IN THE CUSTOMS, EXCISE AND SERVECE TAX APPELLATE TRIBUNAL, WEST ZONAL BENCH AT MUMBAI
COURT NO. IV

APPEAL NO. C/926, 927 & 973/10

(Arising out of Order-in-Original CAO No. 77/2010/CAC/CC(I)/SHH dated 27.08.2010 passed by the Commissioner of Customs (Import), Mumbai-I.)

Manamar Singh Bedi	**Appellant**
M/s Barkat Hiring Company	

Vs.

Commissioner of Customs (Import), Mumbai	**Respondent**

Appearance:

Shri Prashant Patankar, Consultant	for Appellant
Shri Chatru Singh, Assistant Commissioner (A.R.)	for Respondent

Commissioner of Customs (Import), Mumbai	**Appellant**

Vs.

M/s Barkat Hiring Company Pvt. Ltd.	**Respondent**

Appearance:

Shri Chatru Singh, Assistant Commissioner (A.R.)	for Appellant
Shri Prashant Patankar, Consultant	for Respondent

CORAM:

HON'BLE SHRI RAMESH NAIR, MEMBER (JUDICIAL)
HON'BLE SHRI RAJU, MEMBER (TECHNICAL)

Date of Hearing: 26.04.2018
Date of Decision: 22.05.2018

ORDER NO. A/**86461-86463/2018**

Per: Ramesh Nair:

The facts of the case are that the appellant has imported old and used second hand Krupp Hydraulic Truck Mobile Crane complete with ACC Model No. GMT 140, year of manufacturing 1989 and serial No. 207875.

2. The Custom Authority on the basis of discrepancy in the Chartered Engineer certificate regarding the valuation of the goods doubted the valuation. Accordingly, during the investigation from the website they have taken up the printout of identical crane. The contention of the Department is that showing the same serial number of the crane, show the value amounting to 2,35,000 US $ whereas the appellant's Bills of Entry declared the value of 1,00,000 US $, therefore the value of the machine was enhanced in the adjudication order from 1,00,000 US $ to 2,35,000 US $ and confirmed the demand of differential duty. Interest was also demanded, since the duty and interest was paid and the same was appropriate the goods so imported goods have been confiscated and redemption fine of Rs. 25,00,000/- imposed. The goods were provisionally released under Section 110A of the Customs Act, 1962 on execution of a bond and bank guarantee, a penalty of Rs. 23,07,281/- which is equal to duty was imposed under Section 114A, in addition penalty of Rs. 2,00,000/- was also imposed on Shri Manamar Singh Bedi of the appellant under Section 112(a) of Customs Act, 1962. Being aggrieved by the Order-in-Original the appellant filed two appeals and Revenue also filed one appeal for enhancing of additional penalty equal to the interest amount under Section 114A.

3. Shri Prashant Patankar, learned Counsel appearing on behalf of the assessee submits that only basis for enhancing value is the minor discrepancy in the original certificate and printout taken from website contending for the similar machine valued 2,35,000 US $ accordingly the value was enhanced. He submits that there are number of variations in the machine imported by the appellant and the crane appearing in the computer printout taken from the website and he pointed out that such variations in both the documents, accordingly it is a submission that firstly printout taken from website is inconclusive, secondly even if printout taken from the website is assumed to be correct, then also due to variation it cannot be said that the crane imported by the appellant and the crane appearing in the website printout is same, therefore on this basis value cannot be enhanced.

4. Shri Chatru Singh, Learned Assistant Commissioner (A.R.) appearing on behalf of the Revenue reiterates the finding of the impugned order.

5. We have carefully considered the submissions made by both sides. We find that the Customs Authority initiated the investigation on the basis that the Chartered Engineer certificate produced by the appellant which suffers from various discrepancies such as that certificate was a photocopy and not on the original letter head of the Chartered Engineer's firm, the certificate did not bear the date of issuance and date of correspondence. On perusal of the certificate, we observed that except the discrepancy pointed out by the Customs Authority all other information is tallying with invoice such as make

model, country, year of manufacturing etc. Therefore, the certificate cannot be brushed aside straight away. However from such discrepancy, it cannot be established that the value declared by the appellant is incorrect, even if the certificate is not considered to be authentic, the Revenue has relied upon the website printout however on comparison the details given in the website printout and the invoice of the supplier in the case of appellant's import there are many differences. The import invoice of the appellant and copies of website printout of crane network are scanned below:-

INVOICE

R.K.Gupta Corp
71-19 80th Street
Building 8, Suite 8313
Atlas Park , Glendale - NY 11385
718-326-8700

DATE: April 2nd, 2008
INVOICE # RKG1086

To Barkat Hiring Co
Disma Office Complex
off# 435 Plot 246
Sector 4EB, Kalamboli
Mumbai 410218
India

SHIP To Barkat Hiring Co
Disma Office Complex
off# 435 Plot 246
Sector 4EB, Kalamboli
Mumbai 410218
India

SALESPERSON	JOB	SHIPPING METHOD	SHIPPING TERMS	DELIVERY DATE	PAYMENT TERMS	DUE DATE
Ranjan	Internal	By Sea	Rates Included CIF	Vessel Upon Arrival	100% Advance	Date of Invoice

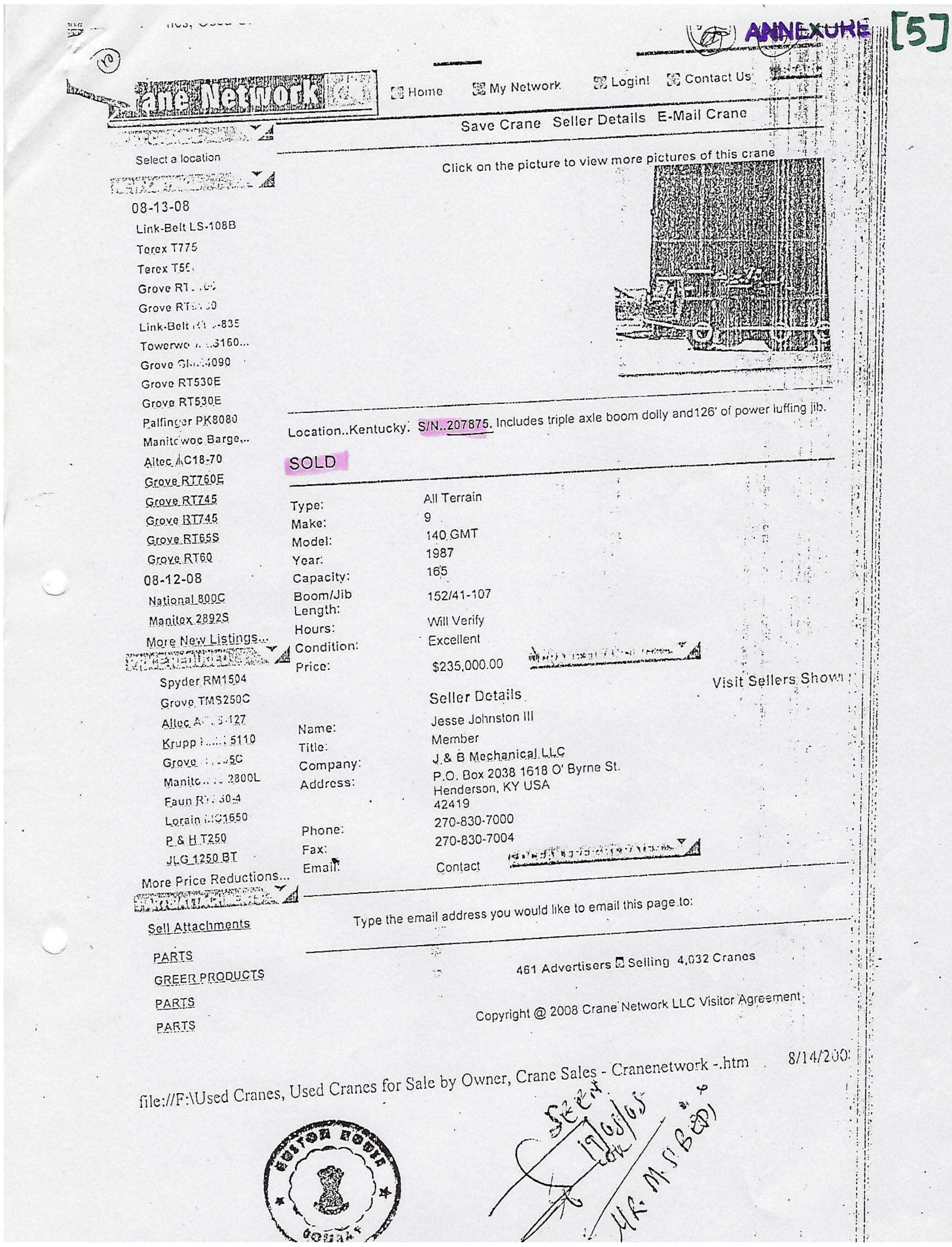
QTY	ITEM #	DESCRIPTION	UNIT PRICE	DISCOUNT	LINE TOTAL
One Used Unit		Used Hydraulic Truck Unit Krupp GMT 140 Boom: 160 Ft, 40 Ft of Jib With an Original Counter Weight Year - 1989 Model # Krupp GMT 140 Capacity: 160 Ton Terms Of Payment: 100% by TT.In Advance	$ 100,000.00		$ 100,000.00
		USD One Hundred Thousand Dollars Only To Order of Citibank N.A Forest Hills Branch 107-01, 71st Avenue, Forest Hills, NY-11375 Routing # 021000089 Beneficiary: R.K.Gupta Corp 71-19 80th Street Building 8, Suite 8313 Atlas Park , Glendale - NY 11385 Account # 95887002			
		Shipping Terms: Rates included CIF Mumbai			
		Said Truck crane is being sold "AS IS" without any expressed or implied warranty as to condition or working order.			
		We are not responsible for any stolen Accessories includig Hook Block, Manuals, Pins & Pendant Wires etc			

TOTAL DISCOUNT

SUBTOTAL $ 100,000.00
SALES TAX
TOTAL $ 100,000.00

Make all Wires payable to [R.K.Gupta Corp]

Thank you for your business!


ANNEXURE [5]

Crane Network | Home | My Network | Login! | Contact Us

Save Crane Seller Details E-Mail Crane

Select a location

Click on the picture to view more pictures of this crane

08-13-08
Link-Belt LS-108B
Terex T775
Terex T5
Grove RT
Grove RT
Link-Belt
Towerwo
Grove
Grove RT530E
Grove RT530E
Palfinger PK8080
Manitowoc Barge...
Altec AC18-70
Grove RT760E
Grove RT745
Grove RT745
Grove RT65S
Grove RT60
08-12-08
National 800C
Manitex 2892S
More New Listings...
Spyder RM1504
Grove TMS250C
Altec A
Krupp 5110
Grove
Manito 2800L
Faun R
Lorain
P & H T250
JLG 1250 BT
More Price Reductions...
Sell Attachments
PARTS
GREER PRODUCTS
PARTS
PARTS

Location..Kentucky. S/N..207875. Includes triple axle boom dolly and126' of power luffing jib.

SOLD

Type:	All Terrain
Make:	9
Model:	140 GMT
Year:	1987
Capacity:	165
Boom/Jib Length:	152/41-107
Hours:	Will Verify
Condition:	Excellent
Price:	$235,000.00

Visit Sellers Show

Seller Details

Name:	Jesse Johnston III
Title:	Member
Company:	J & B Mechanical LLC
Address:	P.O. Box 2038 1618 O' Byrne St. Henderson, KY USA 42419
Phone:	270-830-7000
Fax:	270-830-7004
Email:	Contact

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6. From the above both documents, it can be seen that in the crane network printout though the machine is same but in the case of appellant's imported crane the make is one 'Krupp' whereas in the crane network printout against the make its shown '9'. On comparison with both the machine following differences are apparent.

	Import Invoice	Crane Network
Make	Krupp	9
Year	1989	1987
Capacity	160	165

7. In view of the above difference, it cannot be said that the machinery shown in the crane network website and the machine imported by the appellant are same. Therefore there is absolutely no basis available with the Customs on which the value could have enhanced. We therefore find that the impugned order enhancing the value, demanding the differential duty and confiscating the goods has no basis, accordingly the impugned order is set aside. The appeals of the assessee and of Shri Manamar Singh Bedi are allowed. Since the demand itself does not exist, there is no question of penalty under Section 114A, consequently Revenue's appeal also does not survive, hence the same is dismissed.

(Pronounced in Court on 22.05.2018)

(Raju)
Member (Technical)

(Ramesh Nair)
Member (Judicial)

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