SUPREME COURT OF INDIA

Commissioner of Central Excise and Service Tax, Noida

Vs.

Sanjivani Non-Ferrous Trading Pvt. Ltd.

C.A.No.18300-18305 of 2017

(A.K.Sikri and S.Abdul Nazeer,JJ.,)

10.12.2018

JUDGMENT

A.K.Sikri,J.,

1. The issue raised in these appeals pertains to the transaction value/assessable value in respect of imported Aluminum Scrap, which was imported by the respondent herein. The respondent had imported various varieties of the said Aluminum scrap during the period 27th August, 2013 to 29th December, 2014 and filed 843 Bills of Entry along with invoices and purchase orders in respect therein declaring the transaction value of the imported goods for the purpose of paying custom duty. The declared value was not accepted by the Assessing Officer who found the same to be low. Accordingly, the said declared value was rejected and reassessment was done by increasing the assessable value.

2. In a writ petition filed by the respondent in the High Court of Allahabad, on the directions of the High Court directed the Deputy Commissioner of Customs, NOIDA passed a speaking order dated 25th March, 2015, giving his reasons to reject the transaction value as declared by the respondent and enhancing the same by taking into consideration the value of imported goods, namely, grades of scrap Aluminum contents therein as well as quantum of presence of other metals.

3. The assessment order dated 25th March, 2015 passed by the Assessing Officer was challenged by filing appeals before the Commissioner (Appeals), Central Excise and Customs, NOIDA. All these appeals were dismissed. Challenging the order of the Commissioner (Appeals), the respondent approached the Customs, Excise and Service Tax Appellate Tribunal (hereinafter referred to as the "Tribunal"). By the impugned common judgment dated 17th January, 2017, the appeals of the respondent were allowed thereby rejecting the enhancement of assessable value by the Revenue. It is the said order of the Tribunal, which is the subject matter of these appeals.

4. The entire basis of the order of the Tribunal is contained in paragraph 7 of the impugned judgment and since that paragraph contains the reasons which persuaded the Tribunal to set aside the order of the authorities below, we reproduce this para along with paragraph 8 which disclosed the outcome of the appeals, in entirety.

> "7. Having considered the rival contentions and on perusal of record, we find that the Original Authority was directed by the Hon'ble High Court to pass speaking order on the enhancement of assessable value. We find that the Original Authority in its Order-in-Original dated 25/03/2015 passed comments on the ground of writ petition and did not properly examine the evidence available with the department required to be examined for enhancement of assessable value. Further, we find that as held in the case laws stated above and as provided by Section 14 of Customs Act, 1962, the assessable value has to be arrived at on the basis of the price which is actually paid and in a case the price is not sole consideration or if the buyers and sellers are related persons then after establishing that the price is not sole consideration the transaction value can be rejected and taking the other evidences into consideration the assessable value can be arrived at. Such exercise has not been done in these cases on hand. Therefore, we reject the enhancement of assessable value in respect of the Bills of Entry which are involved in all the appeals being decided and we restore the assessable value as declared by the appellant in said Bills of Entry.
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> 8. In result, we set aside all the impugned Orders-in-Appeal and allow all the appeals. The appellant shall be entitled for consequential relief, if any, in accordance with law.

5. The precise submission of Mr. K. Radhakrishna, learned senior counsel appearing for the Revenue was that as per the Tribunal itself, the reasons for upsetting the order in original are:

> (a) That he did not properly examine the evidences available with the Department, which were required to be examined for the purpose of enhancement of assessable value.
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> (b) As per the provisions of Section 14 of the Customs Act, 1962 and the case law in respect thereof, the assessable value has to be arrived at on the basis of the price which is actually paid and in case the price is not the sole consideration or if the buyers and sellers are related persons then after establishing that the price is not the sole consideration, the transaction value can be rejected. However, such exercise has not been done in these cases.

6. It was submitted that if the Original Authority/Assessing Officer had failed to examine the evidence that was available with the Department and had not undertaken the exercise regarding price being not the sole consideration, the Tribunal should have remanded the case back to the Assessing Officer for examining the material and undertaking that exercise. To put it otherwise, the entire thrust of the argument of Mr. Radhakrishna was that appeals could not have been allowed straightaway by accepting the transaction value given by the

respondent/assessee and another opportunity should have been given to the Assessing Authority in this behalf.

7. This argument may seem to be attractive, but only when there is a cursory look at the aforesaid observations of the Tribunal that the Assessing Officer did not examine the evidence available with the Department which was necessitated for such a purpose. However, the observations of the Tribunal have to be understood in their entirety and in the context in which these are made. The Tribunal has categorically mentioned that as per the provisions of Section 14 of the Customs Act and the principles laid down in the case law (which it referred to in the earlier part of the judgment) interpreting this provision, the assessable value has to be arrived at on the basis of the price which is actually paid. It is the basic principle enshrined in the aforesaid provision, i.e., Section 14, which can be culled out from the catena of judgments pronounced by this Court.

8. In *Eisher Tractors Ltd., Haryana vs. Commissioner of Customs, Mumbai*[1], this Court held as under:

> "6. Under the Act customs duty is chargeable on goods. According to Section 14(1) of the Act, the assessment of duty is to be made on the value of the goods. The value may be fixed by the Central Government under Section 14(2). Where the value is not so fixed, the value has to be determined under Section 14(1). The value, according to Section 14(1), 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. The word "ordinarily" necessarily implies the exclusion of "extraordinary" or "special" circumstances. This is clarified by the last phrase in Section 14 which describes an "ordinary" sale as one "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 ...". Subject to these three conditions laid down in Section 14(1) of time, place and absence of special circumstances, the price of imported goods is to be determined under Section 14(1-A) in accordance with the Rules framed in this behalf.

9. These exceptions are in expansion and explicatory of the special circumstances in Section 14(1) quoted earlier. It follows that unless the price actually paid for the particular transaction falls within the exceptions, the Customs Authorities are bound to assess the duty on the transaction value.

> 12. Rule 4(1) speaks of the transaction value. Utilisation of the definite article indicates that what should be accepted as the value for the purpose of assessment to customs duty is the price actually paid for the particular transaction, unless of course the price is unacceptable for the reasons set out in Rule 4(2). "Payable" in the context of the language of Rule 4(1) must, therefore, be read as referring to "theparticular transaction" and payability in respect of the transaction envisages a situation where payment of price may be deferred.

13. That Rule 4 is limited to the transaction in question is also supported by the provisions of the other rules each of which provide for alternate modes of valuation and allow evidence of value of goods other than those under assessment to be the basis of the assessable value. Thus, Rule 5 allows for the transaction value to be determined on the basis of identical goods imported into India at the same time; Rule 6 allows for the transaction value to be determined on the value of similar goods imported into India at the same time as the subject goods. Where there are no contemporaneous imports into India, the value is to be determined under Rule 7 by a process of deduction in the manner provided therein. If this is not possible the value is to be computed under Rule 7-A. When value of the imported goods cannot be determined under any of these provisions, the value is required to be determined under Rule 8 "using reasonable means consistent with the principles and general provisions of these Rules and sub-section (1) of Section 14 of the Customs Act, 1962 and on the basis of data available in India". If the phrase "the transaction value" used in Rule 4 were not limited to the particular transaction then the other rules which refer to other transactions and data would become redundant.

22. In the case before us, it is not alleged that the appellant has misdeclared the price actually paid. Nor was there a misdescription of the goods imported as was the case in Padia Sales Corpn. [1993 Supp (4) SCC 57] It is also not the respondent's case that the particular import fell within any of the situations enumerated in Rule 4(2). No reason has been given by the Assistant Collector for rejecting the transaction value under Rule 4(1) except the price list of vendor. In doing so, the Assistant Collector not only ignored Rule 4(2) but also acted on the basis of the vendor's price list as if a price list is invariably proof of the transaction value. This was erroneous and could not be a reason by itself to reject the transaction value. A discount is a commercially-acceptable measure which may be resorted to by a vendor for a variety of reasons including stock clearance. A price list is really no more than a general quotation. It does not preclude discounts on the listed price. In fact, a discount is calculated with reference to the price list. Admittedly in this case a discount up to 30% was allowable in ordinary circumstances by the Indian agent itself. There was the additional factor that the stock in question was old and it was a one-time sale of 5-year-old stock. When a discount is permissible commercially, and there is nothing to show that the same would not have been offered to anyone else wishing to buy the old stock, there is no reason why the declared value in question was not accepted under Rule 4(1)."

9. To the same effect, are other judgments, reiterating the aforesaid principle, such as, *Commissioner of Customs, Calcutta vs. South India Television (P) Ltd.*[2], *Chaudhary Ship Breakers vs. Commissioner of Customs, Ahmedabad*[3] *and Commissioner of Customs, Vishakhapatnam vs. Aggarwal Industries Ltd.*[4].

10. The law, thus, is clear. As per Sections 14(1) and 14(1-A), the value of any goods chargeable to ad valorem duty is deemed to be the price as referred to in that provision. Section 14(1) is a deeming provision as it talks of 'deemed value' of such goods. Therefore, normally, the Assessing Officer is supposed to act on the basis of price which is actually paid

and treat the same as assessable value/transaction value of the goods. This, ordinarily, is the course of action which needs to be followed by the Assessing Officer. This principle of arriving at transaction value to be the assessable value applies. That is also the effect of Rule 3(1) and Rule 4 (1) of the Customs Valuation Rules, namely, the adjudicating authority is bound to accept price actually paid or payable for goods as the transaction value. Exceptions are, however, carved out and enumerated in Rule 4(2). As per that provision, the transaction value mentioned in the Bills of Entry can be discarded in case it is found that there are any imports of identical goods or similar goods at a higher price at around the same time or if the buyers and sellers are related to each other. In order to invoke such a provision it is incumbent upon the Assessing Officer to give reasons as to why the transaction value declared in the Bills of Entry was being rejected; to establish that the price is not the sole consideration; and to give the reasons supported by material on the basis of which the Assessing Officer arrives at his own assessable value.

11. In South India Television (P) Ltd., the Court explained as to how the value is derived from the price and under what circumstances the deemed value mentioned in Section 14(1) can be departed with. Following discussion in the said judgment needs to be quoted hereunder:

> "10. We do not find any merit in this civil appeal for the following reasons. Value is derived from the price. Value is the function of the price. This is the conceptual meaning of value. Under Section 2(41), "value" is defined to mean value determined in accordance with Section 14(1) of the Act. Section 14 of the Customs Act, 1962 is the sole repository of law governing valuation of goods. The Customs Valuation Rules, 1988 have been framed only in respect of imported goods. There are no rules governing the valuation of export goods. That must be done based on Section 14 itself. In the present case, the Department has charged the respondent importer alleging misdeclaration regarding the price. There is no allegation of misdeclaration in the context of the description of the goods. In the present case, the allegation is of underinvoicing. The charge of underinvoicing has to be supported by evidence of prices of contemporaneous imports of like goods. It is for the Department to prove that the apparent is not the real. Under Section 2(41) of the Customs Act, the word "value" is defined in relation to any goods to mean the value determined in accordance with the provisions of Section 14(1). The value to be declared in the bill of entry is the value referred to above and not merely the invoice price.
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> 12. However, before rejecting the invoice price the Department has to give cogent reasons for such rejection. This is because the invoice price forms the basis of the transaction value. Therefore, before rejecting the transaction value as incorrect or unacceptable, the Department has to find out whether there are any imports of identical goods or similar goods at a higher price at around the same time. Unless the evidence is gathered in that regard, the question of importing Section 14(1-A) does not arise. In the absence of such evidence, invoice price has to be accepted as the transaction value. Invoice is the evidence of value. Casting suspicion on invoice produced by the importer is not sufficient to reject it as evidence of value of imported

goods. Undervaluation has to be proved. If the charge of undervaluation cannot be supported either by evidence or information about comparable imports, the benefit of doubt must go to the importer. If the Department wants to allege undervaluation, it must make detailed inquiries, collect material and also adequate evidence. When undervaluation is alleged, the Department has to prove it by evidence or information about comparable imports. For proving undervaluation, if the Department relies on declaration made in the exporting country, it has to show how such declaration was procured. We may clarify that strict rules of evidence do not apply to adjudication proceedings. They apply strictly to the courts' proceedings. However, even in adjudication proceedings, the AO has to examine the probative value of the documents on which reliance is placed by the Department in support of its allegation of undervaluation. Once the Department discharges the burden of proof to the above extent by producing evidence of contemporaneous imports at higher price, the onus shifts to the importer to establish that the invoice relied on by him is valid. Therefore, the charge of under invoicing has to be supported by evidence of prices of contemporaneous imports of like goods.

13. Section 14(1) speaks of "deemed value". Therefore, invoice price can be disputed. However, it is for the Department to prove that the invoice price is incorrect. When there is no evidence of contemporaneous imports at a higher price, the invoice price is liable to be accepted. The value in the export declaration may be relied upon for ascertainment of the assessable value under the Customs Valuation Rules and not for determining the price at which goods are ordinarily sold at the time and place of importation. This is where the conceptual difference between value and price comes into discussion."

12. The observations of the Tribunal made in the impugned judgment are to be appreciated in the light of the principles of law specified in the aforesaid judgment, inasmuch as the Tribunal has categorically remarked that the normal rule is that assessable value has to be arrived at on the basis of the price which is actually paid, as provided by Section 14 of the Customs Act and the case law referred to by it (In paragraph 5, the Tribunal referred to its own judgments which follow the aforesaid principle laid down by this Court).

13. It is, therefore, rightly contended by Mr. Dushyant A. Dave, learned senior counsel appearing for the respondent that the reason given for setting aside the order that the normal rule was that the assessable value has to be arrived at on the basis of the price which was actually paid, and that was mentioned in the Bills of Entry. The Tribunal has clearly mentioned that this declared price could be rejected only with cogent reasons by undertaking the exercise as to on what basis the Assessing Authority could hold that the paid price was not the sole consideration of the transaction value. Since there is no such exercise done by the Assessing Authority to reject the price declared in the Bills of Entry, Order-in-Original was, therefore, clearly erroneous.

14. In *Commissioner of Customs vs. Prabhu Dayal Prem Chand*[5], this Court was confronted with almost same kind of fact situation. On the basis of the information received

subsequently from the London Metal Exchange (for short, 'LME') to the effect that the price of the two metals, viz., brass scrap and copper scrap, in LME as on the date of import was more than the price declared by the respondent, demanded additional duty amounting to Rs. 90,248/- and Rs. 1,94,035 respectively, from the assessee on the said two Bills of Entry. This order was set aside by the Tribunal and appeals there against by the Customs were dismissed by this Court. The Court noted, while accepting the plea of the assessee, that they were not confronted with any contemporaneous material relied upon by the Revenue for enhancing the price declared by them in the Bills of Entry. It also noted the following remarks of the Tribunal:

> "In the present case as mentioned above, even though there is a reference to contemporaneous import in the order passed by the Deputy Commissioner no material regarding such import has been placed before us or made available by the appellant at any point of time. Therefore, assessment in this case has to be taken as having been made purely on the basis of LME bulletin without any corroborative evidence of imports at or near that price which is not permissible under law. We, therefore, set aside the impugned order and allow the appeal."
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> Dismissing the appeals, this Court observed as follows:
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> "....It is manifest from the aforeextracted order of the Tribunal that no details of any contemporaneous imports or any other material indicating the price notified by LME had either been referred to by the adjudicating officer in the adjudication order or such material was placed before the Tribunal at the time of hearing of the appeal. The learned counsel for the Revenue has not been able to controvert the said observations by the Tribunal. In that view of the matter no fault can be found with the order passed by the Tribunal setting aside the additional demand created against the assessee."

15. We, thus, do not find any merit in these appeals and dismiss the same.

Judgment Referred.

[1]*(2001) 1 SCC 0315*
[2]*(2007) 6 SCC 0373*
[3]*(2010) 10 SCC 0576*
[4]*(2012) 1 SCC 0186*
[5]*(2010) 13 SCC 0535*