consequential relief and Appeal No. C/2344/91-A filed by the department is hereby dismissed.

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