

**Varsha Industries Vs. Collector of Customs**

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

**Decided On :** Oct-10-1995

**Reported in :** (1996)(82)ELT225TriDel

**Appellant :** Varsha Industries

**Respondent :** Collector of Customs

**Judgement :**

1. This is an appeal against order dated 13-1-1984 passed by the Collector of Customs, Bombay. Briefly stated the facts of the case are that the importers filed a Bill of Entry for the clearance of 680 bags which was declared to contain 17 M.T. Acrylic Moulding Powder of CIF value of US \$ 18360.00. The goods were covered by Invoice No.QY-E130848 dated 29th August 1983 of M/s. Kasei Shoji Co. Ltd. Tokyo, Japan. The clearance of the goods was sought under OGL Appendix 10 Item No. 1 of 1983-84 Import Policy. Since the detailed description of the goods i.e. brandgrade, shade, manufacturer's name, date of manufacture etc. was not declared by the importers nor were the Indent, Acceptance, Correspondence, Sale Note etc. were filed the Special Investigation Branch of the Custom House subjected the goods to detailed examination in the presence of the concerned Custom House Agent. Physical examination of the consignment showed the marking and description of the goods as under : Since information was received by the Custom House that plastic raw material such as C.A.B. Moulding Powder, Acrylic Moulding etc. were being grossly undervalued and since in the import document the relevant detail in respect of the goods such as the manufacturer's

name, brand, grade etc. had not been declared, the Special Investigation Branch of the Custom House carried out searches at the premises of Varsha Industries and the residential premises of Shri Shantilal J. Jain, Manager of M/s. Varsha Industries and also recorded his statement. It appeared that Custom House had come across imports of Acrylic (Plastic) Moulding Powder Shinkolite MDP-001 clear shade weighing 9 MT manufactured by M/s. Mitsubishi Rayon, Japan indented through M/s. C.Itoh & Co. Ltd. New Delhi by M/s. Lumax Industries Pvt. Ltd., B-85/84 Mayapuri Industrial Area, New Delhi 110064 at the unit price of US \$ 1600 per MT CIF against Bill of Entry No. 1470/12 dated 26-9-1983. On the basis of the import of identical goods by Lumax Industries Pvt.

Ltd. at unit price of US \$ 1600 per MT CIF Bombay it appeared that in terms of Section 14(l)(a) of the Customs Act, 1962 the correct assessable value of the imported Acrylic Moulding Powder Shinkolite MDP 001 Grade was US \$ 1600 per metric ton CIF Bombay and accordingly the assessable value of the imported goods was Rs. 2,76,142.13. It, therefore, appeared that the imported goods did not correspond any material particular in regard to the value and description as declared in the Bill of Entry filed under Section 46 of the Customs Act, 1962 and the mis-declaration if not detected would have resulted in a loss of revenue to the tune of Rs. 2,11,309.11. The goods therefore appeared to be liable for confiscation under Section 111(m) of the Customs Act, 1962 and the importers were liable to penalty under Section 112 of the Customs Act, 1962. In their letter dated 6-12-1983 the importers informed the Customs House that they did not want a show cause notice nor did they desire to have any personal hearing as they had already submitted the documents and given their statement. Though show cause notice was waived by the importers the charges against them were explained to them. In their letter dated 25-11-1983 the importers contended that the imported consignment was negotiated by them at the time of visit of the representative of M/s. Mitsubishi Rayon Ltd. Japan in May, 1983 and it was offered to them as clearance sale. They also enclosed a copy of the letter received by them and the sale note issued by the supplier. However, in the impugned order the Collector held that the importers contention that the price had been negotiated by them and the consignment was offered to them as clearance sale was not tenable as the difference between the price at which the goods had been imported by the

importers and the price at which identical goods were imported by M/s. Lumax Industries was of US \$ 520 per MT and it did not stand to reason that any trader would sell his goods at such reduced price. The letter dated 4-6-1983 from M/s. Sekin Trading Co. Ltd. Japan, shippers of the goods claiming that the goods had been offered as clearance sale was not held as reliable by the Collector on the grounds that the said letter was not produced by the appellants at the time of search of their premises. In this regard, the Collector also observed that in his statement recorded under summons under Section 108 of the Customs Act, 1962 Shri Shantilal J. Jain had not claimed that the goods had been offered to him on clearance sale basis. Therefore, he held that this plea taken by the importers was an afterthought in order to cover up the offence of misdeclaration of value in the import document. On the basis of these findings the Collector held that the value of the imported goods was determinable under Section 14(l)(a) of the Customs Act, 1962 at US \$ 1600 CIF per MT in respect of the contemporaneous import of identical goods by M/s. Lumax Industry and rejected the CIF price of US \$ 1080 PMT shown in the invoice. He held that the value of the imported goods was thus less declared to the extent of Rs. 89,746 rendering them liable to confiscation under Section 111(m) of the Customs Act, 1962. He, therefore, ordered that the goods shall be assessed to duty at the ascertained CIF value of US \$ 1600 per MT. He also ordered confiscation of the goods under Section 111(m). He, however, gave an option to the importers to redeem the goods on payment of a fine of Rs. 25,000/- under Section 125 of the Customs Act, 1962.

2. Appearing on behalf of the appellant Shri Pradeep Jain, learned Advocate submitted that the Collector's finding that the value of the imported goods was misdeclared was based on a single import of similar goods by M/s. Lumax Industry. He added that the consignment imported by the appellant comprised of 17 MT Acrylic Moulding Powder, whereas the imports by M/s. Lumax Industry, on the basis of which the value of the appellants' goods had been arrived at, was only 9 MT. He contended that under these circumstances the impugned order could not be held as sustainable.

3. On behalf of the respondent Shri Vipin Handa, learned SDR took us through the impugned order and submitted that the appellants had deliberately not declared in

the import document the manufacturer's name, grade, brand etc. of the imported goods with the intention of avoiding detection of mis-declaration of the description and value. He submitted that the imported goods on actual examination were found to be Acrylic Resin Shinkolite 'P' Brand-MDP 001 Grade manufactured by Mitsubishi Rayon Co. Ltd. Japan. He stated that on comparison with the invoice price of 1600 US \$ per MT in respect of contemporaneous imports of identical goods by M/s. Lumax Industry, it was evident that the value of the imported goods at US \$ 1080 CIF PMT was grossly mis-declared. He submitted that there was no infirmity in the order passed by the Collector determining the value of the imported goods under Section 14(l)(a) of the Customs Act, 1962 on the basis of the contemporaneous invoice price in respect of the goods of same brand and manufactured by the same party. In support of his contention he cited the Tribunal's decision in O.K. Industries v. Collector of Customs, Bombay 4. It is seen that the facts in this case are identical to the facts in the case of O.K. Industries v. Collector of Customs, Bombay (supra) wherein the Tribunal has held that in respect of a consignment of 34 MT Methyl Acrylate Polymer Shinkolite-P, MDP of Japanese origin which was imported at the invoice price of US \$ 600 PMT CIF Bombay was determinable under Section 14(1)(a) on the basis of the invoice price of contemporaneous imports of Methyl Acrylate Polymer of the same grade and manufactured by the same manufacturer viz. Mitsubishi Rayon Co. of Japan imported by M/s. Lumax Industry, Delhi at US \$ 1475 PMT. Para 7 of the said order being relevant is reproduced below :- "7. It is seen from the impugned order that the imported goods covered by Invoice No. QY-E-131681, dated 12-6-1985 issued by M/s.

Kasei Shoji Co. Ltd. Japan were declared as Methyl Acrylate Polymer, Shinkolite-P, MDP. However, on test of the sample by the Customs House Laboratory they were found to be 'Polymethyl Methacrylate'.

Search of the appellants premises resulted in seizure of certain documents which also confirmed that the goods were Polymethyl Acrylate Polymer of Shinkolite PMDP Moulding Grade. For the determination of the value of the imported goods the Department has relied upon the price of contemporaneous imports at US \$ 1475 PMT at which a consignment of 17 M. Tons of Shinkolite-PMDP of Japanese

origin supplied by M/s. C. Ioth & Co. Ltd. Japan vide their Invoice No. 131673, dated 12-6-1985 against Bill of Entry No. 003184, dated 8-8-1985, was cleared by M/s. Lumax Industries, Delhi. It is seen that the invoice in respect of imports by M/s. Naresh Udyog, M/s.

Varsha Industries and M/s. Graphic Arts (at pages 48.51 and 56 of the paper book) respectively in respect of imports of Polymethyl Methacrylate Moulding Compound on which the appellants have placed reliance do not indicate the grade of the imported material. Apart from this fact, it is seen that the consignment imported by M/s.

Varsha Industries was shipped from Spain and the goods were of Spanish Origin. None of these consignments were of MDP Grade and it is also not confirmed from the description of the goods in the relevant invoices that the goods were of Shinkolite-P brand which is the registered trademark of the well-known Mitsubishi Rayon Co. Ltd. of Japan. The goods imported by the appellants being indisputably of Shinkolite-P brand of MDP Grade, we find that there is no infirmity in the Collector's finding that the imported goods and the goods imported against the contemporaneous invoice dated 12-6-1985 of the M/s. C. Ioth & Co. Ltd., Japan in respect of 17 M. Tons of Shinkolite-P MDP Polymethyl Methacrylate imported by M/s. Lumax Industries, Delhi were identical and their assessable value was determinable in terms of Section 14(l)(a) on the basis of the price of imports by M/s. Lumax Industries. We agree with the JDR that the price of the indigenously produced Polymethyl Methacrylate Moulding Powder by M/s. Gujarat State Fertilizer Co. relied upon by the appellant's is not relevant for the purpose of valuation of the imported goods. For this reason and in view of the finding of the Tribunal in its Order No. 332/88-A, dated 10-6-1988, the charge of mis-declaration of the goods by the appellants had been established.

We hold that there is no force at all in the appellant's contention that the value of their imported goods was determinable on the basis of the invoice price of M/s. Naresh Udyog, M/s. Varsha Industries and M/s. Graphic Arts relied upon by the appellants." The facts in the appellants' case being identical inasmuch as the correct description, grade, the manufacturer's name etc. had not been declared in

the invoice and other import documents and the goods on actual examination were found to be Acrylic Moulding Powder Shinkolite-P, MDP Grade 001 manufactured by Mitsubishi Rayon Co. Ltd. of Japan, following the ratio of the Tribunal's order extracted above, we hold that the Collector's finding that the value of the imported goods was determinable under Section 14(l)(a) of the Customs Act, 1962 on the basis of the invoice price of identical goods imported contemporaneously by M/s. Lumax Industry Pvt. Ltd. against Bill of Entry No. 1470/12 dated 26-9-1983 is sustainable.

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