Rajkumar Knitting Mills (P) Ltd. vs Collector Of Customs, Bombay on 14 January, 1998

Equivalent citations: 1998VIAD(SC)37, AIR1998SC2602, 1998(60)ECC254, 1998(98)ELT292(SC), JT1998(4)SC308, (1998)3SCC163, AIR 1998 SUPREME COURT 2602, 1998 AIR SCW 2636, 1998 (6) ADSC 37, 1998 (3) SCC 163, (1998) 4 JT 308 (SC), (1998) 98 ELT 292, (1998) 77 ECR 236, (1998) 9 SUPREME 20

Bench: S.C. Agrawal, S. Rajendra Babu

ORDER

1. This appeal by the assessee has been filed under Section 130-E of the Customs Act, 1962 (hereinafter referred to as "the Act") against the judgment of the Customs, Excise and Gold (Control) Appellate Tribunal (hereinafter referred to as "the Tribunal") dated 12-7-1989.

2. The appellant, M/s. Rajkumar Knitting Mills (P) Ltd., imported 24 sets of second-hand water jet looms from Japan under Bills of Entry dated 27-7-1988. The said imports were made on the basis of a contract entered into by the appellant with M/s. Jinbo Boeki Shokal of Osaka, Japan on 1-12-1987 for the supply of 80 sets of second-hand "NISSAN" water jet looms. As per the invoice of the supplier dated 23-6-1988, the price of the said looms was 4,00,000 Japanese Yen per set. The goods had been shipped on 18-6-1988 and they arrived at the Indian port on 26-7-1988. The appellant claimed that for the purpose of payment of customs duty the value of the goods should be assessed on the basis of the price indicated in the invoice. Similar goods (8 sets) had been imported from the same supplier in Japan by another firm, M/s. Hibotex Pvt. Ltd., on the basis of contract dated 2-5-1988 @ 7,00,000 Japanese Yen per set. The date of shipment was 25-6-1988 and the date of arrival at Indian port was 4-8-1988. A show-cause notice dated 7-10-1988 was issued by the Assistant Collector of Customs requiring the appellant to show cause why the value declared be not enhanced from 4,00,000 to 7,00,000 Japanese Yen per set. The appellant filed its reply to the said notice. After considering the said reply the Additional Collector of Customs passed the order dated 16-11-1988 whereby he enhanced the value of goods to 6,00,000 Japanese Yen per set. In the said order the Additional Collector has stated that two other consignments of similar goods (8 sets each) had been imported in May 1988 by M/s. N.V. Textiles and K.V. Textiles of Surat at the declared value of 5,00,000 Japanese Yen per set. The Additional Collector has held that the goods imported by M/s. Hibotex Pvt. Ltd. were identical in every respect, i.e., in the quantity and description of the goods and in the time and delivery of the goods and there was sufficient evidence to indicate that the value declared by the appellant is lower than the prevailing international market for the goods. Having regard to the fact that the appellant had contracted for a larger quantity and was eligible for quantity discount, the Additional Collector, on the basis of the letter of suppliers dated 7-9-1988, allowed a quantity discount of 1,00,000 Japanese Yen per set and assessed the value at 6,00,000 Japanese Yen per set. The appeal filed by the appellant against the said order of the Additional Collector has been dismissed by the Tribunal by the impugned judgment.

3. Shri D.N. Mehta, the learned counsel for the appellants, has submitted that the Tribunal as well as the Additional Collector were in error in basing themselves on the date of shipment and the date of importation for the purpose of assessing the value of the goods. The submission is that the relevant date for assessing the value of the goods for the purpose of payment of customs duty under Section 14 of the Act is the date of the contract and that since the contract under which the appellant had imported the goods was made on 1-12-1987 while the contract under which M/s. Hibotex Pvt. Ltd. had imported the goods was made on 2-5-1988, nearly five months after the contract of the appellants, the value of the goods imported by the appellant could not be assessed on the basis of price of the goods imported by M/s. Hibotex Pvt. Ltd. Shri Mehta has also submitted that since the quantity of goods for which contract was entered into by the appellant was much larger than the quantity of goods imported by M/s. Hibotex Pvt. Ltd, as well as M/s. N.V. Textiles and K.V. Textiles, the price of the goods indicated in the invoices of the said parties could not afford the basis for assessing the value of the goods imported by the appellant.

4. Shri M. Gouri Shankar Murthy, the learned counsel for the Revenue, on the other hand, has urged that under Section 14 of the Act the relevant date for the purpose of assessing the value of the imported goods for payment of customs duty is the date of importation and that the Tribunal as well as the Additional Collector have correctly assessed the value of the goods as on the date of importation and it is not correct to say that the valuation has to be done on the basis of the date of contract.

5. The relevant provisions of Section 14 of the Act, as it stood at the relevant time, were as follows:

> "14. Valuation of Goods for purposes of Assessment.--(1) For the purposes of the Indian Tariff Act, 1934 (32 of 1934), 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--
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> (a) 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;
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> (b) where such price is not ascertainable, the nearest ascertainable equivalent thereof determined in accordance with the rules made in this behalf."

6. A perusal of the said provisions contained in Section 14(1)(a) shows that for payment of customs duty the value of the goods is:

> (i the price at which such or like goods are ordinarily sold or offered for sale,
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> (ii) for delivery at the time and place of importation and exportation as the case may be,

(iii) in the course of international trade,

(iv) where the seller and the buyer have no interest in the business of each other and price is the sole consideration for the sale or offer for sale.

7. This means that the value of the goods is to be ascertained on the basis of the price at which such or like goods are ordinarily sold or offered for sale for delivery at the time and place of importation and exportation in the course of international trade. The relevant date would, therefore, be the date of importation or exportation. Shri Mehta has laid stress on the words "ordinarily sold or offered for sale" and has submitted that in view of these words the date of contract is the relevant date. We are unable to agree. The words "ordinarily sold or offered for sale" have to be read along with the words which precede and the words that follow these words. If thus read these words mean that for the purpose of assessing the value it is necessary to ascertain the price at which the said or like goods are sold or offered for sale for delivery at the time and place of importation and exportation in the course of international trade. The words "ordinarily sold or offered for sale" do not refer to the contract between the supplier and the importer, but to the prevailing price in the market on the date of importation or exportation. We are, therefore, unable to accept the contention urged by Shri Mehta that the Tribunal has committed any error in proceeding on the basis that value has to be assessed according to the price as on the date of importation and not on the basis of the date of contract.

8. Shri Mehta has placed reliance on the decision of the Calcutta High Court in Sneha Traders (P) Ltd. v. Collector of Customs, (1992) 60 ELT43(Cal), wherein the learned Judges have expressed the view that assessable value has to be determined on the basis of the prevailing international market price at the time of entering into the contract and the delay in shipment on the part of the supplier cannot have any effect on determination of the assessing value. We find it difficult to agree with the said view of the Calcutta High Court. We are of the view that the contract between the supplier and the importer may have a bearing in governing the inter se relationship between the supplier and the importer but insofar as assessment of the value for the purpose of levy of customs duty under Section 14 of the Act is concerned, what is necessary is to determine the value of the goods as on the date of importation or exportation.

9. In the present case, the value of the goods has been assessed on the basis of price paid by M/s. Hibotex Pvt. Ltd. in respect of similar goods which were imported from the same supplier at about the same time as import of goods by the appellant. The date of shipment of the goods imported by M/s. Hibotex Pvt. Ltd. was 25-6-1988 and the date of arrival of the goods was 4-8-1988, while in respect of the goods imported by the appellant the date of shipment was 18-6-1988 and the date of arrival was 26-7-1988. There was a difference of about a week only between the dates of shipment and dates of arrival of goods in the said imports. The price of the goods imported by M/s. Hibotex Pvt. Ltd. could, therefore, provide the basis for assessing the value of the goods imported by the appellant. The price of the goods imported by M/s. Hibotex Pvt. Ltd. was 7,00,000 Japanese Yen per set. Having regard to the fact that the appellants had contracted for a larger quantity, the Additional Collector has allowed quantity discount of 1,00,000 Japanese Yen per set on the basis of the letter of suppliers dated 7-9-1988 and he assessed the value of the goods at 6,00,000 Japanese

Yen per set. The said assessment has been upheld by the Tribunal. We do not find any infirmity in the said approach of the Additional Collector, In the circumstances, we do not find any merit in the appeal and the same is accordingly dismissed. There shall be no order as to costs.