SUPREME COURT OF INDIA

Commissioner of Customs

Vs.

National Lamination Industries & Anr.

C.A.No.3748-3751 of 2007

(A.K.Sikri and R.F.Nariman,JJ.,)

07.10.2015

JUDGMENT

A.K.Sikri,J.,

1. The respondent/assessee herein imported sixteen consignments of secondary/defective CRGO Electrical Steel in the form of Sheets, Coils, Strips and Cuttings, for which it filed different Bills of Entry. The unit price of the goods was declared as US$ 250 Per Metric Ton (PMT) for CRGO Electrical Steel Strips and US$ 300 PMT in respect of other variety of goods. The Directorate of Revenue Intelligence, Chennai Zonal Unit, received some information to the effect that the assessee was undervaluing the goods and violating the EXIM Policy as well as conditions of Customs Exemption Notifications. The goods were, thus, examined and seized under reasonable belief that they were undervalued. Four show cause notices were issued. In the show cause notice dated 26.11.2001, it was alleged that the country of origin in respect of the said goods imported were USA, Japan, U.K., Russia, Europe etc. and the value of these goods assessed ranging between US$ 475 (C&F) to US$ 750 PMT (C&F). On that basis, the show cause notice proceeded as under:

> "15. In terms of Rule 3 of the Customs Valuation Rules, 1988, the value for the purpose of assessment shall be the transaction value of the goods under Rule 4 of the said Rules, ibid, the transaction value of the imported goods shall be the price actually paid or payable for the goods when sold for export to Indian adjusted in accordance with the provisions of Rule 9 of these Rules. Section 14 of the Customs Act, 1962 inter alia, states that "... 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...". In the instant case, from the facts stated above and the tables showing the comparative declared/assessed values of other importers as well as M/s. Alfa & National for import of Secondary/Defective CRGO through the Port of Mumbai / Nhava Sheva as against the values declared by M/s. Alfa for their imports (currently under investigation) through Port of Chennai, have not declared are price/ value at which such or like goods are ordinarily sold or offered for sale as contemplated under Section 14 of the Customs Act, 1962 read with Rule 4

of the Customs Valuation Rules, 1988 in as much as they have declared much lower values for their imports through the Port of Chennai as compared to the values declared by them and other importers for imports through Mumbai/Nhava Sheva for their goods. The values declared by M/s. Alfa for their imports through Ports other than Chennai is very much in line with the values declared by the other Importers through the above said Ports, and thus it appears that the prices declared by M/s. Alfa, their sister concern M/s. National as well as the other Importers at the above said Ports are to be the values/prices at which such goods are ordinarily sold or offered for sale."

2. It is clear from the above that the main ground on the basis of which undervaluation of the goods was alleged was that the assessee had imported the same material declaring higher price which was cleared at Mumbai port. Order-in-Original was passed affirming the said show cause notice and the demand of differential duty, including interest contained therein. The assessee had taken up the defence that the goods imported at Mumbai port at a higher value were of better quality and that they had the warranty of the suppliers. In support, the assessee had filed photographs of coils, strips and cuttings and also full description and the sizes/specifications of the goods imported through Chennai port to substantiate the claim that these goods were of inferior quality compared to those imported through Mumbai port. However, this defence was brushed aside by the Adjudicating Authority on the ground that the plea was not supported by any documentary evidence.

3. The assessee filed appeal against this order before the Customs Excise & Service Tax Appellate Tribunal (in short CESTAT). The CESTAT, vide impugned decision dated 18.07.2006, set aside the order of the Adjudicating Authority, by accepting the plea of the assessee and holding that the declared values representing the true and correct transaction value under Rule 4 of the Customs Valuation Rules and, therefore, was required to be accepted.

4. According to the Tribunal, the Commissioner had treated the goods of higher value on the basis of statements of the two partners of the assessee in respect of goods imported by them in Mumbai wherein the goods were assessed at values ranging from US$ 485to US$ 600 PMT. However, on going through the Statement of these two partners, the Tribunal purportedly found that there was no such admission of undervaluation made by them on their part, which was made the basis of the Order- in-Original passed by the Commissioner. The Tribunal, finding fault with the Order-in-Original, gave following reasons:

"11. We also find substance in the contention that there is a variation between the prices of goods imported through Mumbai Port and through Chennai Port for the reason that, while the goods imported at Mumbai were under contract containing a guarantee clause, contracts under which the Chennai imports took place had no such clause.

12. There is yet another reason for rejecting loading and that is while applying Rule 8 of the Customs Valuation Rules, for determining the value of the goods the

Commissioner has adopted Rule 8 read with Rules 5 and 6, which deal with the valuation of similar/ identical goods, in the face of categories averment in the show cause notice, and his finding in the impugned order, that there were no imports of similar or identical goods, elsewhere, so as to resort to valuation under Rule 5 or 6, specially when the material was secondary/defective in nature. In other words, while ruling out Rules 5 and 6, what he has done in fact, is to adopt the value of Mumbai imports of the appellants, which cannot be sustained for the reason that admittedly no similar or identical goods are found to have been contemporaneously imported elsewhere in India. Valuation under Rule 8 is also not sustainable for the reason that the rule provides that reasonable means for determining the value read with Customs Valuation Rules and Section 14(1) of the Customs Act have to be adopted and as per Section 14(1), time and place of delivery is very relevant and, therefore, the Commissioner has erred in enhancing the values on the basis of imports at a place other than the price of delivery of goods in question, by adopting Mumbai values for Chennai imports."

5. Contesting the aforesaid reasons and rationale given by the Tribunal, learned counsel for the appellant/Department referred to the averments and allegations made in the show cause notice which, according to him, were based on the investigations carried out in the matter, and clearly depicted that the assessee had shown the value of the same goods in question at a lesser price in the Bills of Entries filed by the assessee. He pointed out that on the basis of a specific information that the assessee and their sister concern M/s. Alfa Laminations, Plot No. B-8-9, IODC Industrial Area, Ringanwada, Daman. 396210 are importing consignments of Secondary Defective ARGO Electrical Steel in the form of Sheets in Coils/Steel Sheets/ Sheets in interleaved coils/Steel Strips in cuttings/used an old Strips/Sheets in Coils through the port of Chennai by grossly undervaluing, violating the EXIM Policy and the conditions of Customs Exemption Notification, investigation was initiated by the officers of the Directorate of Revenue Intelligence, Chennai Zonal Unit. Investigation conducted revealed that the above said goods, when imported through Mumbai, Nhava Sheva port and ICD Muland, were being cleared at declared/assessed values ranging from US$ 485 per MT (CIF) to US$ 750 PMT (CIF), depending upon the nature of the product, whereas the goods were being cleared at declared/assessed values ranging from US$ 210 to US$ 300 PMT CIF for import through Chennai port. The learned senior counsel also argued that the Tribunal wrongly recorded that there was no admission in the statements of the partners. He pointed out that Mr. Mahendra Parekh, one of the Partnersof M/s. National Lamination specifically admitted that they were importing through the port of Chennai since the values assessed in Mumbai were very much higher and agreed to pay the duty differentials. Pursuant to the initiation of the investigations by the DRI, the importer reduced the imports of the impugned items through the port of Chennai and whatever clearances were effected the value was declared at US$ 485 PMT (CIF) for purposes of assessment. Based on the above investigation, show cause notices were issued to the importers/assessee asking them to show cause as to why the values declared by them in their Bills of Entry should not be rejected and the same be refixed under the Best Judgment method in terms of Rule 8 of the Valuation Rules, 1988 and the differential duty demanded apart from proposing confiscation of the goods and imposition of penalty.

6. Learned counsel also drew our attention to the Order-in- Original wherein the evidence collected against the assessee was discussed by the Adjudicating Authority in the following manner:

> "I have perused the documents and the list of Bills of Entry of other importers through Chennai port evidencing import of CRGO electrical steel at about US$ 250-350 same range as that of the importers. I find that there are 125 Bills of Entry in all filed by M/s. National Lamination Industries and M/s. Alfa Laminations covered under four show cause notices. Their main suppliers of CRGO electrical steel at Chennai as well as Mumbai and Nhava Sheva ports were M/s. J. Pearson International Inc, USA, M/s. Electrical Steel International, M/s. Trans Metal Gmbh, M/s. Orbit Metals Gmbh, M/s. Gold Arrow Metals, USA, ARB Metals, USA, Norek Trading etc. This list submitted by the importers in respect of imports by others indicate supplies made by M/s. J. Peason International in one case, M/s. Oribti Metals in 3 cases and M/s. Transmetal in 6 instances wherein the values were shown in the range of US$ 280 to US$ 350 PMT. On the other hand, the investigation brought out much clear and many more evidences of imports by others both through Chennai and Mumbai ports indicating much higher prices. I find that the investigation clearly brought out that other importers through Mumbai/Nhava Sheva Ports also imported secondary/defective steel cuttings and strips at US$ 485 PMT or more. Thus, the evidences were overwhelming in support of the argument that the goods imported through Chennai port where undervalued. Hence, I am unable to accept the contention that the imports made by others through Chennai port at the same price as the importers should be accepted for assessment. Such imports were stray cases of lower values being adopted and in any case cannot form the basis of comparison when clear evidences are available to arrive the conclusion that the correct value of the goods was more than US$ 485 PMT when imported in any form."

7. Another significant material which was referred to by the learned counsel is the statement of the partners of the assessee wherein it was admitted that the prices/values declared by the assessee for import through Chennai port for similar items was much less compared to the value declared at Mumbai port. It was also argued that keeping in view the clearances at Mumbai port by the assessee themselves, minimum value of the various clearances was taken, which could not be faulted with.

8. After giving our due consideration to the submissions with reference to the records, we are of the firm opinion that the impugned judgment of the Tribunal is unsustainable. In fact, the Tribunal has not only misinterpreted the statements of two partners of the assessee, it has also sidetracked and ignored other relevant material. We have gone through the statements of the two partners of the assessee and find that there is a categorical admission on their part that the prices/values declared by them for imports through Chennai port for similar items was much less compared to the values declared at Mumbai port. At this juncture itself, it would also be pertinent to point out that while recording the statement of Mr. Nilesh Parekh, partner of the assessee where he admitted the aforesaid facts, he also stated that the exact

reason for declaring different values, even when the goods were similar, would be explained by his elder brother Mr. Mahendra Parekh, who looked after these imports. The justification which was ultimately sought to be given was that the goods imported at Chennai port were defective in nature which was the reason and for this reason, these goods were brought at lesser price. It was also explained that though there was guarantee clause in the contracts in respect of goods imported at Mumbai, no similar provision was there for the products imported and cleared at Chennai port. However, we find that assessee has not substantiated the aforesaid plea by producing the contract in respect of Mumbai port and Chennai port. In the absence thereof, it was not permissible for the Tribunal to accept this plea of the assessee.

9. There is yet another material circumstance which is specifically taken note of by the Adjudicating Authority but glossed over by the Tribunal. The factory of the assessee is at Daman and, thus, Mumbai port was much closer. On this basis, specific query was put to the assessee as to why certain imports were made through Chennai port instead of Mumbai port. However, no satisfactory reply was given to this question except making a bald averment that landing charges etc. were much less compared to rates at Mumbai which does not inspire any confidence, that too in the absence of any material given by the assessee in support of this plea. Insofar as the plea that goods which were cleared at Chennai port were defective in nature and, therefore, were not similar or identical goods, the Tribunal has only gone by the photographs that were produced. Here also, we find that approach of the Tribunal is faulty and the Commissioner rightly observed that these photographs did not conclusively establish that goods in such form were not imported through Mumbai port. It was also not clear when and how the photographs depicting goods cleared through Mumbai port were taken in order to compare with the goods cleared through Chennai port. Above all, as already pointed out above, no documentary evidence was produced by the assessee to support the plea that the goods at Chennai port were inferior in quality than the goods imported and cleared at Mumbai port and there was no warranty clause of the goods imported at Chennai.

10. The Tribunal also erred in holding that the Commissioner wrongly applied Rule 8 of the Custom Valuation Rules. Order- in-Original shows that ithad taken into evidence 55 Bills of Entry pertaining to goods imported and cleared at Mumbai port which showed price ranging from US$ 485 PMT to US$ 600 PMT. The goods imported by the assessee which were cleared at Mumbai port were found to be similar in nature. These imports were by the assessee itself. Therefore, price declared therein could be made the basis of valuation. Minimum price was taken as the transaction value. It was clearly permissible under Rule 8 read with Rules 5 and 6 of the Valuation Rules.

11. We, thus, allow the appeals, thereby setting aside the order of the Tribunal and restoring the Order-in-Original passed by the Commissioner.