

Maya Enterprises Vs. Collector of Customs

Maya Enterprises Vs. Collector of Customs

SooperKanoon Citation : sooperkanoon.com/7316

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Feb-14-1994

Reported in : (1994)(71)ELT817TriDel

Appellant : Maya Enterprises

Respondent : Collector of Customs

Judgement :

1. M/s. Maya Enterprises, Kashmere Gate, Delhi have filed the present appeal against the order-in-original No. KCH/Collr./14/91, dt.

8-3-1991, passed by the Collector of Customs, Kandla.

2. M/s. Maya Enterprises, the importers have imported evaporators for car air-conditioning, from Singapore during the year 1990. In the show cause notice dt. 8-12-1990 issued to the importers it was alleged that: (1) the goods have been mis-declared : they were found to be complete cooling unit with blower assembly, as against the 'evaporator' declared; (2) the value of the goods has been under-declared with a view to evade payment or appropriate customs duty; and (3) the subject goods have been imported unauthorisedly in as much as they were not covered by the endorsement on the licence produced for clearance.

3. It was also observed that some of the goods were without marks; in some cases markings were torn off in identical manner on all the sides.

There were also some discrepancies with regard to the number of pieces and the country of origin.

4. The importers had taken the matter to the Gujarat High Court who had given some directions to the department for provisional release of the goods, and the early disposal of the case.

5. The Collector of Customs, Kandla who adjudicated the matter, came to the following findings : (1) The country of origin of 210 pieces has been mis-declared as Thailand while the goods were of Japanese origin.

(2) The goods imported were evaporator assembly and that the evaporator assembly was more than a evaporator.

(3) Prices for customs purposes have been under-declared. The correct assessable values were determined as Singapore \$ 220 per piece for goods of Japanese origin and as Singapore \$ 165 per piece for goods of Thai origin, as against the declared assessable value of Singapore \$ 60 and Singapore \$ 45 respectively.

(4) The import was unauthorised as the licence produced for clearance was not valid and did not cover the goods imported.

6. The differential customs duty of Rs. 64,72,362/- was demanded. A redemption fine of Rs. 20 lakh and a penalty of Rs. 5 lakhs was imposed.

7. The matter was fixed for hearing on 21-12-1993 when Shri G.L. Rawal, Advocate with Shri Kuljeet Rawal, Advocate appeared for the appellant.

Smt. C.G. Lal, SDR represented the respondent.

8. Shri G.L. Rawal, the learned Advocate stated that at the time of import the goods were covered by the licence produced for clearance and that the licence was suspended on 7-2-1991, while the show cause notice had been issued in this case on 8-12-1990. It was also stated that at the time of filing the Bill of Entry there was no requirement for producing the manufacturers' invoice and that the assessable value could not be fixed on the basis of the quotations. He dealt with

the facts of the case in detail and submitted that the charge of under-valuation has been made on the basis of the insufficient and inadequate evidence. In support of his arguments the learned Advocate cited a number of decisions. In particular he referred to the Supreme Court decision in the case of UOI v. Sampat Raj Dugar, 1992 (58) E.L.T.163 (SC) wherein it has been held that if on the date of the import the goods were covered by a valid import licence then the subsequent cancellation of licence is of no relevance; nor does it retrospectively render the import illegal. He also referred to the Supreme Court decision in the case of East India Commercial Co. Ltd. v. CC, AIR 1962 SC 1893 wherein it has been held that a licence obtained by fraud is only voidable; it is good till avoided in the manner prescribed by law.

The learned Advocate also referred to Calcutta High Court's decision in the case of Sandeep Agarwal v. CC, 1992 (62) E.L.T. 528 (Cal.) wherein it has been held that a higher quotation by itself is not adequate to prove under-valuation.

9.1 Smt. C.G. Lal the learned SDR replied that the charges in this case have been proved on the basis of the facts on record; the marks on the packages were torn off in identical fashion; the goods were not 'evaporator' only, were evaporator assembly, were something more than the evaporator; there was mis-declaration in quantity and the licence did not cover the goods. Relying upon the opinion of the Chief Controller of Imports and Exports the learned SDR submitted that the import was unauthorised. Dealing with the facts she submitted that the correspondance produced by the importer did not meet the charge of under-valuation, and on the other hand the evidence produced by the department was overwhelming to establish the charge of under-valuation.

The learned SDR cited a number of decisions in support of the points made by her. In particular she cited the following decisions : (1) MJ Exports Ltd. v. CEGAT - 1992 (60) E.L.T. 161 (SC) - opinion given by the Chief Controller of Imports and Exports is binding.

(2) Satellite Engg. v. UOI -1987 (31) E.L.T. 356 (Bom.) - the nearest estimatable equivalent could form the basis for determination of value.

(3) AAR Keyess Imports Corp. v. CC - 1988 (37) E.L.T. 188 (Trib.) - prices prevalent during immediate past years for valid reasons are relevant for the purposes of valuation.

(4) Hind Packaging Industry Ltd. v. CC - 1989 (40) E.L.T. 168 (Trib.) - when the value declared by the appellants was ridiculously low, the Collector of Customs could adopt the value on the basis of the invoice seven month old.9.2 The learned SDR also referred to some other decisions which will be discussed in subsequent paragraphs.

10. In rejoinder the learned Advocate submitted that the policy as on the date of the import was alone relevant. There was valid endorsement on the licence and the subsequent suspension will have no effect on the imports already made. He referred to the following decisions in support of his contention that the import was not unauthorised : (1) CC v. Priyanka Overseas Pvt. Ltd. - 1989 (41) E.L.T. 195 (Cal.) - the validity of the import licence is decided with reference to the date of actual shipment/ description of the goods from the supplying country, and not the date of arrival of the goods at an Indian port.

(2) Dynamatic Hydraulics Ltd. v. CC - 1992 (58) E.L.T. 553 (SC) - Opinion of the import trade control authorities was not binding on customs authorities but nevertheless helpful in resolving the issues.

11. We have carefully gone through the facts and circumstances of the case, and have given our due thought and consideration to the submissions made by both the sides. Both the learned Advocate and the learned SDR have cited a number of decisions in support of their respective contentions. The decision in this case, as will be seen from the succeeding paragraphs, follows from the analysis of the facts. We have accordingly not discussed all the case law cited across the Bar; however, some of them which we considered relevant for the appreciation of the facts, have been referred to by us at appropriate place.

12. The main point for our consideration in this case is whether the value of the goods imported have been correctly declared.

13. First, let us refer to the goods in question. The term 'evaporator' can be used in a narrow sense, and can also be used in a larger sense.

In a narrow sense it refers to the cooling coils; in a larger sense it includes the complete cooling unit, with all accessories and attachments. They come in different shapes and sizes and in differing capacity with different attachments. They are usable in different ways.

In automobile air-conditioning, some of them can be placed under dash-board while some of them are fixed in the rear; some of them are of hang-on type while some may be 'universal'. There could be different type of evaporators for different type and make of the vehicles; vans, trucks, buses, ambulances etc.

14. Now let us see the correspondence leading to the present import.

Under their communication No. Nil dt. 24-4-1990 Maya Enterprises wrote to M/s. Yama Kawa Trading Co. Pvt. Ltd., Singapore requesting their quotation for evaporators suitable for Indian cars. No other details or specifications such as cooling capacity, dimension, airflow etc. were mentioned in that communication. On 22-6-1990 M/s. Yama Kawa wrote a letter to Maya Enterprises (attention Mr. Singh) referring to their enquiry regarding the evaporators and quoting their price. The reference was only to the enquiry and there were no mention of any communication as such. In this communication from the suppliers also there was no reference to any specification, name of the manufacturer, model to which the prices etc. quoted related. Vehicle, the particular car or cars for which the evaporator whose prices were quoted could be suitable, were also not referred to. On 26-6-1990 (in response to letter dt. 22-6-1990) acceptance letter was despatched to the suppliers for 1500 pieces of evaporators (Thai origin). In this order also no other details except number of pieces were mentioned. It is seen that in proforma invoice dt. 5-7-1990, order dt. 12-7-1990, Bill of lading dt. 29-8-1990, commercial invoices dt. 29-8-1990, certificates of origin dt. 30-8-1990, and the Bills of Entry dt 28-9-1990, no details of the items, make, model, specifications etc. were mentioned. None of these communications show as what precisely the importer wanted and what precisely the supplier supplied. It was only on examination of the packages that the goods were found to be evaporators

attached with motorised blower, control knobs expansion valve, thermostat, tube, wiring with harness/housing and stand. The full details were as under : 15. It was seen that the goods were packed in 8+3=11 type of cartons.

In different cartons different types of goods were packed. There was no uniformity as between different packages, and the goods contained in those packages. It was also seen that model numbers were different for different units. Some of the goods of Thai origin were of Formula III brand, while some were without any brand name. Similarly, goods of Japanese origin were of Five Star, Palm Air along with some without any brand. At the same time a uniform price irrespective of model and combination without any details, was quoted Singapore \$ 60 per unit for evaporators of Japanese origin and Singapore \$ 45 for evaporators of Thai origin. There is nothing on record to show as how a uniform price in such circumstances has been charged.

16. As per technical literature presented by the appellants themselves, there are different models of evaporator units, with different specifications and features and for different vehicles. UNICLA have referred their evaporators as cooling unit (refer model U 9101). From the specifications of different models, it is clear that these are complete units with specific features, attachments and housing. The specifications of the blower assembly have been shown separately. In 'Formula' air-conditioning catalogue seven different models of 'Formulae', three of evaporator and three of concealed evaporator have been mentioned.

17. Evaporator assembly as per literature at page 166 of the paper book consists of evaporator coil, blower assembly, blower switch, knob expansion valve, thermostat etc.

18. The Adjudicating Collector of Customs, Kandla had called for and examined the goods. It was found that the following items have been imported in each case:

19. The Collector of Customs has discussed in detail that the goods imported were 'evaporator assembly' which is more than an 'evaporator'.

Although he has come to a finding that there was no mis-declaration in respect of the description of the goods, he has considered this fact relevant for arriving at the

correct value of the goods.

20. In this connection, we may refer to the description of the evaporator in the world book encyclopaedia volume 5 page 98 : "A dehumidifier consists of a set of cold coils, called the evaporator, and a set of hot coils, called the condenser. A fan in the dehumidifier draws moisture filled air from a room and blows it across the coils. The Air loses moisture as it passes over the evaporator and it is reheated to room temperature by the condenser.

The air then re-enters the room, absorbs moisture again and recirculates through the dehumidifier." 21. While we find that the prices declared without any relationship to the various items imported and the correspondence produced do not inspire any confidence, the Collector of Customs, Kandla has relied upon the prices quoted by M/s. Precision Singapore, to M/s. Sanden Vikas India Ltd. Prices quoted by M/s. Precision are itemwise as under : ITEM SUPER NATIONAL8.

Misc. Hardware nuts & bolts 15 10 Total 230 220 22. The appellants have not given any reasons (except denying) as to why the value of the complete set of evaporator of Japanese origin as quoted by M/s. Precision Auto Air-conditioning Co., vide their letters dt. 16-6-1989 and 22-6-1989 should not form the basis for revising their prices upwards, and that the price of cooling coil alone was in the range of the price declared by them for the 'evaporator'.

23. The department is not required to prove under-valuation with mathematical precision. In the case of Collector of Customs v. D.Bhoormul -1983 (13) E.L.T. 1546 (SC), the Hon. Supreme Court have held that the department would be demed to have discharged its burden if it adduces so much evidence, circumstantial or direct as is sufficient to raise a presumption in its favour with regard to the existence of the fact sought to be proved. Paras 43 and 44 of the judgment in that case are extracted below : 24. In the case of Poonam Plastic Industries v. CC - 1989 (39) E.L.T.634 (Trib.), the Tribunal had observed that the department was not to prove actual value with mathematical precision and that reliance on documents was proper when transaction was veiled in secrecy. Para 18 of the Tribunal's order in that case is extracted below : 25. The valuation could be based on quotations. The Hon. Supreme Court in the case of Sharp Business

Machines Pvt. Ltd. v. CC - 1990 (49) E.L.T. 640 (SC) have held that value in quotations could be the basis for assessable value and in certain circumstances the invoice value was ignorable.

26. As we have noted above the correspondence exchanged between the importer and the supplier does not inspire confidence with regard to the prices at which the goods have been sought to be cleared. It is obvious from the actual import that in the documents the term evaporator has been used in a larger sense while the price declared is of the evaporator in the narrow sense.

27. As regards the validity of the licence we find that the licence dt.

20-2-1989 has been transferred in part by M/s. Sound N Image in favour of M/s. Maya Enterprises in terms of para 183(i) and (ii) of the Import policy for 1988-91. It was made clear in the letter of transfer : "In the event of any penalty/damage or loss on account of mis-utilisation, if any, made by you or your transferee you will be fully responsible for the same and we do not own any responsibility and liability for the same." 28. We also find that the Joint Chief Controller of Imports and Exports, under his order dt. 6-8-1991, after taking note of the various submissions made by the licensee/transferees, and the case law cited in support of their contentions, has confirmed the order dt. 18-2-1991 of the Dy. Chief Controller of Imports and Exports, cancelling the additional licence dt. 20-2-1989 under clause 9(1)(a) of the Imports (Control) Order, 1955, on the ground of fraud and misrepresentation.

The case law cited before us had also been quoted before the licencing authorities, who had passed appropriate orders after taking cognisance of the same. The appeal preferred by M/s. Maya Enterprises was also rejected. In Para 11 of his order the Joint Chief Controller of Imports and Exports observed as under : 29. M/s. Maya Enterprises filed a writ petition in the Bombay High Court challenging the order dt. 6-8-1991 of the Joint Chief Controller of Imports and Exports. All the various decisions cited before us were also relied upon by the appellants in their writ petition before the Hon. Bombay High Court, in addition to the various submissions on facts and law. The Hon. Bombay High Court under their order dt. 5-5-1991 passed some interim orders, subject to certain conditions.

It was clarified by the Hon. Bombay High Court that the said licence could not be utilised for any further imports of any item.

30. The Collector of Customs, Kandla has also dealt with this matter in detail in his order-in-original.

31. In the case of MJ Export Ltd. v. CEGAT - 1992 AIR SCW 2384 the Hon.

Supreme Court in para 22 of their judgment have referred to the binding effect of the opinion of the Chief Controller of Imports and Exports derived from para 24(1) of the Import Policy. Para 24(1) of the Import Policy (1988-91) provided as under : "Para 24(1); the interpretation given by the Chief Controller of Imports and Exports, New Delhi in the matter of interpretation of Import Policy and procedures shall be final and will prevail over any clarification given by any other authority and person in the same matter." 32. In the circumstances we do not consider it necessary to go into this aspect of the matter any further. Suffice it to say that as held by the Collector of Customs, Kandla the importation in this case was unauthorised and the goods were liable to confiscation under the provisions of the Customs Act read with the provisions of the Import and Export Control Order and the Import and Export Control Act.

33. As regards the quantum of redemption fine, the Hon. Supreme Court have held in the case of Jain Exports Pvt. Ltd. v. UOI - 1993 AIR SCW 2686 as under in para 6 : "The quantum of the redemption fine would depend on the facts and circumstances of each case and no hard and fast rule can be laid down in that behalf. So also the mere fact that the importers had acted in good faith and bona fide will not entitle them to claim that the entire redemption fine must be waived. Even in such cases the fixation of the quantum of the redemption fine will depend on the totality of the facts and circumstances of the case." "the fixation of the quantum of redemption is in exercise of the discretionary jurisdiction of the authorities under the Customs Act and ordinarily this Court while exercising jurisdiction either under Article 32 or under Article 136 of the Constitution would be slow to interfere with such an order unless it is shown to be thoroughly arbitrary or whimsical resulting in gross mis-carriage of justice." 35. The Tribunal decision under Order No. 773/90-A, dt. 26-3-1990 in the case of Shashi Kant and Co.,

Bombay v. CC relied upon by the appellants has been set aside by the Hon. Supreme Court (refer 1992 AIR SCW 327). The order dt. 6-4-1993 passed by the Collector of Customs, Calcutta referred to by the appellants has no precedence value. It appears that the full facts regarding suspension of the licence, the show cause notice for cancellation and its cancellation on the ground of fraud and misrepresentation, have not been brought to the notice of the Collector of Customs, Calcutta. There is no reference to the Bombay High Court decision dt. 5-9-1991 wherein it was directed that the said licence could not be utilised for any further imports of any item. The learned Collector of Customs, Calcutta has not discussed the validity of the licence in the light of the binding orders passed by the Chief Controller of Imports and Exports, and the order of the Hon. Bombay High Court. On the question of valuation also his findings are mainly based on the argument that there is no basic difference between the evaporator and the evaporator assembly in respect of the car air-conditioner. He has not gone into the question that even if evaporator assembly may be referred to as evaporator, the valuation will not depend upon the nomenclature as such but on the actual goods imported. Ramesh Kumar v. Kesho Ram -1992 AIR SCW 336 the Hon.

Supreme Court have held that the Court is not precluded from taking a 'cautious cognizance' of the subsequent events of fact and law. The Hon. Supreme Court quoted Hughes CJ in (1934) 294 US 600 "and in determining what justice does require, the Court is bound to consider any change either in fact or in law which has supervened since the judgment was entered." 37. Taking all the relevant facts into consideration we are of the considered view that the Collector of Customs, Kandla has correctly rejected the invoice price. We also find no infirmity in the basis adopted by the Adjudicating Collector of Customs for fixing the revised value for purposes of the customs duty.

38. However, taking into consideration all the relevant facts, in the interest of justice we reduce the redemption fine from Rs. 20 lakhs (Rupees twenty lakh only) to Rs. 10 lakh (Rupees ten lakh only] and the amount of penalty from Rs. 5 lakh (Rupees five lakh only) to Rs. 2.5 lakh (Rupees two lakh fifty thousand only).

39. Subject to above the appeal is otherwise rejected and the impugned order is confirmed.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com