

SUPREME COURT OF INDIA

Commissioner of Customs, Ahmedabad

Vs.

Essar Steel Limited

C.A.Nos.6940-6949 of 2003

(Mrs.Ruma Pal and S. H. Kapadia JJ.)

28.09.2005

JUDGMENT

Ruma Pal, J.

1. The respondent No. 1 had imported Iron Ore Pellets from Brazil and Bahrain to Hazira in the State of Gujarat between March, 1990 and September, 1991. For this purpose, the respondent No. 1 had arranged with its sister concern, the respondent No. 4, to take five vessels from the Time Charter. Of the five vessels, one belonged to respondent No. 4. The respondent No. 1 paid the duty on the cost of transportation as certified by the respondent No. 4. Pursuant to investigations made by the appellants, certain invoices raised by the respondent No. 4 on the appellants were found. The invoices were relied upon by the appellants for issuing show cause notices to the respondent No. 1 and the respondent No. 2 by which it was, inter alia, proposed to increase the value of the cost of transportation.

2. It is undisputed that under Section 14(1) of the *Customs Act, 1962* read with Rule 9(2) of the *Customs Valuation (Determination of Price of Imported Goods) Rules, 1988*, the cost of transportation is includible in the value of the goods.

3. The Commissioner confirmed the demand as raised in the show cause notices and imposed penalty on the respondents 1 and 2 as well as on some officers and levied interest on, what was claimed to be, the difference between the cost of transportation as disclosed by the respondent No. 1 and the cost of transportation as ascertained. The matter ultimately came up before the Customs, Excise and Gold (Control) Appellate Tribunal. The Tribunal held that the demand was not sustainable and set aside the impugned order of the Commissioner. The decision of the Tribunal appears to be correct having regard to this Court's opinion as expressed in *Union of India v. Gosalia Shipping Pvt. Ltd.* reported in (relied).

4. According to the appellants, the Tribunal erred in setting aside the order of the Commissioner. It was contended that the Tribunal failed to notice that the respondents had been unable to establish the actual cost of transportation incurred or relatable the import of the goods in question.

5. Learned Counsel appearing on behalf of the respondents supported the decision of the Tribunal and have submitted that the show cause notices proceeded on the basis that the quantum payable on account of Time Charter was includible in the value of the goods imported. It is said that this Court in GosaHa's case (supra) had clearly held that the price payable on a Time Charter could not be treated as the cost of transportation. We have already held that this submission of the respondent is correct. The respondents have also relied upon the fact that as far as the Bahrain import was concerned, they had charged the actual difference between C&F cost of importation and the FOB cost of importation which worked out to approximately US \$ 3(three) per metric tonne. As far as the Iron Ore Pellets imported from Brazil were concerned, since the cost of transportation was not ascertainable, in terms of Rule 9 sub-rule (2) proviso (i), the cost should have been taken at 20% of the FOB value of the cost. That was exactly what the respondents had in fact done. They had added 20% of the FOB value of the goods by way of transportation charges as far as the Brazil imports were concerned. This submission of the respondents is also correct.

6. As far as the Bahrain imports are concerned, the respondents may be correct in their submission that they had given a firm basis for the cost of transportation and that the Customs Authorities themselves had not been able to adduce any contrary evidence on the basis of which they could impugn the rate disclosed. Be that as it may, we note that at the time of the hearing before the Commissioner, Counsel for the respondent No. 1 did put forward an alternative submission to the effect that since in all the cases of import the freight was not readily ascertainable the same could be determined on the basis of 20% of the FOB value and he expressed his readiness to pay the duty so calculated. Before us, the appellants submit through the learned Additional Solicitor General that, they are willing to accept this offer.

7. In the circumstances and without disturbing the other findings of the Tribunal relating to the quashing of the Penalty and interest and to the Brazil imports, we dispose of these appeals by directing the respondent No. 1 to pay the cost of transportation in respect of the Bahrain imports at 20% of the FOB value. It is being made clear that this direction will not be the basis of any penalty or interest to be levied against respondent No. 1 any of their officers

8. No order as to costs.