

# SUPREME COURT OF INDIA

Radhey Shyam Ratanlal

Vs.

Commnr. of Customs (Adjudication), Mumbai

C.A.No.2700 of 2006

(S.B. Sinha and Dr. Mukundakam Sharma JJ.)

06.05.2009

## JUDGEMENT

### **Dr. Mukundakam Sharma, J.**

1. The present Civil Appeal is filed by the appellant under Section 130E of the *Customs Act, 1962*. The appeal is directed against the impugned judgment and order dated 8.3.2006 passed by the Customs, Excise and Service Tax Appellate Tribunal, New Delhi (hereinafter 'the Tribunal' whereby and whereunder the adjudication order dated 31.12.2003 passed by the Commissioner of Customs (Adjudication), Mumbai was upheld and whereby the Tribunal dismissed both the appeals preferred by the appellants holding that the appellant was fully aware and was made known about the materials placed before the authority and he had full opportunity to deal with the documents Page 1 of 16 submitted by the witness. The Tribunal upheld and confirmed the reasoning and the conclusions of the Commissioner for passing the order dated 31.12.2003. By the aforesaid order passed by the Tribunal, a fine of Rs. 5 lacs in lieu of confiscation of the goods and penalty of Rs. 10 lacs was imposed on the appellant firm, and also a penalty of Rs. 5 lacs imposed on Ratanlal under the provision of Section 112(a) of the Customs Act imposed by the Commissioner of Customs (Adjudication) was upheld.

2. The entire proceeding arises out of a contract of importation of cloves of the bulk quantity of 300 MTs at US Dollars 2600 PMT CIF, Mumbai. It was alleged that the appellants herein entered into a contract with M/s. Ketan Trading Company, Singapore on 23.11.2000 for import of cloves. The goods were described as 'cloves-Zanzibar/Indonesia' meaning thereby cloves of Zanzibar/Indonesian origin of the bulk quantity of 300 MTs at US Dollars 2600 PMT CIF Mumbai.

3. The aforesaid contract dated 23.11.2000 for the above-mentioned quantity of cloves was registered with the Customs Department by the appellants in the course of which three bills of entry were filed by appellants for clearance of part shipment declaring the contract price as the invoice price.

Again, for further imports seven more bills of entry were filed by the appellants in terms of the direction of the respondent. The appellants paid the price at the enhanced price.

4. The Customs House initiated an investigation into the import of cloves included in all ten bills of entry. The Customs Department alleged that during the investigation, it was revealed that the aforesaid goods were invoiced by M/s. Ketan Trading Co., Singapore at Unit Price of US Dollars 2600 PMT CIF, Mumbai although the prevailing international price of cloves during the relevant period (in the month of January-February, 2001) was around US Dollars 5500 which reached to US Dollars 6500 PMT by the end of February and beginning of March, 2001 and that the cloves were not traded at a price less than US Dollars 4200 PMT during the year 2000 except in the beginning of January, 2000.

5. It was also alleged that in order to avoid deterioration of goods, the appellants as directed by the Department, deposited the amount towards enhanced price. The Bill of Entry was provisionally assessed and out of charge order under Section 47 of the Act was passed. After that the goods were stored in a warehouse at Vashi in its general section.

6. It was further alleged that the imports made by M/s. Spices Trading Corporation of India established that cloves of Indonesian and Comoros origin were shipped from Singapore at the rate of US Dollars 5500 PMT (CIF) to Nhava Bills of Entry dated 10.5.2001 and 8.5.2001. The case of the Customs is also that Bulletin of Spices Market published by the trade information services of Spices Board of the Ministry of Commerce and Industry, Government of India indicated that the prices of cloves were ranging from US Dollars 4490 to US Dollars 6010 between 17.11.2000 to 23.2.2001.

7. Further evidence was also collected indicating that as per the Public Ledger, an international publication of repute, the CIF European Port prices of cloves were ranging from US Dollars 4400 to US Dollars 6300 between 6.11.2000 and 26.3.2001. It was also indicated that several of the importers admitted that the cloves were imported by them at various prices ranging between US Dollars 5050 to US Dollars 5500 during the aforementioned relevant period. During the course of investigation, the partner of the appellant was also questioned. In that process, he admitted that the original contract was with M/s. Ketan Trading Co., Singapore for supply of 300 MTs and it was signed in November, 2000 and that he was having only a photocopy of the said contract. He stated that the international market price of cloves in the beginning of 2001 was only US Dollars 2900 to US Dollars 3000 and that in February, March-April the price went up to US Dollars 5000 depending upon the quality. As regards the invoice bearing No. 624/2K- 01 dated 7.2.2001 issued M/s. IJIM ASIA in the name of M/s. Ketan Trading Co. showing consignment of 24.538 MTs of cloves at the rate of US Dollars 5600, he stated that one consignment was imported by him under bill of entry dated 24.2.2001, which was the same consignment mentioned and shown against invoice dated 7.2.2001.

8. It was also stated that while seeking clearance the quantity declared was 23.488 MTs, but on actual examination the consignment was found to be in excess by 1.05 MTs confirming the correctness of the quantity mentioned as per invoice dated 7.2.2001 i.e. 24.538 MTs.

9. It was therefore submitted by the department that there is foolproof evidence to suggest undervaluation in the import of cloves by the appellant with intent to evade customs duty. A Show Cause Notice was issued by the Department on 27.2.2002 to which reply was also received.

“Appellants requested for supply of certain documents. The aforesaid request was acceded to by the Department and personal hearing was also given to the appellants. The appellants also filed their written submission. Thereafter, an order was passed on 13.2.2003 by the Commissioner of Customs (Adjudication) holding that the value for the purpose of assessment of the cloves imported under four Bills of Entry should be US Dollars 5500 PMT and for the balance six Bills of Entry, the value for the assessment of the cloves imported by the Appellants should be @US\$ 5600 PMT (CIF).”

10. Aggrieved by the abovesaid order dated 31.12.2003, the Appellant Company preferred an Appeal in the Tribunal on various grounds.

11. Apart from the aforesaid appeal filed by the appellant, another appeal No. 169 of 2004 was preferred by the partner of the appellant Company in the same Tribunal. The Tribunal heard the parties and thereafter by an Order dated 8.3.2006 dismissed both the appeals filed by the appellant and its partner.

12. Still aggrieved, the present appeal is filed by the appellant challenging the orders passed by the Adjudicating Authority as also by the Tribunal.

13. Mr. Rajiv Dutta, the learned senior counsel appearing for the appellant submitted before us that the transaction value which the appellant could establish by producing relevant documents should have been accepted by the respondent. It was also submitted by him that the transaction value was based on the price agreed upon which was contractual in nature, and therefore, the said price should have been accepted as value of the goods and having not done so, the impugned orders are required to be set aside. His further submission was that, the Public Ledger or Weekly Bulletin should not have been considered as of any evidentiary value in the matter under consideration.

14. The aforesaid submission of the counsel appearing for the appellant was however refuted by the learned counsel appearing for the Commissioner of Customs. His submission was that the appellant could not produce the original contract said to have been entered into between M/s. Ketan Trading Company and the appellant in which the price of the goods was allegedly agreed upon at US Dollars 2600 PMT. He pointed out that the document dated 23.11.2000 of M/s. Ketan Trading Co. is not a contract and therefore no reliance could and should be placed on the said document to arrive at a finding that in fact the appellant had supplied the aforesaid cloves for Ketan Trading Company at US Dollars 2600 PMT. He also submitted that the findings and conclusions arrived at by the Commissioner of Customs (Adjudication)

as well as by the Tribunal are findings of fact and the same should not be interfered with by this Court.

15. In the light of the aforesaid submissions we have perused the documents on record. A perusal of the relevant documents would indicate that the issue that arises for our consideration is as to how the value of the goods, in question, was to be computed. In other words whether the price of goods at the time of computation should be the deciding factor in arriving at the value of the goods or it is the price agreed upon by the parties.

16. In order to substantiate the claims and the rejection of the said claims, reference was made to the provisions of Sections 14(1) (a) of the Customs Act, 1962 and Rule 4 and Rule 5 and Rule 10A of the Customs Valuation Rules, 1988.

“The said provisions being relevant, material part thereof are extracted herein below.

Section 14: Valuation of goods. -- (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 of 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 - (a) the seller and the buyer have no interest in the business of each other; or (b) one of them has no interest in the business of the 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;

1(A) 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.

The relevant Rules are Rules 4, 5 and 10A of the Customs Valuation Rules, 1988, which are reproduced hereunder:

Rule 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) the sale is in the ordinary course of trade under fully competitive conditions;

(b) the sale does not involve any abnormal discount or reduction from the ordinary competitive price;

(c) the sale does not involve special discounts limited to exclusive agents;

(d) objective and quantifiable data exist with regard to the adjustments required to be made, under the provisions of rule 9, to the transaction value.

(e) 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;

(f) 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;

(g) 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 (h) 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.

Rule 5. Transaction value of identical goods. -- (1)(a) Subject to the provisions of Rule 3 of these rules, the value of imported goods shall be the transaction value of identical goods sold for export to India and imported at or about the same time as the goods being valued.

(b) In applying this rule, the transaction value of identical goods in a sale at the same commercial level and in substantially the same quantity as the goods being valued shall be used to determine the value of imported goods.

Rule 10A. Rejection of declared value. -- (1) When the proper officer has reason to doubt the truth or accuracy of the value declared in relation to any imported goods, he may ask the importer of such goods to furnish further information including documents or other evidence and if, after receiving such further information, or in the absence of a response of such importer, the proper officer still has reasonable doubt about the truth or accuracy of the value so declared, it shall be deemed that the value of such imported goods cannot be determined under the provisions of sub-rule (1) of Rule 4.

(2) At the request of an importer, the proper officer, shall intimate the importer in writing the grounds for doubting the truth or accuracy of the value declared in relation to goods imported by such importer and provide a reasonable opportunity of being heard, before taking a final decision under sub-rule (1).”

17. The alleged transaction value claimed by the appellant was not accepted by the respondent mainly on the grounds namely inability to produce relevant documents and failure to prove and establish as to at what price the imported goods were purchased by the appellant. The same was also not accepted as it is indicated from the comparable rate that other persons and firms purchased same goods almost at the same relevant time at a higher rate.

18. Counsel appearing for the appellant heavily relied on the document dated 23.11.2000 which is a document issued by M/s. Ketan Trading Co. The said letter is a certificate issued by M/s. Ketan Trading Company in favour of the appellant confirming that they had sold to the appellant, cloves of Zanzibar, Indonesia and Cameroon origin at US Dollars 2600 PMT CIF, Mumbai of a quantity of about 300 MTs. A bare perusal of the said document would indicate that the same is not a contract which was entered upon between the parties and it is merely a certificate issued by M/s. Ketan Trading Co. in favour of the appellant.

19. We have extracted hereinbefore, the relevant part of the provision of Section 14 (1) (a) of the Customs Act and the relevant part of Rule 4, Rule 5 and Rule 10A of the Customs Valuation Rules. Section 14 of the Act relates to valuation of goods for the purpose of assessment and inter alia provides that the value of any goods chargeable to duty of customs would 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 where the seller and the buyer have no interest in the business of each other or one of them has no interest in the business of the other and the price is the sole consideration for the sale or offer for sale. By inserting sub-Section (1A) of Section 14 which was inserted with effect from 16.8.1988, it was provided that subject to the provisions of sub-Section (1) of Section 14, the price referred to in the sub-Section in respect of imported goods would be determined in accordance with the rules made in this behalf.

20. Further, Rule 4 deals with the transaction value which is required to be determined under aforesaid rule. Under Rule 4 of the Valuation Rules, the transaction value of imported goods shall be the price actually paid or payable for the goods when sold for export to India. In accordance with the provisions of Rule 9, such transaction value is required to be accepted subject to the proviso to sub-Rule (2). But the expression used in Section 14 and Rule 4 clearly indicates that the transaction value of imported goods would be accepted as provided by sub-Rule (2) of Rule 4 but such value is always subject to the provision of sub-Section (1) of Section 14 in view of the opening expression used in sub-Section (1A) of Section 14 which opens with the expression "subject to the provisions of sub-Section (1) of Section 14." Therefore, the provisions of sub-Section (1) of Section 14 would prevail when the transaction value required to be determined under Rule 4 does not reflect the price at which such or like goods are ordinarily sold or offered for sale for delivery at the time and place of importation. There cannot be any dispute with regard to said interpretation that it is the provision which will always prevail. In other words the deemed value contemplated under Section 14(1) would prevail when the price declared does not reflect the price at which such or like goods are ordinarily sold or offered for sale for delivery at the time and place of importation. Under

Rule 5, it is inter alia provided that the value of imported goods shall be the transaction value of identical goods sold for export to India and imported on or about the same time, good being valued subject to provisions of Rule 3. It is also provided in the said Rule that in applying the said rule the transaction value of identical goods and sale at the same commercial level and substantially of the same quantity, would be used to determine the value of the imported goods.

21. We are required to apply the aforesaid provision to the facts and circumstances of the present case and when done so it would appear that the appellant although claimed a transaction value, but such value could not be supported by production of the original contract or the invoices relating to procurement of cloves to the appellant under the ten Bills of Entry in question. The said documents were called for and were directed to be produced, but same could not be produced. The alleged contract dated 23.11.2000 cannot be termed as a contract between the parties and it is merely a certificate issued by M/s. Ketan Trading Co.

22. The respondent department has also relied upon the contemporaneous documents like the Weekly Bulletin of Spices Market and also the Public Ledger. The Weekly Bulletin of Spices Market published by the Trade Information Services of the Spices Board of the Ministry of Commerce and Industry, Government of India indicated that the price of Indonesian cloves on 24.11.2000 was US\$ 4765 PMT and that of Zanzibar cloves was US\$ 4650 PMT. Such bulletin also indicates that by 23.12.2001 the price of Zanzibar cloves had reached Rs.6100/- PMT. The Public Ledger which is also considered as International Publication of Report indicates that the price of cloves in the international market on 27.11.2000 was US Dollars 4700 which reached US Dollars 6300 on 26.3.2001.

23. We are also satisfied with the records produced before us that the nature of business of M/s. Ketan Trading Co. is primarily dealing with sport goods and not cloves. There is also a reference of the document on record particularly the relevant bill of lading which indicates that cloves were imported by the appellants from IJIMASIA Pvt. Ltd. through M/s. Ketan Trading Co. at the price of US Dollars 5600 PMT through bill of entry dated 7.2.2001. The value of the said Zanzibar cloves were shown as US Dollars 5600 PMT. It has also come in evidence that 9.5648 MTs cloves of Indonesian origin shipped from Singapore imported by M/s. Spices Trading Corporation under bill of entry dated 8.5.2001 were bought at the rate of US Dollars 5500. The said consignment was shipped on 25.2.2001 as per the bill of lading. Another consignment of 9.300 MTs of cloves of Comoros origin was also imported by M/s. Spices Trading Corporation at the same unit price. A table of imports made by the appellants in the Bill of Entry in question is placed on record. The evidence therefore which exist on record clearly support the findings and the conclusions arrived at by the Commissioner of Customs (Adjudication), Mumbai and also by the Tribunal. The findings and conclusions cannot be said to be perverse. They are based on cogent reasons which are found to be forceful and reasonable. We find no reason and ground to take a different view than what is taken by the said two authorities.

24. In our considered opinion, it is conclusively proved that the Department correctly imposed proper assessment value on the goods in question imported by the appellant. The

said value for the purpose of assessment of the goods had been correctly arrived at in accordance with the provisions of the Acts and the Rules framed thereunder particularly in accordance with Rule 5 of the Valuation Rules.

25. In terms of aforesaid discussion and in the facts and circumstances of the case, we find no merit in this appeal which is dismissed with costs. Counsel fee assessed at Rs. 25,000/-.