

Customs, Excise and Gold Tribunal - Delhi

Kashish Overseas vs Cc on 3 March, 2004

Equivalent citations: 2004 (93) ECC 492, 2004 (178) ELT 354 Tri Del

Bench: K Usha, N T C.N.B.

ORDER C.N.B. Nair, Member (T)

1. The subject matter of this appeal is the import of 3530 second-hand used computer monitors by the appellant at Kandla in November 2002. The purchase price declared by the appellant was US \$ 8 per piece. Under his adjudication order dated 7.11.2002, Commissioner of Customs rejected the transaction value for assessment of the goods to customs duty and fixed the assessable value at US \$ 25 per piece for 14" monitors and US \$ 45 per piece for 17" monitors. The Commissioner also confiscated the goods for their being imported without a import license (Second-hand goods were not covered by Open General Licence License (OGL) as well as for misdeclaration of value of the goods.

2. In the present appeal, the objection raised about the requirement for import license is not being contested. The contest is limited to the valuation adopted. The appellant's submission that the valuation has been done based on certain sales in the domestic market and that adoption of sale prices in India of goods made in India was contrary to the legal provision. During the hearing of the case on 16.12.2003, the learned Counsel for the appellant also pointed out that even though reference has been made in the impugned order to two invoices of imports made by M/s Palmon Exports, no particular of the Bill of entry relating to those imports is furnished in the order. We, therefore, directed the SDR to obtain copies of the invoices as well as the Bill of entry relating to the imports, which have been relied upon by the Commissioner while passing the impugned order. Those documents were produced on 26.12.2003. On a perusal of those documents. It was seen that the Bills of entry and invoices did not correspond. That apart, one invoice showed the rate as US \$ 9.50 per piece and the other invoice gave the rate as per kg., thus, casting serious doubts about the basis of the impugned order. We, therefore, passed our Miscellaneous Order No. 250/03-NB(A) dated 16.12.2003 directing the Commissioner who passed the order under challenge to file an affidavit producing copies of the invoices and the corresponding bills of entry relied on by him in the adjudication order. In compliance with that, an affidavit dated 19.1.2004 affirmed by Shri R.M. Ramchandani, presently posted as Additional Director General (Audit), Mumbai Zonal Unit, Mumbai and who as Commissioner had passed the order was filed before us. We read the relevant portion of the Affidavit:

"2. During my tenure as Commissioner of Customs, Kandla, the first consignment of used Monitors was noticed when M/s Nikhil Enterprises, New Delhi, filed a Bill of Entry No. F-10792 dated 6th August, 2002 for clearance of 1650 pcs. of used Computer Monitors. While verifying the aspect of valuation, it was learnt that the authorities of Kandla Special Economic Zone had fixed the following import values of used working Monitors (based on the size of the Monitor screen) for the purpose of facilitating the units located in Kandla Special Economic Zone to effect DTA clearances) and the corresponding Bills of Entry. This evidence was thus applied in the case of import of used Monitors by M/s Nikhil Enterprises, New Delhi; the values of 14", 15" and 17" Monitors enhanced, and the adjudication order finalized after issuance of Show Cause Notice, and granting an opportunity of

personal hearing to the party, Kandla Custom House Order-in-Original No. KDL/COMMR/25/2002 dated 22nd August 2002 was issued as a consequence thereof.

3. The consignment of M/s Kashish Overseas, New Delhi which is the subject matter of the present proceedings before the Hon'ble Bench, was the second consignment of used Monitors noticed during my tenure at Kandla Customs House. In this case, the importer filed a Bill of Entry No. F-16022 dated 6th November 2002 for clearance of 3530 pcs. of used Monitors of sizes 14" and 17" at the declared unit price of US \$ 8 per pc. (for both the sizes i.e. 14" & 17"). Simultaneously, the importer also filed a letter in the Custom House stating that they do not want any Show Cause Notice or personal hearing. A copy of this letter is annexed herein as "Annexure-A". It would be observed therefrom that there appears to be a mistake in the date of the letter. It should read 7.11.2002 instead of 7.10.2002 as has been written therein. I recollect, the CHA, M/s Prime Forwarders, Gandhidham approached me on the same day (7.11.2002) and requested for immediate finalisation of the adjudication proceedings, as the party had imported the impugned consignment for stock and sale, and had a ready buyer. Therefore, in order to maintain uniformity in practice, the adjudication proceedings were finalized on the same lines as in the case of M/s Nikhil Enterprises, New Delhi, While finalizing these proceedings, reliance was placed on the DTA invoices of Ms Palmon Exports, Kandla Special Economic Zone, dated 16.1.2002 and 10.4.2002 respectively. These invoices (duly authenticated) are annexed herein as "Annexure-B & C" respectively. Insofar as the serial numbers of the invoices are concerned, the same appear to be machine numbered and are not very legible. On a closer look at the serial numbers vis-a-vis the serial numbers of the invoices recorded at para 3 of the impugned order dated 7.11.2002, it is respectfully admitted that an inadvertent typographical error appears to have crept in. The inconvenience caused to the Hon'ble Bench on this account is regretted. However, the substantive evidence relating to value of used working Monitors (US \$ 25/ PC for 14" and US \$ 45 /PC for 17") shown in the respective invoices is factually correct and tallies with the value recorded at para 3 and 8 of the impugned order dated 7.11.2002. Here again, the corresponding Bills of Entry were not relied upon as these were not found to be relevant for the reasons indicated in the preceding para 3 herein".

3. The hearing of the appeal was concluded on 6.2.2004.

4. From the above, it is clear that the valuation of the imported goods has been carried out based on the previous proceedings in which sale price of goods manufactured and sold in India were taken as basis. This is contrary to the specific provision of Customs Valuation Rules. Sub-rule 2(i) of Rule 8 prohibits the use of the selling price in India of goods produced in India for valuation of imported items. The manner in which adjudication is carried out is also extremely unsatisfactory. The documents purportedly relied upon do not relate to the transactions. The particulars culled out from those documents are also not tallying. Nor are they disclosed to the importer. Such sloppiness is not becoming in an adjudication proceeding. Only if materials relied upon are carefully identified and copies of them made available to the defendants, can the defendant make any meaningful defence. Keeping relied upon information back from defendants not only robs them of an opportunity for effective defence, it also leads to passing of orders based on baseless or inaccurate information, as in the present case. Adjudication proceedings can also become the victim of whim or oppression. Time and again, courts have stressed the importance of following basic standards of principles of natural

justice in quasi-judicial proceedings. It is clear that no standard has been observed in the present proceedings.

5. That part, in the present case, it is also seen that the value shown in the invoice purportedly relied upon by the Commissioner is a fraction of the value adopted by him for assessing the impugned goods. The entire functioning of the Customs House is shown as lacking in any standard by the present proceedings. It is strange that the rate recorded for imported computer monitors is per kg. Computer monitors are not commodities to be transacted in by weight.

6. In view of the above, there is no basis to uphold the valuation adopted in the impugned order and the same is required to be aside. We do so and direct that the goods to be assessed at the transaction value.

7. Coming to the issue of requirement for import license, as already noted, the importer does not dispute that license was required for the import of used and second-hand monitor and that the goods become liable to confiscation for violation of that requirement. Therefore, the confiscation of the monitors under Section 111(d) and imposition of penalty are required to be sustained. We do so. However, the amounts fixed by way of redemption fine and penalty are required to be suitably modified inasmuch as they were fixed keeping in view the higher value fixed, after rejecting the transaction value. Accordingly, redemption fine is reduced to Rs. 2 lakhs and penalty is reduced to Rs. 1 lakh.

8. The appeal is disposed of in the above terms.