

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
MUMBAI**

WEST ZONAL BENCH

CUSTOMS APPEAL NO: 903 OF 2010

[Arising out of Order-in-Appeal No: 257(GR. VA)/2010(JNCH) /IMP-245 dated 13th September 2010 passed by the Commissioner of Customs (Appeals), Mumbai – II.]

Jindal Saw Limited

Samagoga, Vill: Mundra, Mandvi Road, Mundra Taluka
Dist Kutch, Gujarat - 370415

... Appellant

versus

Commissioner of Customs (Import)

Jawaharlal Nehru Customs House, Nhava Sheva
Tal: Uran, Dist: Raigad, Maharashtra

...Respondent

APPEARANCE:

Shri Durgesh Nadkarni, Advocate for the appellant

Shri Manoj Kumar Deputy Commissioner (AR) for the respondent

CORAM:

HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)

HON'BLE MR AJAY SHARMA, MEMBER (JUDICIAL)

FINAL ORDER NO: A / 86376/2023

DATE OF HEARING:

24/03/2023

DATE OF DECISION:

14/09/2023

PER: C J MATHEW

In this appeal of M/s Jindal Saw Limited, concerned with

import of 'old and used parts of plate leveler machines' against bill of entry no. 700610/30.09.2009 declaring value to be ₹ 12,43,560, order¹ of Commissioner of Customs (Appeals), Mumbai-II upholding the re-determination of value to ₹ 37,05,816 by recourse to rule 9 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, confiscation of the goods under section 111(d) of Customs Act, 1962 for not being in possession of valid licence for import as well as under section 111(m) of Customs Act, 1962 for misdeclaration of value and imposition of penalty of ₹ 3,50,000 under section 112 of Customs Act, 1962, is under challenge.

2. It is submitted that the 'plate leveler' had been manufactured by M/s Stemco in 1942 and that it had been dismantled as it could not be used as such; he clarified that the goods are nothing but scrap and that the agreement between M/s Jindal Saw USA, LLC and the importer was thus for sale at the prevailing price of 'market scrap' as reflected in sale contract dated 18th June 2009. According to him, the certification from chartered engineer, M/s Steel Metallurgical Consultants, Inc., furnished by them at the time of import clearly indicates this and that customs authorities have not established that the relationship with supplier has influenced the price. It was further contended that the equipment had been dismantled and that the age of the machine precludes use as anything other than scrap. It was further

¹ [order-in-appeal no. 257(GR. VA)/2010(JNCH) /IMP-245 dated 13th September 2010]

submitted that this is made even more apparent from the report of chartered engineer, M/s RK Aggarwal.

3. Learned Counsel did not agree with the report of M/s Intertek, the chartered engineer engaged by the customs authorities, as the survey was conducted at the premises of the appellant and the methodology adopted for valuation is absent and, even, was unclear about the year of manufacture. Reliance was placed by him on the decision of the Tribunal in *Anish Kumar Spinning Mills v. Commissioner of Customs, Tuticorin* [2004 (172) ELT 394 (Tri-Chennai)] upheld by the Hon'ble Supreme Court and of the Hon'ble Supreme Court in *Gajra Bevel Gears v. Collector of Customs, Bombay* [2000 (115) ELT 612 (SC)].

4. According to Learned Authorized Representative, the declared value is based on sale contract with related person and sought to be sustained by report of overseas chartered engineer which has estimated current value of scrap without taking into account the cost of disassembling of the machinery. He further contends that the reports indicate that the parts of the machinery are serviceable and can hardly be 'scrap' as claimed by the appellant. He placed reliance on the decision of the Hon'ble Supreme Court in *Commissioner of Central Excise, Madras v. System & Components Pvt Ltd* [2004 (165) ELT 136 (SC)] to submit that admitted facts do not have to be proved.

It was also argued by him that the contraventions came to light after clearance and that, in such cases, as held by the Tribunal in *Prasant Glass Works P Ltd v. Collector of Customs, Calcutta* [1996 (87) ELT 518 (Tribunal)], it was not necessary that accompanying documents had to be accepted. Further reliance was placed on the decision of the Tribunal in *Commissioner of Customs v. PV Ukkru International Trade* [2009 (235) ELT 229 (Ker)] and in *Commissioner of Customs, Mumbai v. Multimetall Ltd* [2002 (144) ELT 574 (Tri-Mumbai)].

5. There are two aspects for consideration here: the description of the goods and value for assessment. Very little has been put forward, and except as passing narration of facts, by the appellant as far as the former is concerned but that cannot be ignored by us. The appellant has claimed that the impugned goods, though ‘old and used’ and of ‘1942 vintage’, is, nonetheless ‘plate leveler’; this has been incorporated in the bill of entry and has not been alienated in submissions before us. The claim of the appellant is that value has not been properly ascertained and, by default, their declaration, though at par with ‘scrap’, should be accepted as the machine has been imported in disassembled condition and unfit for use as such.

6. The appellant has chosen to describe the goods as ‘plate leveller’ in the bill of entry and, in accordance with section 17 and section 47 of Customs Act, 1962, there is no reason to expect a

different classification to be substituted. Even now, it is not their claim that goods are 'scrap' but merely that it is not intended to be erected as machinery and the goods, in disassembled form, have not been claimed to fit any other classification with declaration disowned as in error. Usage after import is not a criterion for classification. Therefore, the goods merit assessment in accordance with the declaration.

7. The goods are admittedly of '1942 vintage' and it is seen that paragraph 2.31 of the Foreign Trade Policy restricts 'second hand goods other than capital goods' and, as it is not the case of customs authorities that these are not 'capital goods', the impugned goods would be freely importable. Consequently, confiscation under section 111(d) of Customs Act, 1962 lacks authority of law.

8. As far as valuation is concerned, recourse was had to rule 12 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 for rejecting the declared value on the admitted relationship of buyer and seller and that the certification by chartered engineer has not been determined on the basis of cost but upon market value of scrap. The decisions relied upon by both sides have not taken into consideration the rigours of the rules in place or the circumstances in which judicial interpretation streamlined the operation of the immediately preceding scheme of valuation.

9. That the buyer and seller are not unrelated is not in dispute but the essence of section 14 of Customs Act, 1962 is not a relationship but relationship as deemed under Customs Valuation (Determination of Value of Imported Goods) Rules, 2007; furthermore, as laid down in

'3. Determination of the method of valuation.-

(1) Subject to rule 12, the value of imported goods shall be the transaction value adjusted in accordance with provisions of rule 10;

XXXXX

(3) (a) Where the buyer and seller are related, the transaction value shall be accepted provided that the examination of the circumstances of the sale of the imported goods indicate that the relationship did not influence the price.

(b) In a sale between related persons, the transaction value shall be accepted, whenever the importer demonstrates that the declared value of the goods being valued, closely approximates to one of the following values ascertained at or about the same time.

(i) the transaction value of identical goods, or of similar goods, in sales to unrelated buyers in India;

(ii) the deductive value for identical goods or similar goods;

(iii) the computed value for identical goods

or similar goods:

Provided that in applying the values used for comparison, due account shall be taken of demonstrated difference in commercial levels, quantity levels, adjustments in accordance with the provisions of rule 10 and cost incurred by the seller in sales in which he and the buyer are not related;

(c) substitute values shall not be established under the provisions of clause (b) of this sub-rule.'

of rule 3 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, recourse to anything other than 'declared value' must be preceded by appropriate justification. The orders of the lower authorities are bereft of any finding on that score. Accordingly, re-determination contingent on adverse presumption is not valid.

10. The only other recourse for re-determination, through sequential application of rule 4 to rule 9 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, is by drawing upon the authority of rule 12 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007. Though the provision affords wide latitude of assessing officers, it is, nonetheless, circumscribed by *Explanation* below

'Explanation.-(1) For the removal of doubts, it is hereby declared that:-

(i) This rule by itself does not provide a method for

determination of value, it provides a mechanism and procedure for rejection of declared value in cases where there is reasonable doubt that the declared value does not represent the transaction value; where the declared value is rejected, the value shall be determined by proceeding sequentially in accordance with rules 4 to 9.

- (ii) The declared value shall be accepted where the proper officer is satisfied about the truth and accuracy of the declared value after the said enquiry in consultation with the importers.*
- (iii) The proper officer shall have the powers to raise doubts on the truth or accuracy of the declared value based on certain reasons which may include –*
 - (a) the significantly higher value at which identical or similar goods imported at or about the same time in comparable quantities in a comparable commercial transaction were assessed;*
 - (b) the sale involves an abnormal discount or abnormal reduction from the ordinary competitive price;*
 - (c) the sale involves special discounts limited to exclusive agents;*
 - (d) the misdeclaration of goods in parameters such as description, quality, quantity, country of origin, year of manufacture or production;*
 - (e) the non declaration of parameters such as brand, grade, specifications that have relevance to value;*

(f) *the fraudulent or manipulated documents.'*

while

'(2) At the request of an importer, the proper officer, shall intimate the importer in writing the grounds for doubting the truth or accuracy of the value declared in relation to goods imported by such importer and provide a reasonable opportunity of being heard, before taking a final decision under sub-rule (1).'

in rule 12 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 is to be triggered by request of importer, where show cause notices are concerned, that onus shifts to the customs authorities. We find a marked absence of such in the notice as well as orders of lower authorities.

11. The system for valuation in Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 for operation of section 14 of Customs Act, 1962 has neither been followed by the adjudicating authority nor such departure taken note of in the impugned order. The law exists for a purpose and that purpose must be served. Consequently, the impugned order is set aside to allow the appeal.

(Order pronounced in the open court on 14/09/2023)

(AJAY SHARMA)
Member (Judicial)

(C J MATHEW)
Member (Technical)