SUPREME COURT OF INDIA

Commissioner of Customs, Maharashtra

Vs

Messrs Galaxy Entertainment (I) P. Limited and Others

Appeal (Civil) 8667-8670 of 2002; Civil Appeal No. 7453 of 2003

(S. H. Kapadia and B. S. Reddy, JJ)

08.05.2007

JUDGMENT

S. H. KAPADIA, J.

A short question which arises for determination in these civil appeals filed by the Department under Section 130-E of the Customs Act, 1962 against the decision of Customs Excise and Gold (Control) Appellate Tribunal ("the Tribunal") dated 4.7.2002 is: whether technical and installation fee amounting to Rs. 59 lacs was required to be loaded in the assessable value of a 20-Lane Bowling Alley equipment imported in October, 1998 by the assessee-Galaxy Entertainment (I) Pvt. Ltd.?

2. The assessee imported 20-Lane Bowling Alley from M/s AMF Bowling Inc. based in USA for installation in their premises situated at Phoenix Mills Compound, Lower Parel, Mumbai-400013. On 18.5.1999, a show cause notice was issued in which it was alleged that the assessee had grossly undervalued the said equipment by declaring the price at US $ 15000 CIF as against the normal price of US $ 30000 for a lane. According to the show cause notice, the assessee had disguised part of the cost of the equipment as Technical and Installation Fee which was payable to the subsidiary of the foreign supplier, M/s AMF Bowling (I) Pvt. Ltd., amounting to Rs. 59 lacs payable over a period of three years. According to the show cause notice, prior to the importation of the above equipment, similar equipment was imported into India during 1997-98 by nine different assessees. According to the show cause notice, in those nine cases the value of the equipment worked out to US $ 30000 per lane. Consequently, according to the Department, the said equipment, in the present case, stood undervalued, hence, liable to confiscation subject to payment of redemption fund.

3. The demand was confirmed by the Adjudicating Authority. It was held by the Adjudicating Authority that the declared price at the rate of US $ 15199 per lane was highly discounted price and there was no reason for granting discount of 45% to the assessee. According to the Adjudicating Authority, the said equipment was undervalued and it was further disguised under what is called as technical and installation fees paid at the rate of Rs. 5.90 per game for one million customers of the assessee over a period of three years. That agreement was dated 20.8.1998. The Adjudicating Authority arrived at the figure of Rs. 59 lacs on the aforestated basis and included the said amount in the assessable value of the equipment. The Adjudicating Authority came to the conclusion that the cost was artificially divided with the intention of evading payment of customs duty. In the circumstances, the Adjudicating Authority held that the transaction value under Rule 4(1) of the Customs Valuation (Determination of Price of Imported Goods) Rules, 1988 ("Customs Valuation Rules") cannot be taken and accordingly, the Adjudicating Authority invoked Rule 5(1)(c) of the Customs Valuation Rules and called upon the assessee to pay duty on the price calculated at the rate of US $ 30000 x 20 + Rs.1.41 lacs per lane as Installation Charges, which M/s Capital Leisure Pvt. Ltd. had paid, amounting to Rs. 28.33 lacs.

4. Aggrieved by the aforesaid decision of the Adjudicating Authority, the matter was carried in appeal by the assessee to the Appellate Tribunal. The Tribunal came to the conclusion that in the present case there was no undervaluation and, therefore, there was no reason to deviate from the valuation under Rule 4(1). According to the Tribunal, the declared value of the equipments at the rate of US $ 15199 per lane was the negotiated price. According to the Tribunal, there was no suppression as the Technical and Installation Agreement dated 20.8.1998 was post-clearance agreement. According to the Tribunal, the facts of the present case stood clearly covered by the judgment of this Court in the case of Basant Industries v. Additional Collector of Customs, Â 2. Consequently, the appeal was allowed by the Tribunal. Hence, these civil appeals have been filed by the Department.

5. We do not find any merit in these civil appeals. In the present case, there were nine imports of the said equipment during the year 1997-98. One such import was made by M/s Capital Leisure Pvt. Ltd., New Delhi. In that matter, the cost came to US $ 30000 per lane. This transaction has been taken by the Department as the basis of valuation under Rule 5(1)(c). However, the import from USA by M/s Capital Leisure Pvt. Ltd. was of 6-Lane Bowling Alley. We have examined all the nine transactions. None of those transactions exceeded 8- Lane Bowling Alley. In the present case, the assessee has imported 20-Lane Bowling Alley. It is the largest in Asia. M/s AMF Bowling Inc., USA, wanted to promote the game in India. The records indicate hectic bargaining for 20-Lane Bowling Alley by the assessee. In the circumstances, the Tribunal was right in coming to the conclusion that the cost per lane at US $ 15000 was a proper negotiated price. In the circumstances, in our view, the matter is fully covered by the judgment of this Court in the case of Basant Industries (supra). Further, there is no merit in the contention advanced on behalf of the Department that the cost of the equipment was deliberately bifurcated and that the Technical and Installation Charges Agreement dated 20.8.1998 was a disguise to arrive at the true value of the import. In this connection we find that, the foreign supplier had its subsidiary in India; that subsidiary was M/s AMF Bowling (I) Pvt. Ltd.. It is not the case of the Department that the said subsidiary was a bogus company. As stated above, the equipment was supplied by M/s AMF Bowling Inc., USA which wanted to promote the game in India. As stated above, 20-Lane Bowling Alley was the biggest in Asia. The foreign supplier wanted the said equipment to be installed

properly. The said equipment was a synthetic item. To install that item required specialized knowledge. That expertise was available with M/s AMF Bowling (I) Pvt. Ltd. (subsidiary of the foreign supplier). As a matter of promotion, the Technical and Installation Charges Agreement dated 20.8.1998 stipulated raising of revenue for next three years by charging a fee of Rs. 5.90 per game for one million games bowled aggregating to Rs. 59 lacs. Therefore, that agreement had no nexus with the sale proceeds of the equipment paid by the assessee to M/s AMF Bowling Inc., USA. The post-clearance agreement was revenue generation agreement. Rs. 59 lacs was not a quantified amount. Rs. 59 lacs was calculated on the basis that one million games were likely to be bowled in the next three years. That risk was taken by M/s AMF Bowling (I) Pvt. Ltd.. Even under Rules of Interpretation to the Customs Valuation Rules, post-clearance agreements are excluded. Further, even under the order of the Adjudicating Authority the validity or the genuineness of the Agreement dated 20.8.1998 is not doubted. In fact, in M/s Capital Leisure, the department has also taken into account the cost of Technical and Installation services at Rs. 28.33 lacs which in the present case is Rs. 59 lacs. As stated, in the case of M/s Capital Leisure the transaction was concerning 6-Lanes Bowling Alley, whereas here we have 20-Lanes.In the circumstances, we do not find any infirmity in the impugned judgment of the Tribunal. One cannot compare the impugned transaction with the transaction which M/s AMF Bowling Inc., USA had with M/s Capital Leisure Pvt. Ltd.. We find no merit in the argument advanced on behalf of the Department that the Technical and Installation charges was a disguise to cover the true cost of the equipment. There is no evidence of any flow-back or extra-consideration deflating the price and, therefore, there was no reason to include Rs. 59 lacs in the assessable value of the equipment. In our view, Rule 4(1) of the Customs Valuation Rules was applicable and the Department had erred in invoking Rule 5(1)(c) of the said Rules.

6. For the aforestated reasons, we find no infirmity in the impugned judgment of the Tribunal dated 4.7.2002. Accordingly the civil appeals are dismissed with no order as to costs.