

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI**

PRINCIPAL BENCH

Customs Appeal No. 50856 of 2020

(Arising out of Order-in-Appeal No. 03/2020/MKS/Pr. COMMR/ICD-IMPORT/TKD dated 16.01.2020 passed by Principal Commissioner of Customs (Import) Inland Container Depot, New Delhi].

M/s. Banke Bihari Electronics Pvt. Ltd. **...Appellant**
8/41, Geeta Colony,
Delhi - 110031

VERSUS

Principal Commissioner of Customs (Import), **...Respondent**
Inland Container Depot,
Tughlakabad,
New Delhi – 110020

WITH

Customs Appeal No. 50857 of 2020

(Arising out of Order-in-Appeal No. 03/2020/MKS/Pr. COMMR/ICD-IMPORT/TKD dated 16.01.2020 passed by Principal Commissioner of Customs (Import) Inland Container Depot, New Delhi].

Shri Ashok Udhwani **...Appellant**
Director
M/s. Banke Bihari Electronics Pvt. Ltd.
8/41, Geeta Colony,
Delhi - 110031

VERSUS

Principal Commissioner of Customs (Import), **...Respondent**
Inland Container Depot,
Tughlakabad,
New Delhi – 110020

WITH

Customs Appeal No. 50858 of 2020

(Arising out of Order-in-Appeal No. 03/2020/MKS/Pr. COMMR/ICD-IMPORT/TKD dated 16.01.2020 passed by Principal Commissioner of Customs (Import) Inland Container Depot, New Delhi].

Shri Dinesh Udhwani **...Appellant**
Authorised Signatory
M/s. Banke Bihari Electronics Pvt. Ltd.
8/41, Geeta Colony,
Delhi - 110031

VERSUS

Principal Commissioner of Customs (Import), **...Respondent**
Inland Container Depot,
Tughlakabad,
New Delhi – 110020

WITH**Customs Appeal No. 50859 of 2020**

(Arising out of Order-in-Appeal No. 03/2020/MKS/Pr. COMMR/ICD-IMPORT/TKD dated 16.01.2020 passed by Principal Commissioner of Customs (Import) Inland Container Depot, New Delhi].

M/s. Zippo Mobiles Pvt. Ltd.

18/A, Sindhu Nagar,
Bareilly
U.P.

...Appellant

VERSUS

Principal Commissioner of Customs (Import), ...Respondent

Inland Container Depot,
Tughlakabad,
New Delhi - 110020

WITH**Customs Appeal No. 50860 of 2020**

(Arising out of Order-in-Appeal No. 03/2020/MKS/Pr. COMMR/ICD-IMPORT/TKD dated 16.01.2020 passed by Principal Commissioner of Customs (Import) Inland Container Depot, New Delhi].

Shri Ashish Kumar

Director
M/s. Zippo Mobiles Pvt. Ltd.
18/A, Sindhu Nagar,
Bareilly
U.P.

...Appellant

VERSUS

Principal Commissioner of Customs (Import), ...Respondent

Inland Container Depot,
Tughlakabad,
New Delhi - 110020

WITH**Customs Appeal No. 50861 of 2020**

(Arising out of Order-in-Appeal No. 03/2020/MKS/Pr. COMMR/ICD-IMPORT/TKD dated 16.01.2020 passed by Principal Commissioner of Customs (Import) Inland Container Depot, New Delhi].

Shri Sonu

Proprietor
M/s. Radhey Enterprises
2917/44, G.F. Beadonpura
Karol Bagh
New Delhi - 110001

...Appellant

VERSUS

Principal Commissioner of Customs (Import), ...Respondent

Inland Container Depot,
Tughlakabad,
New Delhi - 110020

AND

Customs Appeal No. 50862 of 2020

(Arising out of Order-in-Appeal No. 03/2020/MKS/Pr. COMMR/ICD-IMPORT/TKD dated 16.01.2020 passed by Principal Commissioner of Customs (Import) Inland Container Depot, New Delhi].

Shri Roshanlal

Proprietor
M/s. Delhi Transport Co.,
Opposite Khusi Ram Bihari Lal Mill
Near Highway Dharamkanta
Alipur Block
Delhi - 110036

...Appellant

VERSUS

Principal Commissioner of Customs (Import), ...Respondent

Inland Container Depot,
Tughlakabad,
New Delhi - 110020

APPEARANCE:

Shri Piyush Kumar, Ms. Reena Rawat and Shri Himanshu Yadav, Advocates
for the Appellant
Shri Nagendra Yadav, Authorised Representative for the Department

CORAM: **HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT**
 HON'BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)

Date of Hearing: 20.03.2024
Date of Decision: 27.05.2024

FINAL ORDER No's. 55814-55820/2024

JUSTICE DILIP GUPTA:

The order dated 16.01.2020 passed by the Principal Commissioner of Customs (Import) Inland Container Depot, Tughlakabad, New Delhi¹ adjudicating the show cause notice dated 22.04.2019 has been assailed in all the seven appeals.

2. The Principal Commissioner has by the impugned order:

- (i) Ordered that the parts of calculators imported under two Bills of Entry No's. 5291267 and 5716603 filed

1. the Principal Commissioner

by M/s. Banke Bihari Electronics Pvt. Ltd.² and two Bills of Entry No's. 5292485 and 5632744 filed by M/s. Zippo Mobiles Pvt. Ltd.³ be combined/ clubbed and assessed under Customs Tariff Item⁴ 8470 10 00 of the Customs Tariff Act, 1975⁵ as calculators in Completely Knocked Down⁶ condition;

- (ii) Confirmed the demand of anti-dumping duty in respect of the aforesaid four Bills of Entry and its recovery from Banke Bihari ;
- (iii) Confiscated the goods imported under Bill of Entry No. 5291267 with an option to Banke Bihari to redeem;
- (iv) Held that the goods imported under Bills of Entry No's. 5292485, 5716603 and 5632744 are liable for confiscation under section 111(m) of the Customs Act, 1962⁷;
- (v) Imposed penalty upon Banke Bihari and Zippo Mobiles under sections 114A and 114AA of the Customs Act; and
- (vi) Imposed penalty upon Zippo Mobiles under section 112(a) of the Customs Act.

3. It transpires from the record that Banke Bihari is engaged in the import and trading of various electronic items namely diodes, parts of remote control and parts of calculators. It had filed a Bill of Entry No. 5291267 dated 20.02.2018 for import of calculator parts namely

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- 2. Banke Bihari
 - 3. Zippo Mobiles
 - 4. CTI
 - 5. the Tariff Act
 - 6. CKD
 - 7. the Customs Act

Printed Circuit Board⁸ for calculators with display (1,81,800 pieces), pressing machines (2 pieces), crews (3,70,000 pieces), button cells (1,81,800 pieces), sponge (124 kg), poly bag (165 kg) and colour box (3503 kg). The said Bill of Entry No. 5291267 dated 20.02.2018 was filed on the basis of a Commercial Invoice No. JM20180118 dated 16.01.2018 received from the Chinese Supplier M/s. Panda Technologies Ltd. China.

4. Zippo Mobiles also imported 1,80,440 pieces of plastic front covers and 182096 pieces of plastic back covers of calculators and had filed a Bill of Entry No. 5292485 dated 20.02.2018 as per Invoice No. PAN20180118 for clearance of the same.

5. Later Banke Bihari also imported another consignment of parts of calculators namely PCBs with display (1,88,700 pieces), screw (3,80,000 pieces), cell (1,89,000 pieces), poly bags (282 kgs), colour box (3187 kgs), sponge (98 kgs) on the basis of Commercial Invoice No. JM20180207 dated 03.02.2018 and filed a Bill of Entry No. 5716603 dated 24.03.2018.

6. Zippo Mobiles also filed a second Bill of Entry No. 5632744 dated 19.03.2018 for calculator front and back cover (1,80,440 and 1,82,096 pieces respectively) and cartons (673 kgs) on the basis of Commercial Invoice No. PAN20180210 dated 08.02.2018.

7. In the month of April, 2018, the Special Intelligence and Investigation Branch⁹ of the Commissionerate after investigation believed that complete calculators were imported by Banke Bihari with complicity of Zippo Mobiles in the guise of parts of calculators so as to evade anti-dumping duty leviable on calculators @ USD 1.22 per

8. PCB
9. SIIB

piece imported from China in terms of the Notification dated 29.05.2015.

8. In the month of May, 2019, Banke Bihari also imported 3,00,000 sets of DVB Remote under Bill of Entry No. 6460501 dated 21.05.2018 declaring CIF value @ USD .04 per set. It appeared to SIIB that Banke Bihari had undervalued the said goods as subsequently DVB remotes were imported in CKD declaring the value of each part and the aggregate value of such parts forming the complete sets of DVB remote was higher than that of declared (@ USD .04 per set) in the Bill of Entry dated 21.05.2018.

9. In the month of June, 2018 Banke Bihari filed yet another Bill of Entry No. 6675087 dated 05.06.2018 for clearance of different types of diodes.

10. A show cause notice dated 22.04.2019 was issued to all the appellants, including Banke Bihari and Zippo Mobiles, calling upon them jointly and severally to the show cause why anti-dumping duty should not be imposed in respect of goods imported through Bill of Entry No's. 5291267, 5292485, 5716603 and 5632744. The appellants were also called upon to show cause as to why the declared transaction value of DVB remote and diodes in CKD condition should not be rejected and should not be re-determined. Proposals were also made for imposing penalties under various sections of the Customs Act.

11. The appellants filed a reply to the show cause notice stating inter alia that calculator parts were imported for trading purposes only and it cannot be urged that complete set of calculators could be

formed and that the enhancement of value of DVD remotes and diodes was not correct.

12. The Principal Commissioner, however, passed the order dated 16.01.2020 holding that the parts of calculators imported under the four Bills of Entry by Banke Bihari and Zippo Mobiles should be clubbed as calculators in CKD condition and so anti-dumping duty shall be imposed upon the calculators in terms of the notification dated 29.05.2015. Penalties were also imposed under sections 114A, 114AA and 112(a) of the Customs Act upon Banke Bihari and Zippo Mobiles.

13. The Principal Commissioner noticed that Banke Bihari and Zippo Mobiles had filed two Bills of Entry on 20.03.2018 and, thereafter, they filed two Bills of Entry on 24.03.2018 and 19.03.2018. The parts of calculators under the aforesaid four Bills of Entry and their quantities imported indicated almost matching quantities for assembly of complete calculators and there was import of even packing material for calculators as well as the two pressing machines for calculators. The Principal Commissioner also noticed the following facts:

“(viii) The Bill of Entry No. 5291267 dated 20.02.2018 filed by M/s. Banke Bihari Electronics Pvt. Ltd. and Bill of Entry No. 5292485 dated 20.02.2018 filed by M/s. Zippo Mobiles Pvt. Ltd. refers to same commercial Invoice No. JM20180118 dated 16.01.2018 of the same supplier M/s. Pandas Technology Ltd., Hong Kong and the said goods have been imported under same IGM/Gateway IGM and also under Bills of Lading having the same date.

(ix) The goods covered under the other two Bills of Entry in March 2018 viz. Bills of Entry Nos. 5716603 dated 24.03.2018 and 5632744 dated 19.03.2018 filed

by M/s. Banke Bihari Electronics Pvt. and M/s. Zippo Mobiles Pvt. Ltd. have also been imported from the same supplier M/s. Pandas Technology Ltd., Hong Kong against Commercial Invoice No. JM20180207 dated 03.02.2018 (by M/s. Banke Bihari Electronics Pvt. Ltd.) and against Commercial Invoice No. PAN20180210 dated 08.02.2018 (by M/s. Zippo Mobiles Pvt. Ltd.). Both the Bills of Entry were covered under the same IGM No. and date.

(x) On inquiry, the calculator parts imported by M/s. Zippo Mobiles Pvt. Ltd. under Bill of Entry No. 5292485 dated 20.02.2018 were found to be stored at the warehouse of M/s. Banke Bihari Electronics Pvt. Ltd.”

14. The Principal Commissioner, on the basis of the evidence, thereafter, recorded the following findings:

“36. In view of above evidences, **I find that the import of the consignments of parts of Calculator in the present case under aforesaid four Bills of entry has been clearly arranged and managed by Shri Dinesh Udhwani. Certain crucial parts like PCB assembly with display and cells have been imported in the name of M/s. BBEPL, where his father Shri Ashok Udhwani is the Director and other plastic parts (front and back covers) are imported in the name of M/s. Zippo Mobiles, where his brother in law Shri Ashish Kumar is the Director. The facts therefore clearly indicate that Shri Dinesh Udhwani, who was fully aware of the levy of anti dumping duty on import of calculators from China, placed an order for parts of calculator from a common supplier and imported the consignments under different Bills of Entry through the companies controlled by his father and his brother-in-law.** The nature of items and their almost matching quantities also support this fact. For the first two consignments even the commercial invoice number in the Bills of entry was found to be same. M/s. BBEPL, along with other parts, has also imported poly bags colour boxes and two pressing machines for calculators. M/s. Zippo mobiles has also imported

cartons for calculator along with front and back covers. This clearly indicates that the intention of said import was for the purpose of assembly of complete calculators. The parts like front and back cover for calculators would be for specific models of calculator and cannot be possibly traded in market as general parts. **Thus, I do not find the contention of the noticee no. 1 and 4 that the above parts have been imported for trading, as correct.** The fact that M/s. Zippo Mobiles has never imported any goods in the past and the present two consignments of plastic part for calculator arranged by Shri Dinesh Udhwani were their first imports, further points to the fact that these parts were closely linked with the two consignments imported by Noticee No. 1, which were deliberately imported under separate Bills of entry, by splitting up the parts, to evade anti dumping duty.

37. xxxxxxxxxxxx. **The nature and quantity of the parts imported by Noticee No. 1 and 4 does not indicate that these were for trading inasmuch as the front and back cover of calculator which would certainly be for specific models and not tradable as such.**

38. xxxxxxxxxxxx. **I further find that the parts imported by M/s. BBEPL inter-alia, contain Printed Circuit Board Assembly (having in built Cell Bracket) and button Cell for calculator. The impugned button cell is found to be compatible with the PCBA imported in the impugned Bill of Entry as the same fits in the cell bracket present at the back said of the PCBA. The representative sample subjected to test checking has shown that when the button cell is inserted into PCBA and PCBA is operated manually by pressing fingers against keypad area of the PBCA, the PCBA is capable of performing operations and the same starts showing on the display screen attached to the PCBA. This has not been disputed. Therefore, I find that in a calculator, Printed Circuit Board Assembly (having in-built cell bracket) connected with display along with button cell constitutes the**

essential part providing the essential character of the complete or finished article.

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40. From the above facts and documents unearthed during investigation, statements and other evidences viewed in the light of applicable legal provisions, **I find that M/s. Banke Bihari Electronics Pvt. Ltd. is the importer for Calculators in CKD, who in active connivance with M/s. Zippo Mobiles Pvt. Ltd. mis-declared the imported goods as parts of calculators while the import vide four Bills of Entry (Bills of Entry Nos. 5291267 dated 20.02.2018 and 5716603 dated 24.03.2018 of M/s. Banke Bihari Electronics and Bill of Entry No. 5292485 dated 20.02.2018 as well under Bill of Entry No. 5632744 dated 19.03.2018 of M/s. Zippo Mobiles Pvt. Ltd.) has been found to be of complete calculators in CKD condition, as per Rule 2(a) of the General Rules of Interpretation."**

(emphasis supplied)

15. The Principal Commissioner then examined the undervaluation of DVB remote and led diodes and recorded the following findings:

"43.5 Thus, as regards the allegation of undervaluation of DVB remote in CKD under Bill of Entry No. 6460501 dated 21.05.2018 filed by M/s Banke Bihari Electronics Pvt. Ltd., I find that no model number was declared on the Bill of Entry. However when seen from the packing list, the model of the DVB remote (both the large and small size) was found to be '703'. Shri Dinesh Udhwani admitted in his statement dated 15.11.2018 that they had received goods as per their order i.e. 703A & 703B and also accepted after seeing the packing list that it appears that models 703, 703A & 703B of DVB remote were the same. I find that the values for the parts of DVB remotes declared in subsequent Bills of Entry Nos. 6675435 & 6675908 both dated 05.06.2018 which have been filed after the interdiction of said Bill of Entry No. 6460501 dated 21.05.2018 have been substantially higher

and the cumulative price of the complete unit of DVB remote parts when added together indicates that the price declared in the above bill of entry has been undervalued to evade the payment of appropriate Customs Duty. The importer though claimed that there was revision of price but could not give any evidence or plausible reasons.

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43.7 As regards alleged undervaluation of High Lumin LED Emitting Diode under Bill of Entry No. 6675087 dated 05.06.2018 filed by M/s. Banke Bihari Electronics Pvt. Ltd. I find that higher values of High Lumin LED Emitting Diode (5MM (Red, Green-S, Blue-S, Whit-S, RG-S, Blue, White-.025w, White-0.75W) were found on pages 6 to 12, 14 and 19 to 23, of the document containing 23 pages retrieved from email account. When asked to explain, Shri Dinesh Udhwani though admitted that the quantity, description, date were matching with their invoices/packing list with Bills of Entry, he feigned ignorance about the document denying any connection with the imports. **These documents recovered from his email, along with other documents like commercial invoices for Zippo Mobiles, indicating details of containers, date wise account of items and value, payments made and due, cannot be discarded as not related to imports. Further, it also appears from the data collected during the investigations that no other firm has imported from the Chinese supplier M/s. Jiangxi MST Electronics Technology Co. Ltd.** The existence of the email account dinesh@mstled.com as appearing on the above mentioned documents retrieved from his email dinesh.udhwani@hotmail.com also substantiates that the documents obtained have been sourced from the said Chinese supplier i.e. M/s. Jiangxi MST Electronics Technology Co. Ltd.”

(emphasis supplied)

16. On the aspect of confiscation, the Principal Commissioner observed as follows:

"44. xxxxxxxxxx. I find that M/s. BBEPL (Noticee No. 1) in active connivance of notice no.4 (M/s. Zippo Mobiles) intentionally and filed separate Bills of Entry by splitting the consignment and thus furnished wrong declaration by mis-classifying the goods with intent to evade applicable Anti dumping duty, as discussed above. Therefore, I find that the goods imported vide above mentioned 4 bills of entry (including the goods imported under Bill of entry No. 5291267 dated 20.02.2018 and seized vide seizure memo dated 26.04.2018) are liable to confiscation under section 111(m) of the Customs Act, 1962."

17. Shri Piyush Kumar, learned counsel for the appellant assisted by Ms. Reena Rawat and Shri Himanshu Yadav made the following submissions:

- (i) Banke Bihari and Zippo Mobiles are two distinct entities incorporated under the Companies Act and, therefore, it was not permissible to club their imports purchased and cleared on payment of duty with their own funds;
- (ii) The Principal Commissioner committed an error in relying upon the judgment of the Tribunal in **Samay Electronics (P) Ltd. vs. C.C. (Import)/(General), Mumbai¹⁰**;
- (iii) The finding of the Principal Commissioner that the goods imported under the four Bills of Entry are calculators in CKD conditions is perverse because neither Banke Bihari nor Zippo Mobiles had imported keypads and plastic buttons which constitute vital parts of a calculator;
- (iv) In any view of the matter, anti-dumping duty could not have been imposed on the basis of the Notification

10. 2015 (328) E.L.T. 238 (Tri.-Mumbai)

dated 29.05.2015 as the said Notification does not provide for levy of anti-dumping duty on calculators in CKD condition or parts thereof;

- (v) The Principal Commissioner committed an error in rejecting the transaction value and then re-determining it on the basis of documents retrieved from the email account of Dinesh Udhwani. These documents are in mixed languages and Dinesh Udhwani had also explained the price of the goods;
- (vi) The onus to prove under-invoicing is on the Revenue and unless it is demonstrated with cogent and valid evidence that the invoice value is vitiated, the value has to be accepted under rule 3 of the Customs Valuation Rules 2007¹¹; and
- (vii) The Principal Commissioner was not justified in confiscating the goods and imposing penalty upon Benke Bihari and Zippo Mobiles;

18. Shri Nagendra Yadav, learned authorized representative appearing for the department, however, supported the impugned order and made the following submissions:

- (i) The two Bills of Entry, each dated 20.02.2018, filed by Banke Bihari and Zippo Mobiles refer to the same commercial invoice of the same supplier and the goods have also been imported under the same IGM/Gateway IGM and under Bills of Lading of the same date;
- (ii) The goods imported under the subsequent two Bills of Entry dated 24.03.2018 and 19.03.2018

11. the 2007 Valuation Rules

filed by Banke Bihari and Zippo Mobiles are from the same supplier and both the Bills of Entry are covered under the same IGM;

- (iii) It is clear that the import of parts of calculator under the four Bills of Entry have been arranged and managed by Dinesh Udhwani. Dinesh Udhwani was fully aware of the levy of anti-dumping duty on import of calculators from China and, therefore, placed order for parts of calculators from a common supplier and imported the consignments under different Bills of Entry controlled by his father and his brother-in-law;
- (iv) The PCB assembly along with the cell provide the essential characteristic of a calculator and, therefore, as per Interpretative rule 2(a), the parts imported by Banke Bihari are in the nature of finished article i.e. calculator and, therefore, in view of the decision of the Tribunal in **Samay Electronics**, rule 2(a) of the Interpretative Rules would be applicable for imposing anti-dumping duty; and
- (v) Banke Bihari undervalued DVB remote and diodes. The Principal Commissioner was, therefore, justified in rejecting the transaction value and re-determining it.

19. The submissions advanced by the learned counsel for the appellants and the learned authorized representative appearing for the department have been considered.

20. The issues that arise for consideration are:

- (A)** Whether the Principal Commissioner was justified in clubbing the consignment of parts of calculators imported by Banke Bihari and Zippo Mobiles through the four Bills of Entry, two dated 20.02.2018 and two dated 24.03.2018 and 19.03.2018;
- (B)** Whether the goods are leviable to anti-dumping duty under Notification dated 29.05.2015 read with rule 2(a) of Interpretative Rules and recoverable from Banke Bihari under section 28(4) read with section 28(8) of the Customs Act;
- (C)** Whether Banke Bihari had undervalued DVD remotes in CKD imported under Bill of Entry No. 6460501 dated 21.05.2018 and Diodes under Bill of Entry No. 6675087 dated 05.06.2018 and whether the rejection of declared assessable value and re-assessment thereof by the Principal Commissioner is correct;
- (D)** Whether the differential duty, as confirmed by Principal Commissioner, is sustainable;
- (E)** Whether confiscation of goods and imposition of penalty ordered by Principal Commissioner is sustainable.

21. Each of the aforesaid five issues are considered separately.

A

22. It is evident that the two consignments imported by Banke Bihari and Zippo Mobiles through two Bills of Entry, each dated 20.02.2018, have the same invoice number and have a common

supplier. The purchase orders for both the importers were placed by Dinesh Udhwani to the same supplier M/s. Pandas Technology Ltd., Hong Kong. The statement made by Dinesh Udhwani on 18.04.2018 reveals that he had placed two separate orders for calculator parts; one was for PCB plate, screw, cell, packing material and the other was for housing of calculator. The statement also reveals that Dinesh Udhwani was aware that the import of calculators from China invited anti-dumping duty and it was for this reason that he imported calculator in CKD condition as that would not attract anti-dumping duty. It is also clear that the commercial invoice of Zippo Mobiles and packing list were found in the email of Dinesh Udhwani and he was also aware that the goods cleared by Zippo Mobiles were lying at the warehouse of Banke Bihari at Bawana Industrial Area. It is also evident that Dinesh Udhwani was related to the Directors of both Banke Bihari and Zippo Mobile as he was the son of Ashok Udhwani, Director of Banke Bihari and brother-in-law of Ashish Kumar, Director of Zippo Mobiles. From the statement dated 08.05.2018 of Ashok Kumar Udhwani it is evident that the work relating to import was looked after by Dinesh Udhwani. It is also clear from the statement that Zippo Mobiles was a Company with paid up capital of Rs. 2,10,000/- which had not made any import prior to the import under Bills of Entry dated 20.02.2018. It is also clear that the goods have been imported under the two Bills of Entry dated 20.02.2018 under the same IGM/Gateway IGM and the Bills of Lading have the same date. The calculator parts that were imported by Zippo Mobiles under the Bills of Entry dated 20.02.2018 were found to have been stored in the warehouse of Banke Bihari. The Principal Commissioner has also

considered the statement made by Dinesh Udhwani that the goods imported through the Bill of Entry dated 24.03.2018 had been sold out was not correct. It also transpires that the nature of the goods that were imported had matching quantities. Banke Bihari had along with other parts also imported polybags, colour boxes and two pressing machines for calculators. Zippo Mobiles also imported cartons for calculator with front and back covers. The Principal Commissioner was, therefore, justified in recording a finding that the intention was to assemble the calculators from the parts that were imported. Infact, it is also clear that Zippo Mobiles had never imported the parts and that the two consignment of plastic part for calculators arranged by Dinech Udhwani were the first import.

23. It is, therefore, more than apparent that Banke Bihari had imported parts of calculator through Bills of Entries so as to assemble the parts to form the calculator only to avoid anti-dumping duty.

B

24. The contention of Banke Bihari that the parts imported by them do not have the essential character of a calculator is not correct as all the essential parts of the calculator have been imported under the four consignments. The parts imported by Banke Bihari inter-alia contain PCB assembly (having in built cell bracket) and button cell for calculator. The impugned button cell is found to be compatible with the PCB assembly imported in the Bill of Entry as the same fits in the cell bracket present at the back side of the PCB assembly. The representative sample subjected to test checking has shown that when the button cell is inserted into PCB assembly and PCB assembly is operated manually by pressing fingers against keypad area of the

PCB assembly, the PCB assembly is capable of performing operations and the same starts showing on the display screen attached to the PCB assembly. The PCB assembly (having in-built cell bracket) connected with display along with button cell, therefore, provides the essential character of the complete or finished article. As per of rule 2(a) of the Interpretative Rules to the First Schedule to the Tariff Act, it is not necessary that all the parts/components of article must be present to merit classification as a complete article. It will still be classified as a complete article if the parts, which are presented, have the essential character of a complete or finished article. PCB assembly along with the cell are enough to provide the essential characteristic and, therefore, as per Interpretative rule 2(a), the parts imported by Banke Bihari are in the nature of a finished article i.e. calculator.

25. In this connection, reference can be made to the decision of the Tribunal in **Samay Electronics** wherein after referring to the provisions of rule 2(a) of the Interpretative Rules, the Tribunal held as follows:

"5.6 From the above Rule, it is evident that for the purposes of classification, an incomplete or unfinished article, if as presented, has the essential character of a complete or finished article, it would be covered by the heading pertaining to the complete or finished article. The second part of the Rule makes it clear that the reference would also include to the article presented unassembled or disassembled. Thus, for the purpose of Customs classification, these Rules shall apply and if by applying these Rules, the imported goods become classifiable under Chapter 85, the provisions of anti-dumping notification shall also apply, as per the clear and unambiguous wordings of the notification levying anti-dumping duty. It is in this premise and context, the arguments made by both the sides ought to be

considered.

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5.10 As regards the argument that Rule 2(a) of the General Rules of Interpretation is not applicable to anti-dumping duty is devoid of merits. Anti-dumping duty is levied on articles dumped into country of the description specified in the notification and falling under the corresponding tariff items mentioned against them. Section 9A forms part of the Customs Tariff Act and therefore, the Rules of Interpretation, which is an integral part of the Schedule to the Customs Tariff Act would apply in respect of the levy under Section 9A as well. Further as per Rule 2(g) of the Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995, the expression "article" has the meaning assigned to it in the Customs Tariff Act, 1975. Rule 2(a) of the General Rules of Interpretation which is an integral part of the said Act defines the meaning of the term "article". Thus as per the statutory provisions relating to anti-dumping duty, the said levy would apply not only to complete articles but also to incomplete articles or articles, unassembled or disassembled, if as presented the incomplete article has the essential character of the complete article. In other words, the scheme of levy of anti-dumping duty under the Customs Tariff Act, 1975, does not envisage or prescribe a separate set of principle of classification for the purposes of the said levy. The General Rules of Interpretation of the Tariff would apply equally for the levy of basic Customs duty under the Customs Act, Additional Duty of Customs under Section 3 of the Customs Tariff Act as well as Anti-dumping duty under Section 9A of the Customs Tariff Act. **Therefore, the contention of the appellant about the inapplicability of Rule 2(a) of the general interpretative rules for levy of anti-dumping duty has to be rejected as it is contrary to the statutory provisions, which are loud and clear.** It has also been contended that since the anti-dumping investigation and levy initiated in 2008 specifically mentioned CFL in CKD/SKD form, it has to be presumed

that the said goods imported in the said form were not covered in the earlier investigation and levy made in 2002. We have already held that as per the wordings employed in the findings of DGAD and the notification imposing levy, CFL in CKD/SKD forms are also included in the anti-dumping levy, this argument is not sustainable and hence, we reject this contention.”

(emphasis supplied)

26. In **Commissioner of Customs, New Delhi vs. Phoenix International Ltd.**¹² the Supreme Court observed as follows:-

“11. In the case of excise duty, the taxable event is “manufacture”. In the present case, however, we are concerned with the levy of customs duty. That duty is levied on the “act” of importation. Therefore, intention plays an important role in matters in which there is an allegation of duty evasion. In the present case, the Department has alleged that a device was evolved by the importer showing import of shoe uppers by M/s. PIL whereas outer soles, insoles and sock liners imported by M/s. PIND. A subterfuge was, therefore, created to show that two independent companies had imported separate parts of the footwear in order to bypass para 156(A) of the EXIM Policy 1992-97. Under the said paragraph, importation of synthetic shoes in SKD condition could only be made against specific import licence. M/s. PIL was aware of the restrictions. It was the only real importer of all the four items. xxxxxxxx”

C

27. The show cause notice alleges that Banke Bihari undervalued DVB remote (CKD) imported through Bill of Entry No. 6460501 dated 21.05.2018 and Diodes imported through Bill of Entry No. 6675087 dated 05.06.2018. The 23 pages found in email of Dinesh Udhwani have been relied upon to allege said undervaluation. They contain the commercial invoice and packing list in respect of Bill of Entry filed by

12. 2007 (216) E.L.T. 503 (S.C.)

Zippo Mobiles. The date wise details of item description, cartons, quantity, unit price and value has been mentioned. The items DVB remote and LED diodes figure in these pages. The summary of container numbers is also mentioned. The said pages also have summary of payments made and payments due and, therefore, indicate the transactional nature of the entries. On being shown Dinesh Udhwani agreed that the details like description, date and quantity is similar to the details in their Bill of Entry/Invoice/Packing list but could not explain the price difference. He was not only evasive in his response but also claimed that the documents cannot be understood by him as they were partly in Chinese.

28. As regards the allegation of undervaluation of DVB remote in CKD under Bill of Entry No. 6460501 dated 21.05.2018 filed by Banke Bihari, it was found that model number was not declared in the Bill of Entry. However, when seen from the packing list, the model of the DVB remote (both the large and small size) was found to be 703. Dinesh Udhwani admitted in his statement dated 15.11.2018 that the goods had been received as per the order i.e. 703A and 703B and also accepted, after seeing the packing list, that it appears that models 703, 703A and 703B of DVB remote were same. The values for the parts of DVB remotes declared in the subsequent Bills of Entry Nos. 6675435 and 6675908, both dated 05.06.2018, which have been filed after the interdiction of said Bill of Entry No. 6460501 dated 21.05.2018 are substantially higher and the cumulative price of the complete unit of DVB remote parts when added together indicates that the price declared in the above Bill of Entry had been undervalued to evade the payment of appropriate Customs Duty. The

appellant claimed that there was revision of price, but the appellant could not give any evidence or plausible reason. It was also found from the 23 pages retrieved from the mail that the import price of DVB remote (model-703) has been mentioned as 1.58 RMB per piece, which is equivalent to Rs. 16.43 as per the conversion rate applicable. In view of the fact that the model of remote in the Bill of Entry No. 6460501 dated 21.05.2018 was not declared and that the documents showing the actual values for DVB remote of same model were obtained during the investigations, it was found that the assessable value declared by the appellant in Bill of Entry No. 6460501 dated 21.05.2018 was liable to be rejected in terms of the provisions of rule 12 of the 2007 Valuation Rules. No values of identical goods could be found during investigation and so the actual transaction value of the same model found from the email of Dinesh Udhwani was taken to be the transaction value under the provisions of rule 5 of the 2007 Valuation Rules. Thus, the total assessable value in respect of the goods covered under the Bill of Entry No. 6460501 dated 21.05.2018 was arrived at Rs. 49,29,000/- (total value of the goods= Rs. 16.43x3,00,000 units i.e. Rs. 49,29,000/-). It needs to be noted that 1.58 RMB is equal to Rs. 16.43 as per exchange rate of RMB in the show cause notice.

29. As regards the alleged undervaluation of High lumin LED Emitting Diode under the Bill of Entry No. 6675087 dated 05.06.2018 filed by Banke Bihari is considered, higher values of high lumin LED Emitting Diode 5 MM (Red, Green-S, Blue-S, White, White-S, RG-S, Blue, White-0.25w, White-0.75W) were found in the document containing 23 pages retrieved from email account. When asked to

explain, Dinesh Udhwani admitted that the quantity, description, date were matching with the invoices/packing list with Bills of Entry, but he feigned ignorance about the document and denied any connection with the imports. These documents recovered from his email, along with other documents like commercial invoices from Zippo Mobiles indicating details of containers related items and value, payments made and due, cannot be discarded as not related to imports. It also appears from the data collected during the investigations that no other firm had imported from the Chinese supplier M/s Jiangxi MST Technology Co. Ltd. Existence of the email account dinesh@mstled.com appearing in the above mentioned documents retrieved from email dinesh.udhwani@hotmail.com also substantiates that the documents were obtained from the same Chinese supplier i.e. Jiangxi MST Electronics Technology Co. Ltd. Thus, the declared value of said high lumin LTD Emitting Diode (5MM (Red, Green-S, Blue-S, White, White-S, RG-S, Blue, White-0.25w, White-0.75W) under Bill of Entry No. 6675087 dated 05.06.2018 is not correct and was correctly rejected in terms of rule 12 of the 2007 Valuation Rules. As no values of identical goods were unearthed during investigation, the transaction value of the same goods found from email of Dinesh Udhwani was correctly taken to be the transaction value under the provisions of rule 5 of the 2007 Valuation Rules.

D

30. As it has been found as a fact that Banke Bihari had undervalued DVD remotes and diodes, the Principal Commissioner was justified in requiring Banke Bihari to pay the differential duty.

E

31. The Principal Commissioner found is a fact that Banke Bihari actively connived with Zippo Mobiles and filed separate Bills of Entry by splitting the consignment. Thus, a wrong declaration was furnished by mis-classifying the goods with intent to evade anti-dumping duty. The seized goods were, therefore, liable to confiscation under section 111(m) of the Customs Act.

32. The show cause notice proposes penalty under sections 112 and 114A on Banke Bihari and Zippo Mobiles on acts of omission and commission. The Principal Commissioner found that Banke Bihari was the real importer of calculator parts and as the goods were liable to confiscation under section 111(m) of the Customs Act, Banke Bihari was liable to penal action under section 114A of the Customs Act. The Principal Commissioner also found that Zippo Mobiles actively connived with Banke Bihari and so penalty was liable to be imposed under section 112(a) of the Customs Act. The imposition of penalty under section 114A of the Customs Act is also justified as both Banke Bihari and Zippo Mobiles had submitted incorrect and fabricated invoices for clearance of the imported goods. The penalties imposed upon Ashok Udhvani, Director of Banke Bihari, Dinesh Udhani, Authorised Representative Banke Bihari, Ashish Kumar, Director of Zippo Mobiles, Sonu Proprietor of M/s. Radhey Enterprises and Roshanlal Proprietor of M/s. Delhi Transport Co. have also, for the reasons stated by the Principal Commissioner, correctly been imposed.

33. Thus, for all the reasons stated above, Customs Appeal No. 50856 of 2020, Customs Appeal No. 50857 of 2020, Customs Appeal

No. 50858 of 2020, Customs Appeal No. 50859 of 2020, Customs Appeal No. 50860 of 2020, Customs Appeal No. 50861 of 2020 and Customs Appeal No. 50862 of 2020 are liable to be dismissed and are dismissed.

(Order pronounced on **27.05.2024**)

(JUSTICE DILIP GUPTA)
PRESIDENT

(P.V. SUBBA RAO)
MEMBER (TECHNICAL)

Jyoti