

# **SUPREME COURT OF INDIA**

M/s Varsha Plastics Pvt. Ltd.

Vs.

Union of India

C.A.Nos.835-836 of 2002

(Markandey Katju and R.M. Lodha JJ.)

05.02.2009

## **JUDGEMENT**

**R.M. Lodha, J.**

1. These two appeals by special leave are directed against the judgment and order of the High Court of Gujarat disposing of Special Civil Application and Miscellaneous Application for review.

2. The first appellant M/s Varsha Plastics Pvt. Ltd., is engaged in the business of importing various goods like plastic materials. They imported a consignment of 18.45 metres of LDPE/HDPE mix granules/powder (floor sweeping) from USA in the month of July, 2000. These goods are claimed to have been purchased from M/s Pexim International of USA under Invoice No. 2827 at the total price of US \$ 4151.25. The importer declared these goods as freely importable item under para 5.1. of the EXIM Policy 1997-2000. The goods were subjected to examination. Some of these goods were found to be mis-declared goods in terms of value and some were found mis-declared in terms of description, value and quality. In view of mis-declaration of goods in terms of description and value, the Customs Authority was of the view that these were liable to be confiscated and importer was liable for penal action. A show cause notice was sought to be given but the importer waived issuance of show cause notice and personal hearing. The Additional Commissioner of Customs, Kandla vide order in original dated 29.11.2000 rejected the invoice price as was found to be very low as compared to prevalent international market price and in view of mis-declaration of goods in terms of value and description, enhanced the value of the goods for the assessment purpose as set out in the order. The Additional Commissioner of Customs ordered confiscation of under-invoiced goods as well as goods mis-declared in description but gave an option to the importer to redeem the same by payment of fine. In his order, the Additional Commissioner of Customs, Kandla also imposed a personal penalty of Rs. 2,50,000/- on the importing firm and its directors.

3. The present appellants, instead of assailing the order in original in a statutory appeal approached the High Court of Gujarat by filing a Special Civil Application inter alia

challenging the constitutional validity of the provision of Section 151A of *The Customs Act, 1962* (for short 'the Act') and also put in issue the legality and validity of the Standing Order No. 7493/99 issued by the Chief Commissioner of Customs, Mumbai with regard to valuation of plastic items.

4. It appears that few other Special Civil Applications raising identical issues were pending before the High Court of Gujarat. These Special Civil Applications were heard together by the Division Bench and disposed of vide Order dated 04.04.2001. The Division Bench did not find any merit in so far as the constitutional validity of Section 151A of the Act was concerned. As regards the power of the Chief Commissioner of Customs to issue the impugned Standing Order to the subordinate Assessing Authorities on the question of assessment of value of the concerned goods for imposing customs duty, the Division Bench held that the impugned Standing Order was not rigid direction or mandate but was an only instruction containing flexible guidelines. The High Court held that the impugned Standing Order is to be taken only as assistance in exercise of quasi-judicial power of determining the value for the purpose of levy of customs duty by the concerned authorities. Having read down the Standing Order, the High Court held that the impugned Standing Order was not liable to be struck down.

5. An application seeking review of the order dated 04.04.2001 was made by the present appellants which came to be disposed of on 25.04.2001. It is from these orders that these two appeals arise.

6. In view of the limited leave granted by this Court, the controversy in these appeals is confined to the legality and validity of the Standing Order No. 7493/99.

7. Ms. Meenakshi Arora, learned counsel, appearing for the appellants, relying upon a decision of this Court in the case of *Eicher Tractors Ltd., Haryana vs. Commissioner of Customs, Mumbai*<sup>1</sup> strenuously urged that the transaction value i.e., price actually paid for imported materials alone can be considered to be the assessable value and, therefore, the impugned Standing Order which directed the assessing authorities to discard such transaction value and take the price published in magazine like PLATT's Weekly Report, as the assessable value was unsustainable in law. The learned counsel referred to two more decisions of this Court viz., (1) *Rabindra Chandra Paul vs. Commissioner of Customs (Preventive) Shillong*<sup>2</sup> (2) *Commissioner of Customs, Calcutta vs. South India Television (P) Ltd.*<sup>3</sup> wherein Eicher Tractors has been followed. In challenging the Standing Order as invalid and ultra vires, the learned counsel submitted that no instructions could be issued as to how assessable value of imported goods should be determined and as to how a consignment of waste like floor sweepings should be classified. She placed reliance on *Orient Paper Mills Ltd. vs. Union of India*<sup>4</sup>.

8. Before we advert to the impugned Standing Order, it would be appropriate to refer to few provisions of law, relevant for the purposes of the controversy raised in these appeals.

9. Section 14 of the Act provides for valuation of goods for purposes of assessment which reads thus:-

“Valuation of goods for purposes of assessment - (1) For the purposes of the *Customs Tariff Act, 1975* (51 of 1975), or any other law for the time being in force whereunder a duty of customs is chargeable on any goods by reference to their value, the value of such goods 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 or exportation, as the case may be, in the course of international trade, where the seller and the buyer have no interest in the business of each other and the price is the sole consideration for the sale or offer for sale;

[Provided that such price shall be calculated with reference to the rate of exchange as in force on the date on which a bill of entry is presented under section 46, or a shipping bill or bill of export, as the case may be, is presented under section 50;]

[(1A) Subject to the provisions of sub-section (1), the price referred to in that sub-section in respect of imported goods shall be determined in accordance with the rules made in this behalf.]

(2) Notwithstanding anything contained in sub-section (1) [or sub-section (1A)] if the Central Government is satisfied that it is necessary or expedient so to do it may, by notification in the Official Gazette, fix tariff values for any class of imported goods or export goods, having regard to the trend of value of such or like goods, and where any such tariff values are fixed, the duty shall be chargeable with reference to such tariff value.

(3) For the purposes of this section -

(a) "rate of exchange" means the rate of exchange

(i) determined by the Central Government, or

(ii) ascertained in such manner as the Central Government may direct, for the conversion of Indian currency into foreign currency or foreign currency into Indian currency;

(b) "foreign currency" and "Indian currency" have the meanings respectively assigned to them in clause (m) and clause (q) of section 2 of the *Foreign Exchange Regulation Act, 1973* (46 of 1973)”

10. Section 151A empowers the Board to issue orders, instructions and directions to officers of Customs for the purpose of uniformity in the classification of goods or with respect to levy of duty thereon. The said provision is as follows:- [151A. Instructions to officers of customs – The Board may, if it considers it necessary or expedient so to do for the purpose of

uniformity in the classification of goods or with respect to the levy of duty thereon, issue such orders, instructions and directions to officers of customs as it may deem fit and such officers of customs and all the other persons employed in the execution of this Act shall observe and follow such orders, instructions and directions of the Board:

“Provided that no such orders, instructions or directions shall be issued -

(a) so as to require any such officer of customs to make a particular assessment or to dispose of a particular case in a particular manner; or

(b) so as to interfere with the discretion of the Commissioner of Customs (Appeals) in the exercise of his appellate functions.]”

11. Section 156 of the Act empowers the Central Government to make rules consistent with the Act for carrying out its purposes. In exercise of the power conferred by Section 156 of the Act read with Section 22 of the *General Clauses Act, 1896*, the Central Government has made the rules called the *Customs Valuation (Determination of Price of Imported Goods) Rules 1988* (for short ‘Customs Valuation Rules’). Rule 2(f) defines inter-alia transaction value, the value determined in accordance with Rule 4 of the Rules. Rule 3 and 4 of the Customs Valuation Rules read thus:-

“3. Determination of the method of valuation- For the purposes of these rules, -

(i) the value of imported goods shall be the transaction value

(ii) if the value cannot be determined under the provisions of clause (i) above, the value shall be determined by proceeding sequentially through Rules 5 to 8 of these rules.

4. Transaction value - (1) 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.

(2) The transaction value of imported goods under sub- rule (1) above shall be accepted : Provided that -

(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) below.

(3) (a) Where the buyer and seller are related, the transaction value shall be accepted provided that the examination of the circumstances of the sale of the imported goods indicate that the relationship did not influence the price.

(b) In a sale between related persons, the transaction value shall be accepted, whenever the importer demonstrates that the declared value of the goods being valued, closely approximates to one of the following values ascertained at or about the same time -

(i) the transaction value of identical goods, or of similar goods, in sales to unrelated buyers in India;

(ii) the deductive value for identical goods or similar goods;

(iii) the computed value for identical goods or similar goods.

Provided that in applying the values used for comparison, due account shall be taken of demonstrated difference in commercial levels, quantity levels, adjustments in accordance with the provisions of Rule 9 of these rules and cost incurred by the seller in sales in which he and the buyer are not related;

(c) substitute values shall not be established under the provisions of clause (b) of this sub-rule.”

12. Section 14(1) of the Act prescribes a method for determination of the value of the goods. It is a deeming provision. By legal fiction incorporated in this Section, the value of the imported goods is the deemed 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' in Section 14 (1) is a word of significance. The ordinary meaning of the word 'ordinarily' in Section 14(1) is 'non-exceptional' or 'usual'. It does not mean 'universally'. In the context of Section 14(1) for the purpose of 'valuation' of goods, however, by use of the word 'ordinarily', the indication is that the ordinary value of the goods, is what it would have in the course of international trade at the time of import.

Section 14(1), thus, provides that the value has to be assessed on the basis of price attached to such or like goods ordinarily sold or offered for sale, in the ordinary course of events in international trade at the time and place of transportation.

13. Customs Valuation Rules have been framed by the Central Government in exercise of the powers conferred by Section 156 of the Act to maintain uniformity and certainty in the matter of valuation of goods which are matters of procedure, substantive provision being contained in Section 14(1). Rule 3 and 4 of the Customs Valuation Rules provide for transaction value method. Rejection of transaction value of goods by the Customs Authority being totally an un-realistic value has been found to be proper by this Court in the case of *Collector of Customs, Bombay vs. Shibani Engineering Systems, Bombay*<sup>5</sup>.

14. In *Eicher Tractors* (supra) this Court held that the value, according to Section 14, 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. It was further held that by Rule 4(1) 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 this mandate is subject to certain exceptions specified in Rule 4(2). It was also held by this Court in *Eicher Tractors* (supra) that both Section 14(1) of the Act and Rule 4 provide that the price paid by the importer to the vendor in the ordinary course of commerce shall be deemed to be the value in the absence of any of the special circumstances indicated in Section 14(1) and particularized in Rule 4(2). However, when the transaction value under Rule 4 is rejected, the value shall be determined proceeding sequentially through Rule 5-8 of the Rules. In *Eicher Tractors* it cannot be said to have been laid down that even in a case of invoice manipulation or under-invoicing or ridiculously low price or mis-declaration in respect of valuation of goods or description or non-commercial considerations or in such like circumstances, the transaction value cannot be rejected by the assessing authority. The observations in *Eicher Tractors*, "...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 goods imported as was the case in *Padia Sales Corporation*", leave no manner of doubt in what we have noticed above. As a matter of fact in *Eicher Tractors*, *Padia Sales Corporation vs. Collector of Customs*<sup>6</sup>, *Basant Industries Nunhai, Agra vs. Additional Collector of Customs, Bombay*<sup>7</sup> and *Sharp Business Machines vs. Collector of Customs*<sup>8</sup> were found distinguishable as in these cases the rejection of transaction value was found justified being covered by special circumstances and/or mis-description of the imported goods to defraud revenue.

15. *Rabindra Chandra Paul* (supra) and *South India Television (P) Ltd.*, (supra) also recognize the legal position that transaction value can be rejected if invoice price is not found to be correct but it is for the Department to prove that the invoice price is incorrect.

16. Rule 11 of Customs Valuation Rules also provide that in case of dispute between importer and the officer of the Customs valuing the goods it shall be resolved consistent with the provisions contained in sub-section 1 of Section 14 of the Act.

17. It has to be kept in mind that once nature of goods has been mis-declared, the value declared on the imported goods becomes unacceptable. It does not in any way affect the legal position that the burden is on the Customs Authorities to establish the case of mis-declaration of goods or valuation or that the declared price did not reflect the true transaction value.

18. Section 151A of the Act confers upon the Board the power to issue orders, instructions and directions to the authorities for proper administration of the provisions of the Act. It also provides that all such authorities and all other persons employed in the execution of the provisions of the Act shall observe and follow such orders, instructions and directions of the Board. Proviso appended thereto states that no such orders, instructions or directions shall be issued – (a) so as to require all such officers of Customs to make a particular assessment or to dispose of a particular case in a particular manner or; (b) so as to interfere with the discretion of the Collector of Customs (Appeals) in exercise of his appellate functions. The proviso to Section 151A makes it abundantly clear that the Customs Officer who has to make a particular assessment is not bound by such orders or instructions or directions of the Board. An Assessing Authority under the Act being a quasi-judicial authority has to act independently in exercise of his quasi-judicial powers and functions. Section 151A does not in any manner control or affects the independent exercise of quasi-judicial functions by the Assessing Authority.

19. By the impugned Standing Order No.7493/99 dated 03.12.1999, the Chief Commissioner of Customs has given detailed guidelines and directions for the determination of valuation of plastic items in the light of international prices contained in the foreign finance journals. The directions issued to the assessing authorities is to apply what is described as PLATT rate, which is explained as rates and prices maintained in the internationally reputed finance journal PLATT's WEEKLY REPORT. It has also given direction as to how classification of mixed material like floor sweeping should be made.

20. The question now is whether the impugned Standing Order in any manner interferes with the independent quasi-judicial function to be discharged in the assessment of duty by the Assessing Officer. Whatever be the language employed in the Standing Order which may suggest that the said instructions are in the nature of a mandate or command, High Court has read down the impugned Standing Order purely as instructions or guidelines and not mandate or command for being obeyed in each individual case of assessment before them. The High Court further held that Standing Order is to be taken only as assistance in exercise of the quasi-judicial power of determining value for the purpose of levying of customs duty. We agree with the view of the High Court. As a matter of fact, it is the case of the Department as well that the impugned Standing Order is not binding; it is just in the nature of guidelines to streamline the functioning of Customs Officers at various field formations. According to the Department, the impugned Standing Order was issued for the smooth functioning of assessment and examination work and to bring about uniformity in the work and it prescribes only pattern of assessment and in no way, interferes with the discretion of the Assessment Authority. In view of the categorical stand of the Department that the impugned Standing Order is just in the nature of guidelines and it does not in any way interfere with the

discretion of officers, the impugned Standing Order has to be read and understood accordingly.

21. In so far as the reference to PLATT's Price Report or other reputed financial journals which are indicators of international prices for the value of imported goods for the purpose of Section 14(1) is concerned, suffice it to observe that once transaction value is rejected on valid grounds, the Customs Authority has to proceed to determine the value of goods by following Customs Valuation Rules and on the basis of contemporaneous import. However, in the absence of any evidence with regard to contemporaneous import, reference to foreign journals that may indicate the correct international price for the purposes of Section 14 may not be irrelevant and relying upon such journal cannot be said to be altogether unreasonable. As to whether in a given case such foreign journal or for that matter PLATT's Price Report indicate correct international price of the concerned goods for the purpose of Section 14(1) would depend on facts of each case and that would be for the department to establish. The valuation of the imported goods where the transaction value in the opinion of Assessing Authority is liable to be rejected because of invoice manipulation or under-invoicing or unrealistic price or mis-declaration in respect of valuation of goods or description or where transaction value of the goods declared is ridiculously low, which of course the Assessing Authority has to justify, he must proceed to determine valuation of goods by following Customs Valuation Rules. The availability of evidence of contemporaneous import of the same goods obviously provides the best guide for determination of value of the import of goods but in the absence of evidence of contemporaneous import, reference to foreign journal for finding out correct international price of imported goods may not be irrelevant because ultimately the Assessing Authority has to determine value of the imported goods, at which such goods are sold or offered for sale in the course of international trade at the time of importation.

22. Paragraph 7 of the impugned Standing Order which provide as to how classification of mixed waste material like floor sweeping should be made also has to be read only as guidelines to the Assessing Authority. The Assessing Authority in his quasi-judicial function has to take independent view in this regard as well.

23. We do not intend to go into the facts as to whether the Assessing Authority was justified in his findings in respect of imported goods having been mis-declared in terms of value and some of the imported goods mis-declared in terms of description, value and quality as these are the aspects which have to be challenged by filing a statutory appeal. The High Court has already kept these aspects open to be agitated by the appellants before the competent authority under the Act.

24. In the result, we find no merit in these appeals and same are dismissed with no order as to costs.

<sup>1</sup>(2001) 1 SCC 315

<sup>4</sup>AIR 1970 SC 1498

<sup>7</sup>(1995) Supp 3 SCC 320

<sup>2</sup>(2007) 3 SCC 93

<sup>5</sup>(1996) 10 SCC 42

<sup>8</sup>(1991) 1 SCC 154

<sup>3</sup>(2007) 6 SCC 373

<sup>6</sup>(1993) Supp. 4 SCC 57