

N.K. Aggarwal Vs. Collector of Customs

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Sep-06-1994

Reported in : (1994)(74)ELT83TriDel

Appellant : N.K. Aggarwal

Respondent : Collector of Customs

Judgement :

1. Shri N.K. Aggarwal, proprietor of M/s. Polyviniyl Industrial Corporation, 308/12, Shahzada Bagh, Delhi and Shri M. Walia have filed the above-captioned appeals being aggrieved from the order passed by the Collector of Customs (Appeals), New Delhi. Since both the appeals emerge from the same order and as such both the appeals are disposed of by this common order.

2. Briefly the facts of the case are that a Bill of Entry No. 239612 dated 3rd August, 1992 was filed and the name of the importer was shown as Polyvinyl Industrial Corporation and the value of the goods was declared at Rs. 40,774.00 CIF and an invoice No. 855 dated 30th July, 1992 from M/s. Shing Components (S) Pvt. Ltd., Singapore was produced with the said bill of entry. A declaration form under Rule 10 of the Customs Valuation (Determination of Price of Imported Goods) Rules, 1988 was also furnished bearing the signature of one Shri Suresh Kumar purported to be the proprietor of the said importing firm. The same signatures of the said Shri Suresh Kumar were also found on the said bill of entry making and subscribing to a declaration as to the correctness of the said invoice and other documents relating to the goods covered by the said invoice. As per the said

invoice, the imported goods are 10 cartons of electronic components, 30,000 pieces of IC LA 4440 of declared value S \$ 2160 at the rate of S \$ 0.072 per piece. A rubber stamp of Bank of India, Okhla Industrial Area, New Delhi was found affixed on the said invoice. Both the country of origin as well as shipment were declared to be Singapore. Intelligence gathered that the actual value of the said imported goods was much higher than that declared by the said importing firm and that the actual importer of the goods was not the real proprietor of the said importing firm. Based on this intelligence, investigations were initiated into the imports of the said imported goods by SIIB. The Directorate of Revenue Intelligence was requested to make enquiries in Singapore regarding the actual value of these imported goods. The real proprietor of the said importing firm was found to be one Shri N.K.Aggarwal and he was summoned to give statements under Section 108 of the Customs Act, 1962. Vide their letter dated 27-8-1992 the Bank of India, Okhla Industrial Area, New Delhi confirmed that the said rubber stamp on the said invoice had not been affixed by their bank and the importing firm had no bank account with the said bank as on 27th August, 1992. The goods were examined and samples were drawn on 28th August, in the presence of the customs house agent. The said IC LA 4440 was found to have been used in the audio systems for sound amplification in consumer goods. Directorate of Revenue Intelligence with their foreign sources got two quotations dated nil and dated 9th September, 1992 from M/s. Sanyo Shin-Nichi Electronic Devices (H.K.) Ltd., Hong Kong showing the unit price of IC LA 4440 as US \$ 0.71 and 0.72 respectively. Two quotations both dated 28th September, 1992 from M/s. Shing Components (S) Pvt. Ltd., Singapore were also obtained showing the unit price of IC LA 4440 as S \$ 1.07 and S \$ 1.09, respectively and from SIIB's own sources also quotation dated 13th November, 1992 from the said Sanyo Shin-Nichi Electronic Devices was obtained showing unit price of IC LA 4440 as US \$ 0.70 CIE The clearance of the goods had been claimed against REP import licences No.P/K/L/M/3396179/D/XX/21/D/9 dated 24th July, 1991 and No.P/K/L/M/3396322/D/XX/91 dated 8th August, 1991. However, the said goods were not falling under Appendix 3A of the earlier ITC Policy under which the said REP import licences were issued and no irrevocable letter of credit has been established on or before 31st March, 1992 in respect of the said imported goods

and the said goods were hit by entry at Serial No. 1 of the Negative List under heading "Consumer Goods" of the ITC Policy AM 1992-97 being components of consumer goods. The said import licences did not appear to be valid to cover the importation of the said imported goods. Without prejudice to this, it further appeared that no licence had been produced to cover the importation of the said goods to the tune of Rs. 5,65,172.20, CIF (Rs. 6,05,946.21 minus declared value Rs. 40,774.00 for reasons for value of Rs. 6,05,946.21 mentioned in the show cause notice dated 14th December, 1992. A show cause notice was issued and written reply dated 9th March, 1993 to the show cause notice was also filed. The adjudicating authority held that there were serious acts of forgery and the value of the said goods had been wrongly declared as shown above and the value of the said goods not to be taken as S \$ 1.07 CIF per piece in terms of provisions mentioned in para 17 above. The appellants agitated that the Bombay Customs had accepted and determined the value of identical goods at the rate of 0.05 US \$ CIF vide Bill of Entry No. 008030 dated 27th May, 1992 and Bill of Entry No. 006524 dated 22nd August, 1992. The adjudicating authority did not accept the contention of the appellant and held that it remained open to Bombay Customs to undertake review or any other suitable action under the Customs Act, 1962 for revising the value of identical goods declared at the rate of 0.05 US \$ CIF. Regarding the import of identical goods by M/s. Sai Enterprises, Delhi cited above, the adjudicating authority had checked up and found that the Additional Collector had not adjudicated the case and suitable action under the Customs Act, 1962 was already being taken by the proper officers of the Customs for upward revision of the value declared therein. In view of the above observations, the adjudicating authority had ordered the confiscation of the above goods and had applied Rule 8 read with Rule 10 of the Customs Valuation Rules, 1988 read with Section 14(1) of the Customs Act, 1962, as Rules 5, 6 and 7 of the Customs Valuation Rules were inapplicable for want of identical/similar goods import and actual transaction values thereof.

The adjudicating authority had held the import as unauthorised and had ordered the confiscation of the goods but had given an option to redeem the same on payment of redemption fine of Rs. three lacs. In addition to this, he had imposed penalties on M/s. Polyvinyl Industrial Corporation, Shri N.K. Aggarwal and Shri M.

Walia to the tune of Rs. 2 lacs each and had also imposed penalties on Shri N.K. Aggarwal and Shri M. Walia at Rs. 1,000.00 each under Section 117 of the Customs Act, 1962.

2. Being not satisfied with the order passed by the Deputy Collector of Customs, the appellants had filed an appeal before the Collector (Appeals). The Collector (Appeals) had upheld the findings of the Deputy Collector and being not satisfied with the order passed by the Collector (Appeals), the appellants have come in appeal before the Tribunal.

3. Shri G.L. Rawal, the learned advocate has appeared on behalf of the appellants. He has reiterated the facts. He argued that the appellants had imported integrated circuits numbering 30,000.00. The declared value per piece was 0.072 S\$ and approximately comes to Rs. 1.39 per piece. The rate of exchange of Singapore dollar is equivalent to Rs. 19.50. The goods had arrived on 2nd August, 1992. The bill of entry was also filed on the same date. The declared value was Rs. 40,774.00 and the assessed value was US\$ 0.70 per piece. The country of origin is Singapore. The charge against the appellants is undervaluation and ITC violation. He argued that the appellants had commented on the contemporaneous imports in para No. 5 of the reply to the show cause notice which appears on pages 50 and 51 of the paper book where it has been mentioned that the Bombay Customs had been accepting and determining the value of the identical goods at the rate of 0.05 US \$ CIF (equivalent to 0.082 S\$ approximately) and the two bills of entry are as under :- (i) Bill of Entry No. 008030 dated 27-5-1992 filed by M/s. Maxwell India, 2218, Jamna Bazar, Delhi.

(ii) Bill of Entry No. 006524 dated 22-8-1992 filed by M/s. Racho Sales Corporation, 1688/3, Bhagirath Place, Delhi.

The computer print appears on page 56 of the paper book. The description of the goods is IC LA 4440. This means the imported product is the same. The value declared is Rs. 18,464.00 and the number of pieces is 10,000 and the value is Rs. 18,649.00 and per piece value comes to Rs. 1.86 and whereas the appellants had declared the same at Rs. 1.39. He referred to page 57 of the paper book and it is also computer print. It is dated 27th May, 1992 and 5000 pieces of IC LA 4440

were imported. The value declared was Rs. 7,728.00, whereas the assessed value is Rs. 7805.00 and per piece value comes to Rs. 1.54 and the documents on pages 56 and 57 were duly filed before the lower authorities. He referred to pages 44 and 45 of the paper book which are fax messages and the value declared is S\$ 1.07 for LA 4440. Shri Rawal, the learned advocate drew the attention of the Bench that the date is the same but in both the fax messages the value is different and as such, no reliance can be placed and the fax messages are being filed by the revenue. On page 46 appears the telex from the Collector of Customs to Shri Sahab Singh, Deputy Collector and there the value of the integrated circuits LA 4440 as per quotation dated 30th November, 1992 issued by M/s. Sanyo is US \$ 0.70 CIF and a copy of the quotation was also enclosed. Shri Rawal referred to pages 48 and 49 of the paper book which are the quotations from Sanyo dated 9th September, 1992 and the value is US \$ 0.72 and 0.71 respectively. Shri Rawal, the learned advocate pleaded that no reliance can be placed on the same. He pleaded that the value declared by the appellants is very reasonable and is in conformity with the computer prints filed by the appellants. On the import trade control violation angle, Shri Rawal argued that the same was imported against REP licence which appears on page 62 onwards. The imports made by the appellants are duly covered by the licence. He argued that for the sake of argument if it is assumed that it is not covered by the licence which falls under OGL. He referred to the bill of entry which appears on page 66 of the paper book and the value of the imported goods had been duly debited to the licence. In support of his argument, he relied on the following judgments :- (1) 1987 (28) E.L.T. 63 - Union of India and Ors. v. Popular Dyechem.

(2) 1987 (31) E.L.T. 745 (Tribunal) - Techmech Surgicals (India) v. Collector of Customs, Madras.

(3) 1988 (38) E.L.T. 105 (Tribunal) - Collector of Customs v. Mansingka Brothers.Decor India and Ors. v. Collector of Customs, New Delhi.

(5) 1982 (10) E.L.T. 43 (Del.) - Jain Shudh Vanaspati Ltd. and Anr.

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He argued that there is no ITC violation and there is no justification for imposition of redemption fine of Rupees three lacs and penalties of Rs. two lacs on M/s. Polyvinyl Industrial Corporation, Shri N.K. Aggarwal and Shri M. Walia, respectively. He argued that in the show cause notice it has not been mentioned that the penalty is levied under which sub-section, whether under Section 112(a) or under Section 112(b) of the Customs Act, 1962 and as such no penalty is involved. In support of his argument he cited the following judgments :-Sudesh Kumar Arora v. Collector of Customs.

(ii) 1991 (56) E.L.T. 64 (Tribunal) - Balvir Singh v. Collector of Customs.

He again argued on the valuation aspect and referred to the Customs Valuation Rule 8(ii), (iii) and (iv). He laid emphasis on the word "shall". He also argued that the fax messages on pages 44, 45 and 47 are Hong Kong to Singapore and on page 46 appears to be from Japan to Singapore and on page 48 from Sanyo Japan to Singapore. The other fax is from Singapore to Singapore on page 49. He pleaded for the allowing of the appeal of Shri N.K. Aggarwal, Proprietor of M/s. Polyvinyl Industrial Corporation. Arguing on behalf of Shri M. Walia, he argued that there is no abetment and as such no penalty is leviable. He pleaded for the acceptance of the appeals.

4. Shri A.K. Singhal, the learned JDR in reply reiterated the facts. He reads the order-in-original. Shri Singhal, the learned JDR has also reiterated the facts. He laid special emphasis on para No. 9 of the order-in-original where the adjudicating authority has observed that Shri N.K. Aggarwal had sent a letter dated 11th August, 1992 addressed to the Appraiser to the effect that he was the sole proprietor of the said firm, but he had not imported any item at any time. He read his voluntary statement dated 12th August, 1992 under Section 108 of the Customs Act, 1962. He stated that he was aware of the said import made in the name of M/s. Polyvinyl Industrial Corporation, but he had not signed the bill of entry and he had authorised Shri M. Walia and in reply to the specific question regarding his relationship with Shri M. Walia, he stated that Shri M. Walia was a professional friend of his and imports on behalf of his firm were made by Shri M. Walia and profits or losses made were passed on from Shri M. Walia to him and it

was not fixed how much of the commission or losses were to be borne by him. He argued that the pricing policy is controlled by Japan and referred to para No. 8 of the order-in-original where it is mentioned "Sanyo Integrated Circuits Monolithic" were found on the packages containing the said imported goods and samples drawn from the said consignment were also forwarded to the foreign source of the Directorate of Revenue Intelligence and the said IC LA 4440 was found to have use in the audio systems for sound amplification on consumer goods. He argued that the invoice had been attested by the Bank and the Bank of India has denied that they had ever attested the invoice. He referred to the bank's letter dated 27th August, 1992 addressed by the Bank of India to the Appraiser of Customs where it has been mentioned that Polyvinyl Industrial Corporation had no account with them. The firm had opened account only on 26th August, 1992 and the rubber stamp appearing on the copy of invoice has not been affixed by the bank. He argued that the customs authorities had written a letter to the bank on 25th August, 1992. He further stated that the statement of Shri Aggarwal was recorded on 11th August, 1992. On 12th August, 1992 he accepts importation. He referred to internal page 2 of the order-in-original which appears on page 80 of the paper book and referred to para No. 11 and as per statement of Shri Aggarwal, the bill of entry was not signed by Shri Aggarwal. He referred to para No. 15 of the order-in-original which appears on page B1 of the paper book. He referred to the statement of Shri Abil Dhingra and signatures of Shri Suresh Kumar on the bill of entry and Suresh Kumar was not an employee of Gateway Clearing Agency and the bank attested the invoice which was supplied to him by Shri Walia. On the valuation aspect, Shri Singhal argued that the value declared is too low and quotations were obtained by DRI in the present matter and the revenue had relied on the same. He referred to para No. 37 of the order-in-original which appears on page 86 of the paper book where the adjudicating authority has mentioned that correct value is S \$ 1.07 per piece. He referred to the quotation from Shing Components (S) Pvt. Ltd., Singapore which appears on page 45 of the paper book. He also referred to the telex which appears on page 46 of the paper book and also on page 47. He argued that there is no evidence as to Singapore to Singapore quotation and referred to pages 48 and 49 of the paper book where it is mentioned US \$ 0.72 and 0.71 per piece, respectively.

5. Now coming to the ITC angle, he referred to para No. 39 of the order passed by the adjudicating authority and in terms of Public Notice No.22 (N-3)-ITC(PN)/92-97 dated 30th June, 1992, the definition of "consumer goods" contained in para 7(ii) of the ITC Policy AM 1992-97 was amended to read as : "consumer goods" means any consumption goods which can directly satisfy human needs without further processing and include consumer durable and accessories, components, parts and spares of such consumer durables. He argued that the goods imported are consumer goods and the licence is not valid. He argued that Section 117 of the Customs Act, 1962 was invoked and the penalty was rightly imposed. He argued that the quotations are from the same supplier and as such, there is no infirmity in the order passed by the lower authorities. He pleaded for the rejection of the appeal.

6. In reply, Shri G.L. Rawal, the learned advocate pleaded that even for the sake of argument if it is assumed that these are consumer goods, the goods imported have to be treated as component parts of consumer durable. Shri Rawal further argued that the statement of co-noticee cannot be relied upon. In support of his argument, he referred to a decision of the Tribunal in the case of Orient Enterprises, New Delhi v. Collector of Customs, Cochin reported in 1986 (23) E.L.T. 507.

7. We have heard both the sides and have gone through the facts and circumstances of the case. The goods imported are 30,000 pieces of IC LA 4440 and their declared value was S \$ 2160 at the rate of S \$ 0.072 per piece. The revenue authorities have relied on two quotations both dated 28th September, 1992 from M/s. Shing Components (S) Pvt. Ltd., Singapore showing the unit price of IC LA 4440 as S \$ 1.07 and S \$ 1.09 respectively. From the SIIB's own sources also quotation dated 13th November, 1992 from M/s. Sanyo Shin-Nichi Electronic Devices was also obtained showing unit price of IC LA 4440 as US \$ 0.70 CIF. The appellant had agitated that the Bombay Customs had accepted and determined the value of identical goods at the rate of 0.05 US \$ CIF vide Bill of Entry No. 008030 dated 27th May, 1992 and Bill of Entry No. 006524 dated 22nd August, 1992. The adjudicating authority did not accept the contention of the appellant and had ordered the assessment of the goods at 1.07 S \$ per piece CIF.

He had ordered confiscation of the goods but had given an option to redeem the same after payment of redemption fine of Rupees three lacs. In addition to this, he had imposed penalty on M/s. Polyvinyl Industrial Corporation, Shri N.K. Aggarwal and Shri M. Walia to the tune of rupees two lacs each and had also imposed penalty under Section 117 of the Customs Act, 1962 on Shri N.K. Aggarwal and Shri M. Walia. Shri G.L. Rawal, the learned advocate had referred to the evidence of contemporaneous imports on which the Department had relied. The fax message of Shing Components Pvt. Ltd. dated 28th September, 1992 appears on page 44. The value of LA 4440 has been shown at S \$ 1.09 and on the same date in the fax message dated 28th September, 1992 which appears on page 45 of the paper book the same value has been shown at S \$ 1.07 and the telex from the Collector of Customs, Madras to Mr. Sehab Singh, Deputy Collector which appears on page 46 of the paper book the price of integrated circuits LA 4440 (Sanyo make) as per quotation dated 30th November, 1992 issued by M/s.

Sanyo is US \$ 0.70 CIF and a copy of the quotation has been duly attached which appears on page 47 of the paper book. There are also quotations from M/s. Sanyo Shin-Nichi Electronics Pvt. Ltd. (HK) and the value has been shown at US \$ 0.72 which appears on page 48 of the paper book. There is no mention of country of origin. On page 49 the value has been shown US \$ 0.71. On page 48 quotation is dated 9th September, 1992 and there is no date of the quotation which appears on page 49 of the paper book, whereas the importer has relied on the evidence mentioned in para No. 5 of the reply to the show cause notice and attention of the Bench was duly drawn by Shri G.L. Rawal, the learned advocate during the course of arguments to para No. 5 of the reply to the show cause notice where vide Bill of Entry No. 008030 dated 27th May, 1992 filed by M/s. Maxwell India, 2218, Jamna Bazar, Delhi, the value of identical goods had been accepted by the Bombay Customs at 0.05 US \$ CEF (equivalent to 0.082 S \$ approximately and Bill of Entry No. 006524 dated 22nd August, 1992 was filed by M/s.

Racho Sales Corporation, Bhagirath Place, Delhi and computer prints also appear on pages 56 and 57 of the paper book. A perusal of the same will show that the product there is also integrated circuits LA 4440.

We have perused the photo copies of the quotations relied upon by the respondent Collector and also the bills of entry referred to by the importer. In the present matter the goods arrived on 2nd August, 1992 and the bill of entry was also filed on 2nd August, 1992. The bills of entry mentioned by the appellant in para No. 5 of the reply to the show cause notice which appears on pages 51 and 52 of the paper book are dated 27th May, 1992 and 22nd August, 1992. Racho Sales Corporation's Bill of Entry No. 006524 dated 22nd August, 1992 is nearest to the date of importation. The adjudication authority has not doubted the genuineness of the computer prints filed by the appellant which appears on pages 56 and 57 of the paper book. The quotations relied in the nature of fax messages which appear on pages 44 and 45 of the paper book are dated 28th September, 1992. The fax messages are unsigned and both the fax messages are of the same date. Value of LA 4440 in fax message on page 44 has been shown at S\$ 1.09 and whereas on page 45 dated 28th September, 1992 the value has been shown at S\$ 1.07. Value is to be determined in terms of provisions of Section 14(1) of the Customs Act, 1962. For the proper appreciation, Section 14(1) of the Customs Act, 1962 is reproduced below :- "14. Valuation of goods for purposes of assessment. - (1) For the purposes of the Customs Tariff Act, 1975 (51 of 1975), or any other law for the time being in force whereunder a duty of customs is chargeable on any goods by reference to their value the value of such goods shall be deemed to be - the price at which such or like goods are ordinarily sold, or offered for sale, for delivery at the time and place of importation or exportation, as the case may be, in the course of international trade, where the seller and the buyer have no interest in the business of each other and the price is the sole consideration for the sale or offer for sale.

Provided that such price shall be calculated with reference to the rate of exchange as in force on the date on which a bill of entry is presented under Section 46, or a shipping bill or bill of export, as the case may be, is presented under Section 50." A perusal of the section shows that for the purpose of Customs Tariff Act, 1975 or any other law for the time being in force whereunder a duty of customs is chargeable on any goods by reference to their value, the value of such goods shall be deemed to be the price at which such or like goods are ordinarily sold, or offered for sale, for delivery at the time and place of importation or exportation, as

the case may be, in the course of international trade, where the seller and the buyer have no interest in the business of each other and the price is the sole consideration for the sale or offer. In the matter before us, the country of origin is Singapore. The adjudicating authority has resorted to Customs Valuation (Determination of Price of Imported Goods) Rules, 1988. Rule 3 relates to the determination of the method of valuation.

Rule 4 relates to transaction value. Rule 5 relates to transaction value of identical goods. Rule 6 relates to transaction value of similar goods. Rule 7 deals with deductive value and Rule 8 relates to residuary method. Rule 8 stipulates that subject to the provisions of Rule 3 of these rules, where the value of imported goods cannot be determined under the provisions of any of the preceding rules, the value shall be determined using reasonable means consistent with the principles and general provisions of these rules and Sub-section (1) of Section 14 of the Customs Act, 1962 (52 of 1962) and on the basis of data available in India. In the present matter the revenue has relied on quotations, whereas the importer has relied on the bills of entry dated 27th May, 1992 filed by M/s. Maxwell India and Bill of Entry dated 22nd August, 1992 filed by M/s. Racho Sales Corporation, Bhagirath Place, Delhi. The adjudicating authority has not commented to the bill of entry referred to by the appellant. Computer print appears on page 56 of the paper book. The total value is Rs. 18,464.00 and net quantity is 10,000 pieces. The value per unit is Rs. 1.86, whereas the appellant's declared value is Rs. 1.39 per piece. The adjudicating authority in para No. 14 on page 80 of the paper book has observed as under :- "14. In response to the enquiries made by the Directorate of Revenue Intelligence with their foreign sources, two quotations dated nil and dated 9-9-1992 from M/s. Sanyo Shin-Nichi Electronic Devices (H.K.) Ltd. Hong Kong were obtained showing the unit price of IC LA 4440 as US \$ 0.71 and US \$ 0.72 respectively. Further two quotations both dated 28-9-1992 from M/s. Shing Components (S) Pte. Ltd., Singapore i.e. the same supplier as the one who has supplied the goods in the subject case were also obtained showing the unit price of IC LA 4440 as S \$ 1.07 and S \$ 1.09 respectively. From SIIB's own sources also, quotation dated 13-11-1992 from the said M/s. Sanyo Shin-Nichi Electronic Devices was obtained showing unit price of IC LA 4440 as US \$ 0.70 CIF." The observations in para 14 are as to the basis of valuation adopted by the revenue,

whereas in para 28 on page 83 of the paper book the adjudicating authority has made an observation as to the bills of entry mentioned by the appellant. A perusal of both the paras and remaining part of the order shows that the adjudicating authority has not given any reason for not accepting the bills of entry cited by him which appear on pages 56 and 57 of the paper book and reference is made in para 5 of the reply to the show cause notice which appears on pages 51 and 52 of the paper book. In para No. 36 final observation has been made by the adjudicating authority. The said para is reproduced below :- "36. From the above investigations conducted and further findings in the subsequent paras, it is seen that this case involves serious acts of forgery and that the said invoice No. 855 dated 30-7-1992 produced with the said B/E does not relate to the said goods for the clearance of which the said B/E has been filed. In view of the above facts, the case law and the evidences in hand, I find that the value of the said goods has been wrongly declared and that the value of the said goods ought to be taken as 1.07 S \$ per piece IF of the said goods in terms of provisions mentioned in para 17 above. The party has stated that Bombay Customs has accepted the value of identical goods at rate of 0.05 US \$ CIF in two B/E No. 008030 dated 27-5-1992 and 006524 dated 28-2-1992. This contention is incorrect as it remains open to Bombay Customs to undertake review or any other suitable action under Customs Act, 1962 for revising the value of identical goods declared at the rate of 0.05 US \$, CIF. Regarding the import of identical goods by M/s. Sai Enterprises Delhi cited above by Shri N.K. Aggarwal's Advocate, it has been checked up and found that the Additional Collector had not adjudicated the case and suitable action under the Customs Act, 1962 is already being taken by the proper officers of the Customs for upward revision of the value declared therein." A perusal of para 36 shows that the adjudicating authority has not accepted the value only on the ground that it remains open to Bombay Customs to undertake review or any other suitable action under the Customs Act, 1962 for revising the value of identical goods declared at the rate of 0.05 US \$ CIF. Since the revenue has not placed any evidence on record as to the revision of the orders passed by the Bombay Customs in respect of bills of entry No. 008030 dated 27th May, 1992 and 006524 dated 22-8-1992. From the perusal of the bill of entry on page 56 the correct date is 22nd August, 1992. The present bill of entry is dated 22nd August, 1992 and the

value in these Bills of Entry is 0.05 US \$. In para 37 the adjudicating authority has discussed the value of S \$ 1.07 per piece CEF, whereas the declared value is 0.072 S \$ per piece. The price which has been accepted by the Bombay Customs is very near to the date of importation. In the present matter, we are of the view that the same has to be accepted. It cannot be rejected merely on the ground that the revenue authorities might have reviewed the case.

It was open to the adjudicating authority to ascertain from the Bombay Customs House as to whether these orders have been reviewed in accordance with law or not. Since the price in the nearest invoice is Rs. 1.86 per piece, whereas the declared value is Rs. 1.39 per piece, we order that value at Rs. 1.86 per piece should be adopted and not the value on the basis of the quotations.

8. Now coming to the licensing angle, we would like to observe that the adjudicating authority in para No. 39 which appears on page 86 of the paper book has made observations into the ITC aspect. Shri Rawal, the learned advocate, on the other hand, relied on the REP licence which appears on pages 62 to 64 of the paper book and argued that the import is covered by the licence and alternatively he has pleaded that the goods are covered under OGL. Shri Rawal had referred to the bill of entry and argued that once the goods were ordered to be cleared, thereafter it is not open to the customs authorities to change its order. Only review order has to be passed. In support of his argument, he cited the following decisions :- (1) 1987 (28) E.L.T. 63 (Bom.) - Union of India and Ors. v. Popular Dyechem (2) 1987 (31) E.L.T. 745 (Tribunal) - Techmech Surgicals (India) v. Collector of Customs, Madras (3) 1988 (38) E.L.T. 105 (Tribunal) - Collector of Customs v. Mansingka Brothers Decor India and Ors. v. Collector of Customs, New Delhi Jain Shudh Vanaspati Ltd. and Anr.

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9. Shri Singhal, the learned JDR referred to the definition of the consumer goods and referred to page 86 of the paper book and also referred to the Public Notice 22(N-3) ITC. He argued that this licence is not valid as the goods are not covered. The judgments cited by the appellant do not help him. We are of the view that the goods are not covered by the import licence and the alternative plea for OGL is

also not acceptable and hold that the importation is unauthorised. The goods have been in the custody of the revenue authorities for long time and have incurred heavy demurrage. The Tribunal in the case of Muddeereswara Mining Industries Co. v. Collector of Customs, Bangalore reported in 1989 (39) E.L.T. 630 (Tri.) had held as under :- "8. Since the goods were liable to confiscation the appellants were liable to a penalty under Section 112 as well. The impugned order imposing fine in lieu of confiscation and penalty is legally quite in order. However, considering the fact that the machine, on its importation, has remained under detention for well over a year, incurring port demurrage, we feel that some reduction in fine and penalty is called for. Considering all facts and circumstances, including the higher amount of depreciation allowed by us, we reduce the redemption fine from Rs. 5 lakhs to Rs. 25,000.00 (rupees twenty five thousand only) and the penalty from Rs. 2 lakhs to Rs. 10,000.00 (rupees ten thousand only)." Keeping in view that the goods are in the custody of the revenue authorities for more than two years, we are of the view that the ends of justice will be met if the redemption fine is reduced. Accordingly we order the reduction of the redemption fine keeping in view the earlier decision of the Tribunal in the case of Muddeereswara Mining Industries v. Collector of Customs reported in 1989 (39) E.L.T. 630 (Tri.), we reduce the redemption fine from Rs. 3 lakhs (rupees three lakhs) to Rs. 50,000.00 (Rs. fifty thousand only).

10. Now coming to the imposition of penalty aspect, Shri N.K. Aggarwal is the sole proprietor of M/s. Polyvinyl Industrial Corporation.

Penalty has been imposed on Shri N.K. Aggarwal as well as Polyvinyl Industrial Corporation. It is only one entity. Only one penalty can be imposed. We quash the penalty on Polyvinyl Industrial Corporation and keeping the judgment in the case of Muddeereswara Mining Industries Co.

as discussed above, the penalty is reduced from Rupees two lakhs to Rs. 40,000/- (Rupees forty thousand only) in respect of Shri N.K. Aggarwal.

11. Keeping in view the totality of the facts and circumstances of the case, Shri Walia's role is not to the mark. We reduce the penalty on Shri Walia from Rupees two lakhs to Rs. 40,000.00 (Rupees forty thousand only). We uphold the penalties

at Rs. 1,000.00 each on Shri N.K. Aggarwal and Shri M. Walia under Section 117 of the Customs Act, 1962.

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