SUPREME COURT OF INDIA

Commissioner of Customs, New Delhi

Vs.

Phoenix International Ltd.

C.A.No.8037-8047 of 2001

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

20.09.2007

JUDGMENT

KAPADIA, J.

1. These civil appeals are filed by the Department under Section 130E of Customs Act, 1962 against order passed by CEGAT dated 22.12.2000 in Final Order No.411-421/2000-D in Appeal Nos.C/286/98-D and C/302-311 of 2000-D with E/Co/239, 257-260/2000-D whereby the Tribunal allowed the appeals of the importers herein (respondents).

2. The question of law that arises for determination in these civil appeals is:

Whether shoe uppers, outer soles, insoles and sock liners imported by M/s. Phoenix Industries Ltd. (PIND) in the same container could be clubbed so that it could be considered as import of the shoe itself in semi knocked down (SKD) condition? Whether the importer was guilty of mis-declaration when the importer declared SKD goods as components?

FACTS

3. A synthetic shoe, inter alia, consists of vital parts, namely, synthetic uppers, outer soles, insoles and sock liners M/s. Phoenix International Ltd. (M/s. PIL) were the holders of Quantity Based Advance Licence under which it was entitled to import synthetic shoe uppers, PVC compounds and natural rubber. M/s. PIL imported synthetic shoe uppers numbering 5215 pairs on 16.2.96 declaring CIF value at Rs.19,52,401. On the same day Phoenix Industries Ltd. (M/s. PIND) imported soles and insoles numbering 5151 pairs worth Rs.7,07,806 (CIF). M/s. PIL had imported synthetic uppers under DEEC Scheme whereas soles were imported by M/s. PIND under para 22 of the EXIM Policy 1992-97. Both the companies imported respective items as components/parts. On preliminary enquiry, Department was satisfied that there was an attempt to mislead by importing the above items separately through two different companies as uppers and soles constituted complete synthetic shoes in SKD form. In the preliminary enquiry the Department found that all the cartons were placed in one container with the marking of "Phoenix" without specifying whether the container was meant for M/s. PIL or M/s. PIND. Hence, two show cause notices came to be issued dated 7.5.96 for the period 21.6.95 to 4.11.95 and the second show cause notice dated 1.7.96 for the month of February

1996.

4. In the show cause notices it was alleged that the parts imported in the name of two companies were synthetic shoes of "Reebok" brand in SKD form; that the import orders for synthetic uppers, outer soles and insoles had been placed by the two companies on the same Supplier in Bangkok; that the import orders carried the same number; that, both the import orders were signed by Mr. Bhupinder Nagpal, General Manager of M/s. PIL; that the import invoices filed by the two companies referred to the same invoice (proforma) dated 2.11.95; and that the import orders for synthetic shoe uppers, outer soles and insoles were placed by Mr. Bhupinder Nagpal on behalf of the said two companies. According to the show cause notices consumer items were placed in the negative list vide para 156(A) of the EXIM Policy 1992-97 and under the said para of consumer goods in SKD condition or Ready to assemble condition, were required to be imported under specific import licence; that synthetic shoes constituted a consumer item and, therefore, required specific import licence; that, in the present case goods in SKD condition or Ready to Assemble condition were imported without specific import licence despite knowledge on the part of M/s. PIL that all the components of "Reebok" shoes like synthetic shoe uppers, outer soles, insoles and sock liners were meant to be assembled either by them or in their behalf and later supplied to M/s. Reebok International Ltd. or M/s. Reebok India. In this connection, the Department placed reliance on the manufacturing agreement between M/s. PIL and M/s. Reebok International Ltd. In the show cause notices it was further alleged that M/s. PIL were the owners of M/s. PIND. In the circumstances, the show cause notices stated that M/s. PIL had resorted to the above subterfuge of importing uppers of "Reebok" shoes in their own name and the remaining three components in the name of M/s. PIND in order to bypass restriction imposed by para 156(A) of the EXIM Policy 1992-

97. In that connection, the Department alleged that a loan of Rs.11.7 crores was advanced by M/s. PIL to M/s. PIND, interest free, during the year ending 31.3.95 and a loan of Rs.7.7 crores was also advanced to the same company, interest free, during the financial year 31.3.94. For that purpose reliance was placed on the balance-sheets of M/s. PIL. Under the above circumstances, the Department alleged, vide the show cause notices, that M/s. PIL was the importer of all the components, namely, synthetic shoe uppers, outer soles, insoles and sock liners; that, as per rule 2(a) of the General Rules of Interpretation of the First Schedule to the Customs Tariff Act, 1975 (for short, "General Rules of interpretation") the goods imported were not parts/components but were SKD goods, liable to be assessed as complete finished goods under tariff Heading 6404.19 of the First Schedule of the Customs Act, 1975 and liable to basic customs duty at 50% ad valorem and countervailing duty at 15% ad valorem. Vide two show cause notices violation of para 156(A) of the EXIM Policy 1992-97, was also alleged. In that connection, the Department alleged that M/s. PIL was fully aware that import of the above parts of "Reebok" synthetic shoes in the name of one company may give rise to suspicion and, therefore, the imports were made through the aforestated subterfuge. Further, according to the show cause notices, the value given in their import invoices did not represent the correct transaction value since a single consignment meant for one importer, namely, M/s. PIL was deliberately split up into two parts and, accordingly, valuation had to be done by invoking rule 8 of the Customs Valuation (Determination of Price of Imported Goods) Rules, 1988 (for short, "Customs Valuation Rules"). In this connection, the case of the Department was that there were no imports of "Reebok" components in India by any other company and, therefore, value of comparable goods was not available and, therefore, the Department had no option but to invoke rule 8 of the Customs Valuation Rules. Accordingly, the CIF value was claimed at Rs.1,566.39 per pair under rule 8 of the Customs Valuation Rules. In the circumstances, vide the show cause notices

the importer was called upon to answer why the benefit of Notification No.45/94-Cus dated 1.3.94 should not be disallowed; why consignments of the two companies should not be clubbed for purposes of assessment under EXIM Policy 1992-97 and Customs Act, 1962; why CIF value of shoes should not be taken at Rs.1566.39 per pair; why synthetic shoe uppers, outer soles, insoles and sock liners be not valued at Rs.82,25,114(CIF); why the said items should not be confiscated under Section 111(d)(l)(m) of the Customs Act, 1962; why the aforestated four items should not be assessed to duty under tariff Heading 6404.19 of Schedule I to Customs Tariff Act, 1975 as synthetic shoes in SKD form liable to basic customs duty at 50% plus CVD at 15% ad valorem; why benefit under DEEC should not be denied and lastly why penalty under Section 112(A) of Customs Act, 1962 should not be imposed for contravention.

5. In reply to the show cause notices, it was stated, that the aforestated two companies were separate independent companies; that M/s. PIND was incorporated as private limited company in 1992 in the name of M/s. Welcome Leather Industries Pvt. Ltd.; that M/s. PIL was incorporated as a private limited company in 1987; that M/s. PIL could not begin its commercial activities for four years and it started its business in 1991 as merchant exporter; that in 1991 M/s. Welcome Leather Industries Pvt. Ltd. decided to sell the company which was acquired by M/s. PIL; that in 1992 M/s. PIL started manufacturing shoe uppers and, therefore, though both the companies, namely, M/s. PIL and M/s. PIND were under the same management having common majority of directors and shareholders, they were separate independent companies in all respects. According to the reply, the two companies were separately assessed under Income Tax Act, Sales Tax Act and Central Excise Duty. The factories of the two companies were located at different places. About 500 employees were working in respective companies. According to the reply filed before the Commissioner, M/s. PIND was engaged in the manufacture of leather shoes, synthetic shoes, semi-leather shoes, outer soles etc. M/s. PIND were registered as a leather industry. According to the reply, goods manufactured by M/s. PIND including footwear were sold in the domestic market. According to the reply, in certain cases footwear was got manufactured by M/s. PIL on job work basis. According to the reply, in some cases M/s. PIND acted as job workers for M/s. PIL. At the same time, in other cases, M/s. PIL were as job workers for M/s. PIND. According to the reply, M/s. PIL handled, during the above period, overseas sales whereas domestic sales were done by M/s. PIND under the authorization of M/s. PIL. As regards the import in question, it was stated that 5251 pairs of outer soles, insoles and sock liners were imported by M/s. PIND from the foreign Supplier in Bangkok. The importer denied that M/s. PIND was a dummy unit of M/s. PIL as alleged by the Department. In reply, M/s. PIND objected to the clubbing of imports as is claimed in the show cause notices. In reply, it was stated that M/s. PIND was 100% fully owned subsidiary of M/s. PIL and, therefore, it was not a dummy company as alleged by the Department. In the alternative, it was submitted that even for the sake of argument imports of two companies were clubbed, yet there was no violation of Foreign Trade (Development and Regulation) Act, 1992. In reply, M/s. PIND stated that the concept of "SKD" did not exist in respect of synthetic shoes; that, in respect of shoes it was not possible to unassemble the product into parts and, therefore, para 156(A) of the EXIM Policy 1992-97 had no application to the facts of the present case. In this connection, it was further stated that in making of shoes a complicated industrial process involving costly machine, workers, technical knowhow etc. was involved and that the finished goods cannot be manufactured without further processing and, therefore, it is a misnomer to call synthetic shoe uppers, soles, insoles and sock liners as SKD packs of complete shoes. Reliance was placed also in para 7(12) read with 156(A) of the EXIM Policy 1992-97 in respect of the contention that "consumer goods" has been defined in para 7(12) refers to goods like ceiling fans, cycles etc.; that para 7(12) refers to "consumer goods" which can directly satisfy human needs without further processing and since synthetic shoes were not capable of being

assembled without further processing they did not attract para 156(A) of the EXIM Policy 1992-97. On the question of applicability of rule 2(a) of the General Rules of interpretation, the importer stated that the said rule was meant only for classification of goods under the Schedule to the Customs Tariff Act, 1975; that, the said rule cannot be used for interpretation of EXIM Policy 1992-97 or the exemption notification No.45/94-Cus dated 1.3.1994 and, therefore, the importer disputed the contention of the Department that because of rule 2(a) of the General Rules of the Interpretation the items imported should be construed as SKD packs of sports shoes, therefore, according to the importer rule 2(a) was not applicable. Further, according to the importer, Notification No.45/94-Cus dated 1.3.1994 gave exemption to the items mentioned in Table A annexed thereto which referred to sole, insole and sock liner and consequently M/s. PIND was entitled to the benefit of the said notification. In this connection, it was stated that goods falling under Table A were not governed by Actual User condition. According to the importer the said notification was applicable to the aforestated four items which were used in the leather industry. According to the importer, so long as the aforestated items, namely, outer soles, insoles and sock liners were imported as "parts" by M/s. PIND, exemption under the above notification was applicable. On the question of valuation it was stated that the foreign Supplier in Bangkok was unrelated to M/s. PIL and M/s. PIND; that Reebok International Ltd. had no shares in the foreign Supplier company; that the said foreign Supplier was not the sole Supplier of Reebok International Ltd. and, therefore, the transaction value of the aforestated four parts should be accepted in terms of rule 4 of the Customs Valuation Rules. Therefore, it was not open to the Department to invoke rule 8 of the Customs Valuation Rules. Accordingly, it was prayed by the importer that the show cause notices be dropped. The reply of M/s. PIL and the reply of M/s. PIND are almost identical.

6. By order dated 12.4.99, the Commissioner held that the imports made by M/s. PIND of soles, insoles and sock liners should be treated as imports by M/s. PIL, however, in view of the elaborate manufacturing process undertaken in the factory to produce a complete footwear it was not possible to hold that complete footwear in SKD condition or Ready to Assemble condition was imported so as to contravene para 156(A) of the EXIM Policy 1992-97; at the same time, the Commissioner held that since the four items had to be clubbed and since the entire operations were undertaken by M/s. PIL and since the four items were essential components of synthetic shoes, rule 2(a) of General Rules of Interpretation stood attract. The Commissioner took the view, in this connection, that rule 2(a) provides for a legal fiction to be applied to the imported goods. It provides for the rate of duty applicable to components to be applied as if the components were finished articles. That, since the imports were of items which were essential parts of synthetic shoes the said imports were imports of synthetic shoes in an unassembled form. Hence, it was held that all imports attracted duty in the present case at the rate applicable to the footwear and not at the rate applicable to components/parts. Accordingly, the Commissioner held that no duty was demandable in respect of synthetic uppers, imported by M/s. PIL during the period 21.6.1995 to 4.11.1995. However, for imports of soles, insoles and sock liners made by M/s. PIND, exemption under notification 45/94-Cus dated 1.3.94 was not admissible and consequently all the three components imported by M/s. PIND would attract duty at the rate applicable to fully-finished footwear under tariff Heading 64.04. That, there was no exemption for footwear under the said notification as it was available only to parts of footwear. That, since all the components imported by M/s. PIND attracted duty at the rate applicable to fully-finished footwear, the said exemption notification 45/94-Cus dated 1.3.94 was not applicable to the facts of this case.

7. In conclusion, the Commissioner passed the following order:

"The goods valued at Rs.78,79,968/- in respect of show cause notice dated 1.7.96 representing the imports made in the name of M/s. Phoenix

Industries Ltd. attracted confiscation. However, since the goods are not available, no order confiscating the goods can be passed. I confirm the differential duty of Rs.16,78,891/- in respect of imports made by M/s. Phoenix International Ltd. and Phoenix Industries Ltd. under two bills of entry covered under show cause notice dated 7.5.96 under Section 28(1) of the Customs Act, 1962. The duty is payable by M/s. Phoenix International Ltd., Noida. I also confirm the differential duty of Rs.29,14,933/- under the proviso to Section 28(1) of the Customs Act, 1962 in respect of imports made in the name of M/s. Phoenix Industries Ltd. during the period 21.6.95 to 4.11.95 covered under show cause notice dated 1.7.96. This amount is also payable by M/s. Phoenix International Ltd. Thus, the total amount of duty payable by M/s. Phoenix International Ltd. is Rs.45,93,824/-. I also impose upon M/s.Phoenix International Ltd. a penalty of Rs.10,00,000/- (Rupees Ten Lacs only) under Section 112(a) of the Customs Act, 1962. Any bank guarantee or deposit made by M/s.Phoenix International at the time of provisional release of goods or during the pendency of these proceedings will be adjusted towards payment of duty demanded and penalty imposed."

CONTENTIONS

8. Mr. Vikas Singh, learned Addl. Solicitor General, submitted that after clubbing all the four components the Commissioner had erred in holding that the clubbed items did not constitute synthetic shoes in SKD condition. That, at the relevant time Para 156(A) warranted all consumer goods in SKD condition to be imported under specific import licence and therefore, the word "SKD" had to be construed in the manner in which the trade dealing in such matter would interpret. That the Commissioner should have held that the imports were in SKD condition and since imports of SKD shoes was a restricted item, the advance licences under which M/s. PIL had made the imports were not applicable to the goods in question. Learned counsel submitted that the Commissioner had erred in holding that the process of manufacturing support shoes was quite elaborate and, therefore, the four items imported did not constitute synthetic shoes in SKD form. Learned counsel submitted that the Commissioner had erred in holding that there was no violation of Para 156(A) of the EXIM Policy. In this connection, learned counsel urged that importation of sports shoes in SKD condition could only be made against special import licence and in order to circumvent the restriction in the EXIM Policy 1992-97 the above device was evolved to bifurcate and import the items separately in the names of two different importers, i.e., shoe uppers were imported by M/s. PIL against advance licence whereas soles, insoles and sock liners were imported by M/s. PIND on payment of concessional rate of duty under para 22 of the EXIM Policy 1992-97 read with Notification No.45/94-Cus dated 1.3.94. Learned counsel further urged that on clubbing tariff Heading 64.06 invoked by the importer, was not applicable and, therefore the importer was liable to pay basic customs duty at 50% + CVD at 15% ad valorem under tariff Heading 64.04. That, the said device of bifurcation was to get the benefit of concessional rate of duty under Notification No.45/94-Cus dated 1.3.94. That, the entire funding and manufacturing functions were undertaken only by M/s. PIL which had entered into Buy-Back Arrangement with Reebok International Ltd. and, therefore, there was a close relationship between Reebok International Ltd., M/s. PIL and M/s. PIND which attracted rule 8 of the Customs Valuation Rules. For the aforestated reasons it was urged that the impugned decision of the Tribunal deserves to be set aside.

9. Mr. V. Lakshmikumaran, learned counsel appearing on behalf of the respondents, submitted that the Commissioner had erred in treating M/s. PIND as a dummy of M/s. PIL. In this connection, it

was urged that the two companies are separate independent entities. They were incorporated on different dates. They are in different business. The domestic market was handled by M/s. PIND whereas export market was looked after by M/s. PIL. M/s. PIL was the holding company whereas M/s. PIND was a subsidiary company. Both the companies had separate balance-sheets. They were registered separately under Central Excise Act. M/s. PIL had fulfilled its export obligations and in recognition thereof an advance licence was issued in its favour inter alia to import shoe uppers and that even in the DEEC the name of M/s. PIND was also shown as Supporting Manufacturer. It was further contended that para 156(A) of EXIM Policy 1992-97 was not applicable to synthetic shoes. It was applicable to products like bicycles, ceiling fans etc. In this connection, learned counsel urged that it is over-simplification to say that if these four parts are clipped together it would constitute a sports shoe. Learned counsel invited our attention to the order of the Commissioner which indicates complicated procedure involved in the manufacture of a sports shoe. Therefore, it is urged on behalf of the respondents that in the present case there was no import of footwear in the SKD condition and, therefore, para 156(A) of the EXIM Policy 1992-97 was not applicable. Learned counsel urged that even according to the Commissioner there was no import of sports shoe in SKD condition and, therefore, there was no violation of para 156(A) of the EXIM Policy 1992-97. Learned counsel urged that this finding of the Commissioner has been confirmed by the Tribunal, therefore, this Court should not interfere with the concurring finding. Learned counsel next urged that M/s. PIND was an independent Unit. It had imported outer soles, insoles and sock liners under para 22 of the EXIM Policy 1992-97. It had paid duty at the concessional rate. Learned counsel submitted that in the present case we are concerned with tariff Heading 64.04 (footwear) as against tariff Heading 64.06 (parts of footwear). Learned counsel submitted that apart from the four parts, namely, shoe uppers, outer soles, insoles and sock liners, there are 28 other parts domestically procured and consumed/used in the manufacture of a sports shoe. He submitted that the process of manufacture was an intricate process. It was urged that if an error was to creep in the manufacture of the sports shoe the manufacturer would be liable for damages to be paid to the sportsman to whom injury may take place on account of defect in the manufacture of the footwear. Accordingly, it was urged that the four parts, referred to above, did not constitute a sports shoe (footwear) and the Commissioner had erred in denying the benefit of concessional rate of duty on the ground that what was imported was in essence a complete footwear falling under tariff Heading 64.04. In this connection, learned counsel also submitted that rule 2(a) of the General Rules of Interpretation was not applicable in this case, particularly, when "parts" of footwear came specifically under tariff Heading 64.06. In this connection, reliance was placed on rule 1 of the General Rules of Interpretation which stated that the classification shall be determined according to the words used in the headings. Learned counsel urged that rule 2(a) of the General Rules of Interpretation in any event cannot be used to interpret Notification No.45/94-Cus dated 1.3.94. It was further contended that under Notification No.45/94-Cus dated 1.3.94 insoles and outer soles fell under Table 'A' annexed to the said notification. That, items falling under Table 'A' when imported into India for use in the leather industry were entitled to the benefit of concessional rate of duty and, therefore, the Commissioner had erred in holding that insoles and outer soles were not entitled to the benefit of concessional rate of duty as they were used in the manufacture of synthetic shoes which did not come under Leather Industry. Learned counsel submitted that M/s. PIND had imported soles, insoles and sock liners under para 22 of the EXIM Policy 1992-97 and, therefore, it was entitled to the benefit of the Notification No.45/94-Cus dated 1.3.94. Lastly, it was urged that in the present case the Commissioner had erred in invoking rule 8 of the Customs Valuation Rules. In this connection, it was urged that in this case the importer had imported the aforestated items for the sale price. That the import was made by two independent companies. That the transaction was at arm's length; that there was no additional consideration and, therefore, rule 4 of the Customs Valuation Rules was alone applicable and there was no basis

whatsoever for the Department to invoke rule 8 of the Customs Valuation Rules. Accordingly, learned counsel submitted that the Tribunal was right in holding that the aforestated items were imported separately by two independent companies and that there was no evidence to show that the footwear in SKD condition was imported and, therefore, in the present case importer was entitled to the benefit of Notification No.45/94-Cus dated 1.3.94 read with tariff Heading 64.06 (parts of footwear) and, therefore, the said items were not liable to duty at the rate of 50% and 15% basic and CVD, ad valorem.

FINDINGS

10. We find merit in the present civil appeals filed by the Department. For the sake of convenience we reproduce para 22 and 156(A) of the EXIM Policy 1992-97 which read as follow:

"Chapter V

Imports

Free

Importability

22. Capital goods, raw materials, intermediates, components, consumables, spares, parts, accessories, instruments and other goods may be imported without any restriction except to the extent such imports are regulated by the Negative List of Imports or any other provision of this Policy or any other law for the time being in force."

"PART II

156. RESTRICTED ITEMS

A. CONSUMER GOODS

Sl.No. Description of Items

Nature of restriction All consumer goods, howsoever described, of industrial, agricultural mineral or animal origin, whether in SKD/CKD condition or ready to assemble sets or in finished form Not permitted to be imported except against a licence or in accordance with a Public Notice Issued in this behalf.

11. In the case of excise duty, the taxable event is "manufacture". In the present case, however, we are concerned with the levy of customs duty. That duty is levied on the "act" of importation. Therefore, intention plays an important role in matters in which there is an allegation of duty evasion. In the present case, the Department has alleged that a device was evolved by the importer showing import of shoe uppers by M/s. PIL whereas outer soles, insoles and sock liners imported by M/s. PIND. A subterfuge was, therefore, created to show that two independent companies had imported separate parts of the footwear in order to bypass para 156(A) of the EXIM Policy 1992-97. Under the said paragraph, importation of synthetic shoes in SKD condition could only be made against specific import licence. M/s. PIL was aware of the restrictions. It was the only real importer

of all the four items. M/s. PIL had funded M/s. PIND with interest free loans running into Rs.18 crores (approximately). M/s. PIND was the factory of M/s. PIL (See the DEEC certificate). When there is an allegation of subterfuge, the court has to examine the circumstances surrounding the import to ascertain whether the importer had entered into fictitious arrangement to evade customs duty. The intention behind the act of importation has to be probed. In this case, the most clinching circumstance is that there is manufacture of the finished products, namely, "synthetic shoe" for domestic and export markets. M/s. PIL manufactured export quality synthetic shoes on their own account whereas those sold in the domestic market by M/s. PIND was also manufactured by M/s PIL for M/s PIND. Further, in his statement, B. Nagpal, on behalf of the importer, has categorically stated that synthetic uppers (imported by M/s PIL), soles, insoles and sock liners (imported by M/s PIND) did constitute complete shoe in SKD condition. Therefore, when we come to the question of "intention" in the present case it becomes clear that the entire device of bifurcation was arranged in order to bypass the restriction imposed vide para 156(A) of the EXIM Policy. The reply of B. Nagpal indicates that, according to the importer, the said four components did constitute synthetic shoe in SKD condition and in order to circumvent 156(A) the entire device was arranged by the importer to evade duty. Further, we find that in the reply to the show cause notices there were no details supplied by the importer regarding the number of units under M/s. PIL. The statement of Bhupinder Nagpal in the preliminary enquiry shows that there were three units in Noida under M/s. PIL. One Unit is in B-1C Sector 10 manufacturing "Phoenix" brand of shoes for exports. There was one more Unit in A-4, Sector 5 manufacturing "Reebok" brand of shoes for exports. It also undertook manufacturing of shoes for domestic sales on job work basis at Sector A-37, Sector 60 for M/s. PIND. The third unit was M/s. PIL. No details of the turnover have been furnished. No details of the number of employees have been furnished. The bifurcation of the turnover between manufacture of synthetic shoes exported and shoes sold in the domestic market was not given. The functional connectivity of the three units was not given. No reason have been given as to why M/s. PIL did not import all the four items particularly when M/s. PIL, as stated hereinbelow, has been in complete charge of manufacturing. The obvious reason behind the said bifurcation was to obtain the benefit of the Notification No.45/94-Cus dated 1.3.94. However, the clinching circumstance is that M/s. PIL was not only manufacturing export quality synthetic shoes but it also manufactured as job-worker of M/s. PIND domestic quality synthetic shoes. Soles, insoles and sock liners were imported by M/s. PIND and supplied as raw-material to M/s. PIL who manufactured the synthetic shoes which were routed through M/s. PIND to M/s. Reebok India for sale in the domestic market. In the circumstances, the complete manufacturing activity was in the hands of M/s. PIL. They manufactured synthetic shoes sold in the export market and they also manufactured synthetic shoes which were sold in the domestic market. The shoe uppers constituted an important part of the footwear. That part was imported under the advance licence by M/s. PIL. The same company got the outer soles, insoles and sock liners in the name of M/s. PIND. It is M/s. PIL which ultimately manufactured synthetic shoes. Therefore, the entire manufacturing activity was carried out by M/s. PIL. Therefore, it is clear that the above device of importation of one item by M/s. PIL and three items by M/s. PIND was a subterfuge/fictitious arrangement intended to deceive the Department and fraud on para 156(A) of the EXIM Policy 1992-97. The above circumstances have not at all been considered by the Tribunal. In cases of the present nature, the Tribunal should look at the entire composite picture in order to ascertain the real intention behind the arrangement on which the importer relies. Lastly, the shoe uppers were imported by M/s. PIL whereas soles, insoles and sock liners were imported by M/s. PIND and given to M/s. PIL who along with 28 other items (peripherals), procured domestically, manufactured the finished product, viz., synthetic shoes. The entire device was undertaken to show that what was imported were parts and not the footwear in the SKD condition. Therefore, M/s. PIL was the only real importer of all the four items and, in the

circumstances, the Department was right in clubbing.

12. It was urged vehemently even if the said four items were clubbed together it would not result in the manufacture of the synthetic shoes as an intricate process is required to be adopted before the finished product stood emerged. As stated above, if the transaction of M/s. PIND and M/s. PIL are looked at separately then the question of subterfuge cannot be examined. In the present case, interest-free loans had been advanced by M/s. PIL to M/s. PIND. The real importer was only M/s. PIL. The manufacturer was also M/s. PIL. The entire transaction was completed by M/s. PIL. No reason has been given as to why M/s. PIL could not have imported the outer soles, insoles and sock liners under para 22 of the EXIM Policy 1992-97 by payment of duty at the concessional rate under Notification No.45/94-Cus dated 1.3.94. The obvious intention was to bypass the EXIM Policy 1992-97 and claim benefit of exemption Notification No.45/94-Cus dated 1.3.94. Lastly, as stated above, all four items plus 28 other items (peripherals), domestically procured, were used in the manufacturing process undertaken by M/s. PIL either on its own account (in case of export) or as job-worker (incase of domestic sales) which led to the emergence of the final product. Therefore, the importer was liable to be assessed under tariff Heading 64.04 and consequently not entitled to the benefit of exemption Notification No.45/94-Cus dated 1.3.94. Lastly, soles and insoles as also sock liners were imported by M/s. PIL in the name of M/s. PIND; that M/s. PIL had an agreement with Reebok International Ltd. which had its subsidiary in India, viz., Reebok India to whom synthetic shoes were sold by M/s. PIL through M/s. PIND and, therefore, the Department was right in invoking rule 8 of the Customs Valuation Rules. Unfortunately, none of these aspects have been considered by the Tribunal.

13. We, therefore, set aside the impugned judgment of the Tribunal. We hold that the respondents were guilty of violating para 156(A) of the EXIM Policy 1992-97; that the respondents were liable to be assessed under tariff Heading 64.04 and, accordingly, they were liable to pay duty of customs at 50% + CVD at 15% ad valorem; that the respondents were not entitled to the benefit of concessional rate of duty under Notification No.45/94-Cus dated 1.3.94 and that the Department was right in invoking rule 8 of the Customs Valuation Rules. Accordingly, we remit only the question of re-quantification of differential duty, redemption fine and penalties, payable by the respondents herein, to the Commissioner of Customs, Inland Container Depot, Tughalkabad, New Delhi, who will decide the said issue in accordance with law.

14. Accordingly, the present civil appeals filed by the Department stand allowed with no order as to costs.