SUPREME COURT OF INDIA

M/S EICHER TRACTORS LTD., HARYANA

Vs.

COMMISSIONER OF CUSTOMS, MUMBAI

14/11/2000

(A.P.Misra, Ruma Pal)

JUDGMENT

RUMA PAL, J.

M/s Eicher Tractors Ltd., the appellant before us, manufacturers tractors and tractor engines in India. From 1955 the appellant imported bearings of a specific size for their tractors and tractor engines from M/s NTN Corporation, Osaka, Japan. This 33 year relationship was snapped in 1988 when the appellant started utilizing bearings manufactured for them in India by M/s HMT Ltd. The Japanese vendor was left with a stock of the bearings which had been manufactured by it for the appellant anticipating the appellants continued custom. Not finding any customer for the bearings, by letter dated 12th February 1993 the vendors agent in India offered to sell the 1989 stock of 3579 bearings to the appellant at a price of Japanese Yen (JY) 826 per piece. The appellant found the offer competitive and agreed to buy the bearings from the vendor at the price offered. An order was placed by the appellant on the vendor on 17th April 1993. The bearings were shipped from Japan and arrived in India. The appellant filed the Bill of Entry on 3rd December 1993 together with the invoice dated 6th October, 1993 with the Custom authorities. The Assistant Commissioner of Customs was not satisfied that the value of the bearings as declared by the appellant was the value of the bearings for the purposes of levying customs duty. He issued a notice on 14th December 1993 to the appellant. The appellant gave a detailed reply setting out the facts noted earlier. The Assistant Commissioner noted that the declared price was only 23% of the vendors list price and was of the view that the 77 per cent discount allowed to the appellant by the vendor was not normal and could not be accepted for the purpose of determining the price of the bearings under Section 14 of the Customs Act, 1962 and Rule 4 of the Customs Valuation (Determination of Price of Imported Goods) Rules, 1988 (referred to briefly as the Rules). The Assistant Commissioner determined the price of the bearings at JY 2507 per piece under Rule 8. In arriving at this figure, the Assistant Commissioner took the list price of the vendor and deducted 30 per cent on account of discount, which, according to the terms of agency between the vendor and its Indian agent, was the maximum permissible discount allowable. The appellant preferred an appeal before the Commissioner of Customs (Appeals), Mumbai. The Commissioner allowed the appeal. The respondent preferred an appeal before the Customs, Excise and Gold (Control) Appellate Tribunal. The Tribunal allowed the appeal by its order dated 23rd September 1998. The Tribunal accepted the reasoning of the Assistant Commissioner and relied upon the decision of this Court in Padia Sales Corporation V. CC 1993 Supp(4) SCC 57 to hold that specially quoted price was not acceptable in preference to the ordinary price in the course of international trade. According to the Tribunal, the ordinary price of the bearings in question was as mentioned in the vendors price list. The decision of the Tribunal has been assailed before us by the Appellant. According to the appellant, Rule 8 of the Rules, could not

have been relied on by the Assistant Commissioner without determining the value of the bearings under Rule 4. It was submitted that giving of discounts was a normal incidence of commerce and given the circumstances of the case a discount of 77% was perfectly justified. Reference was made to the decision in Mirah Export Pvt. Ltd. V. Collector of Customs 1998 (98) ELT 3 where discounts ranging between 50% to 70% were found to be acceptable. According to the appellant, the reason given by the Assistant Collector for not accepting the actual price paid for the bearings as the true value of the transaction was erroneous particularly when there was no allegation of under-valuation. The respondent contended that the principle for valuation of imported goods was to be found in Section 14(1) of the Act which provides for the determination of the value on the basis of the international sale price. It is argued that the Rules would have to be read subject to Section 14(1) and that the use of the words price payable in Rule 4 meant the market value of the goods in international trade. While conceding that the onus was on the Customs authority to establish the market value of the imported goods, the respondent claimed that the onus had been discharged by proof of the vendors price list. In support of this argument, the respondent relied on Sharp Business Machines Pvt. Ltd., Bangalore V. Collector of Customs, Bangalore 1991 (1) SCC 154. Under the Act customs duty is chargeable on goods. According to Section 14 (1) of the Act, the assessment of duty is to be made on the value of the goods. The value may be fixed by the Central Government under Section 14(2). Where the value is not so fixed, the value has to be determined under Section 14(1). The value, according to Section 14(1), 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 in the course of international trade. The word ordinarily necessarily implies the exclusion of extraordinary or special circumstances. This is clarified by the last phrase in Section 14 which describes an ordinary sale as one where the seller or the buyer have no interest in the business of each other and the price is the sole consideration for the sale.. Subject to these three conditions laid down in Section 14(1) of time, place and absence of special circumstances, the price of imported goods is to be determined under S. 14(1A) in accordance with the rules framed in this behalf. The rules which have been framed are the Customs, Valuation (Determination of Price of Imported Goods) Rules, 1988. The rules came into force on 16th August, 1988. Under Rule 3(i) the value of imported goods shall be the transaction value. Transaction value has been defined in Rule 2(f) as meaning the value determined in accordance with Rule 4. Rule 4 (1) in turn states: The transaction value of imported goods shall be the price actually paid or payable for the goods when sold for export to India, adjusted in accordance with the provisions of Rule 9 of these rules.

Reading Rule 3(i) and Rule 4 (1) together, it is clear that a mandate has been cast on the authorities to accept the price actually paid or payable for the goods in respect of the goods under assessment as the transaction value. But the mandate is not invariable and is subject to certain exceptions specified in Rule 4(2) namely: a) there are no restrictions as to the disposition or use of the goods by the buyer other than restrictions which

i) are imposed or required by law or by the public authorities in India;

or ii) limit the geographical area in which the goods may be resold; or

iii) do not substantially affect the value of the goods;

b) the sale or price is not subject to same condition or consideration for which a value cannot be determined in respect of the goods being valued;

c) no part of the proceeds of any subsequent resale, disposal or use of the goods by the buyer will

accrue directly or indirectly to the seller, unless an appropriate adjustment can be made in accordance with the provisions of Rule 9 of these rules; and

d) the buyer and seller are not related, or where the buyer and seller are related, that transaction value is acceptable for customs purposes under the provisions of sub-rule (3).

These exceptions are in expansion and explicatory of the special circumstances in Section 14 (1) quoted earlier. It follows that unless the price actually paid for the particular transaction falls within the exceptions, the customs authorities are bound to assess the duty on the transaction value. The respondents submission is that the phrase the transaction value read in conjunction with the word payable in Rule 4(1) allows determination of the ordinary international value of the goods to be ascertained on the basis of data other than the price actually paid for the goods. This, according to the respondent, would be in keeping with the overriding effect of Section 14(1). We cannot agree. It is true that the Rules are framed under Section 14(1A) and are subject to the conditions in Section 14(1). Rule 4 is in fact directly relatable to Section 14(1). Both Sections 14(1) and Rule 4 provide that the price paid by an importer to the vendor in the ordinary course of commerce shall be taken to be the value in the absence of any of the special circumstances indicated in Section 14(1) and particularized in rule 4(2). Rule 4 (1) speaks of the transaction value. Utilization of the definite article indicates that what should be accepted as the value for the purpose of assessment to customs duty is the price actually paid for the particular transaction, unless of course the price is unacceptable for the reasons set out in Rule 4 (2). Payable in the context of the language of Rule 4 (1) must, therefore, be read as referring to the particular transaction and payability in respect of the transaction envisages a situation where payment of price may be deferred. That Rule 4 is limited to the transaction in question is also supported by the provisions of the other Rules each of which provide for alternate modes of valuation and allow evidence of value of goods other than those under assessment to be the basis of the assessable value. Thus, Rule 5 allows for the transaction value to be determined on the basis of identical goods imported into India at the same time; Rule 6 allows for the transaction value to be determined on the value of similar goods imported into India at the same time as the subject goods. Where there are no contemporaneous imports into India, the value is to be determined under Rule 7 by a process of deduction in the manner provided therein. If this is not possible the value is to be computed under Rule 7A. When value of the imported goods cannot be determined under any of these provisions, the value is required to be determined under Rule 8 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 and on the basis of data available in India. If the phrase the transaction value used in Rule 4 were not limited to the particular transaction then the other Rules which refer to other transactions and data would become redundant. It is only when the transaction value under Rule 4 is rejected, then under Rule 3(ii) the value shall be determined by proceeding sequentially through Rules 5 to 8 of the Rules. Conversely if the transaction value can be determined under Rule 4(1) and does not fall under any of the exceptions in Rule 4(2), there is no question of determining the value under the subsequent Rules. The Assistant Collector in this case determined the value of the imported goods under Rule 8. The question is whether he should have determined the transaction value under Rule 4 at the price actually paid by the appellant for the 1989 bearings. Naturally, if Rule 4 applies to the facts of this case, the Assistant Collectors reasoning under Rule 8 must, by virtue of language of Rule 3 (ii), be set aside. The Assistant Collector appears to have proceeded on the law as it was prior to the 1988 Rules when special considerations on the basis of which a transaction was held not to be an ordinary sale in the course of international trade within the meaning of Section 14(1), had not been statutorily particularized. As to what would constitute such special consideration has been considered in several decisions of this Court. For example, a special quotation for the importer singling him out

from other importers in India was held to be a special consideration in Padia Sales Corporation V. Collector of Customs Bombay (supra) justifying the rejection of price paid as the transaction value. On the other hand in Basant Industries V. Addl. Collector of Customs, Bombay 1996 (81) ELT 195 (SC), a special quotation for an old and valued customer was upheld as not being a special circumstance. The decision in Sharp Business Machines Pvt. Ltd., relied upon by the respondent is another case where the transaction value was rejected. In that case, the importer had wrongly mis-described the imported goods and sought to defraud the Revenue by attempting to surreptitiously import items prohibited under the import policy. It was found that there was justification, in the circumstances, for rejecting the price shown in the invoice. The transaction value having been rejected, assessment of value was made on the basis of the price list of the foreign vendor. Both the decisions, Padia Sales Corporation and Sharp Business Machines Pvt. Ltd. were distinguished subsequently in Mirah Exports Pvt. Ltd. V. Collector of Customs 1998 (98) ELT 3. As the facts of this case are somewhat similar to the case before us, it is dealt with in some detail. Mirah Exports Pvt. Ltd. along with other importers had imported bearings at high rates of discount. The declared value was rejected by the Customs authorities on the basis of the price list of the vendors. This Court set aside the decision of the respondent authorities accepting the argument that a discount is a recognised feature of international trade practice and that as long as those discounts are uniformly available to all and based on logical commercial bases, they cannot be denied under Section 14. It appears from the judgment that a distinction was drawn between a discounted price special to a particular customer and discounts available to all customers. As already noted all these cases dealt with imports made prior to the coming into force of the Rules in 1988. Now the special considerations are detailed statutorily in Rule 4(2). In the case before us, it is not alleged that the appellant has mis-declared the price actually paid. Nor was there a mis- description of the goods imported as was the case in Padia Sales Corporation. It is also not the respondents case that the particular import fell within any of the situations enumerated in Rule 4(2). No reason has been given by the Assistant Collector for rejecting the transaction value under Rule 4(1) except the price list of vendor. In doing so, the Assistant Collector not only ignored Rule 4(2) but also acted on the basis of the vendors price list as if a price list is invariably proof of the transaction value. This was erroneous and could not be a reason by itself to reject the transaction value. A discount is a commercially acceptable measure which may be resorted to by a vendor for a variety of reasons including stock clearance. A price list is really no more than a general quotation. It does not preclude discounts on the listed price. In fact, a discount is calculated with reference to the price list. Admittedly in this case discount upto 30% was allowable in ordinary circumstances by the Indian agent itself. There was the additional factor that the stock in question was old and it was a one time sale of 5 year old stock. When a discount is permissible commercially, and there is nothing to show that the same would not have been offered to any one else wishing to buy the old stock, there is no reason why the declared value in question was not accepted under Rule 4(1). In the circumstances, production of the price list did not discharge the onus cast on the Customs authorities to prove that the value of the 1989 bearings in 1993 as declared by the appellant was not the ordinary sale price of the bearings imported. The decision of the Tribunal accepting the determination of value by the Assistant Collector cannot, therefore, be sustained. We accordingly allow the appeal by setting aside the judgment under appeal but without any order as to costs.