

SUPREME COURT OF INDIA

Sounds N. Images

Vs.

Collector of Customs

(S.P. Bharucha and N. S. Hegde JJ.)

19.01.2000

ORDER

1. What we are concerned with here is the valuation of unbranded condensers of Japanese origin. At the initial stage before the Collector, the Customs authorities relied upon the fax copy of a quotation issued by a Singapore party to another Singapore party. The Collector noted that "the same had been collected from a source. The source was not revealed by the Department as normally done." The appellants disputed the correctness of the fax copy of the quotation that was relied upon and sought cross-examination of the source. The Collector took the surprising view that if the appellants suspected the bona fides of the document, it was for them to prove that it was not genuine. He added that when the entire contents of the fax copy of the quotation had been given to the appellants, the cross-examination that was sought was not necessary. The Collector referred to investigations that had been made in regard to earlier imports of similar goods by the appellants and held that, for that reason, the value thereof was not acceptable.

2. The matter was carried by the appellants to the Customs, Excise & Gold (Control) Appellate Tribunal, The Tribunal concurred with the argument of the appellants that the burden lay on the Customs authorities not only to bring sufficient evidence of the correct valuation but also to disclose it to the other side for rebuttal. It held that the authorities were not right in relying, upon the quotation offered by one party in Singapore to another party in Singapore. Having regard to the investigation that was in progress, the Tribunal remanded the matter to the Collector on the limited issue of valuation, to redetermine it in the light of its observations.

3. Accordingly, the matter went back to the Collector. The Collector found that the investigations had revealed nothing. Even so, the material relating to valuation that was produced by the appellants was not accepted. Instead, the Collector once again relied upon the same quotation given by one party in Singapore to another and that without offering to the appellants the opportunity of cross-examining the source, and proceeded to value the imported goods upon that basis.

4. The appellants again carried the matter to the Tribunal. The Tribunal quoted some part of the order that had been made by it at the earlier stage but upheld the valuation that the Collector had made. It did not take note of what had been said about burden, disclosure, cross-examination, the error of relying upon a quotation made by one party in a foreign city to another also there and the direction to the Collector to decide the matter on remand in the light of its observations.

5. A fax message setting out a quotation by one party in Singapore to another party in Singapore

cannot be made the basis of valuation of goods imported into India, particularly so when the importer's request to be allowed to cross-examine the alleged offeror is declined. It is always for the Customs authorities to establish by methods known to law and in a satisfactory manner that the value of imported goods is not what the importer says it is and what that value actually is. That onus cannot be shifted to the importer. We have no doubt that all this has been said by the courts again and again, but to no avail.

6. The appeal is allowed. The order under appeal is set aside. The goods in appeal shall be valued, in the circumstances, upon the basis of the value declared by the appellants.

7. The respondent shall pay to the costs of the appeal.