

COLLECTOR OF CUSTOMS, CALCUTTA

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v.

SANJAY CHANDIRAM

MAY 5, 1995

[S.P. BHARUCHA, SUHAS C. SEN AND K.S. PARIPOORNAN, JJ.]

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Customs Act, 1962—Section 14—Customs Valuation (Determination of Price of Imported Goods) Rules, 1988—Rules 3 and 4—Transaction value—Meaning of—Importer producing false certificate of country of origin—Transaction value cannot be the value declared by him in the invoice—Where country of origin not proved held, transaction value would be price of same or similar goods in the course of international trade.

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The respondent is the proprietor of one M/s. Shiv Shankar International which imported zip rolls from a company in Singapore and produced a copy of the country of origin certificate declaring the said goods to be of North Korean origin. The goods were detained by the Directorate of Revenue Intelligence. On the basis of information that the importer was misdeclaring the country of origin and was under-invoicing the goods to evade payment of duty. A show cause notice was issued to the respondent and few others to this effect.

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The Assistant Collector after hearing the parties held that the goods were not of North Korean origin and that the importer had produced a forged certificate of country of origin. However, as the actual country of origin could not be proved, the Collector of Customs assessed the value of the goods at the South Korean price which was the lowest price at which the goods were being generally purchased in the international trade.

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On appeal, the CEGAT confirmed the finding of the Assistant Collector that goods were not imported from North Korea and that the country of origin certificate produced by the importer was not genuine. However, on an interpretation of Rules 3 and 4 of the Customs Valuation (Determination of Price of Imported goods) Rules, the CEGAT held that as there was no evidence of contemporary imports of comparable goods at higher rates and for the fact that the importer had clandestinely remitted more than the amount actually paid, the transaction value of the goods under Rule 4 of the Customs Valuation (Determination of Price of Im-

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A ported Goods) Rules would be the price declared by the importer.

Hence the present appeal.

Allowing the appeal, this Court

B HELD : 1. Rules 3 and 4 of the Customs Valuation (Determination of Price of Imported Goods) Rules, 1988 could not be applied in the facts of this case. These rules are based on the assumption that the price actually paid or payable for the imported goods has been genuinely disclosed by the importer. But, if the certificates of origin of the goods have been found to be false, the value declared in invoices cannot be accepted as genuine. The irresistible conclusion from the facts found in this case is that the real value of the imported goods has not been shown in the invoices. Therefore, the value of the imported goods, as declared by the importer cannot be taken as the transaction value. [25-G, 26-E, 27-D]

D 2. Once the CEGAT came to the finding that the goods were not imported from DPR Korea, the only way to ascertain the value of the goods was to find out the price at which such or like goods are ordinarily sold or offered for sale in the course of international trade. This is precisely what the collector of Customs did in this case. [27-A]

E CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5411 of 1990.

From the Judgment and Order dated 11.10.90 of the Central Excise, Customs and Gold (Control) Appellate Tribunal, New Delhi in Appeal No. C/A No. 1543/90/A) Order No. 1515/90-A).

F V.C. Mahajan and P. Parmeswaran for the Appellant.

P.N. Misra for the Respondent.

The Judgment of the Court was delivered by

G SEN, J. M/s. Shiv Shankar International, 69/10, 72 Canning Street, Calcutta, imported the following four consignments of Zip Rolls from Singapore and filed four Bills of Entry in the Customs House, Calcutta, as follows :-

H (1) 8,00,000 yards of Zip Roll No. 5 'CF' type per vessel John

Everett, Rot No. 692/89, Line No. 196, declared C.I.F. value Rs. 3,06,941.52 against B/E No. 236 dated 20.11.89. A

(2) 7,60,000 yards of Zip Roll No. 5 'CF' type per vessel John Everett, Rot No. 692/89, Line No. 197, declared C.I.F. value Rs. 2,91,594.44 against B/E No. 1237 dated 20.11.89. B

(3) 8,00,000 yards of Zip roll No. 5 'CF' type per vessel Calabar, Rot No. 687/89, Line No. 323, declared C.I.F. value Rs 3,06,911.52 against B/E No. 1654 dated 28.11.89. B

(4) 8,00,000 yards of Zip roll No. 5 'CF' type per vessel Calabar, Rot No. 687/89, Line No. 324, declared C.I.F. value Rs 3,06,941.52 against B/E No. 1655 dated 28.11.89. C

The goods were detained by the Directorate of Revenue Intelligence, Calcutta, on the basis of information that the importer was misdeclaring the country of origin of the imported goods and was under-invoicing the value of the goods. Sanjay Chandiram, Proprietor of M/s. Shiv Shankar International, was summoned to appear for the further investigation on 8.12.89. Chandiram did not appear before the Customs authority pursuant to the summon, but moved the High Court by way of writ petition challenging the validity of the proceedings. There were various court proceedings. Ultimately, the matter reached this Court. By an order dated 3.1.90, the Customs authority was directed to issue a show cause notice within four weeks and to complete adjudication proceedings within a further period of three weeks thereafter. D E

A show cause notice was issued by the Assistant Director, D.R.I., Zonal Unit, Calcutta, to the importer and also to M/s. N.N. Bose and Nephew, their Clearing Agents. F

It was alleged in the show cause notice, *inter alia*:-

"(1) that the said M/s. S.S. International have produced forged country of origin certificates declaring the said goods under import to be of DRI Korea Origin; G

(2) that these certificates do not show the details of shipment such as marks and numbers, vessel name, weight, Bill of lading particulars, etc. H

- A (3) that the importers have produced these certificates with the intention of misleading Customs authorities regarding the real country of origin of the goods under import so that they could get their goods assessed at a very low value of US\$ 2.28 C.I.F. per 100 yards;
- B (4) that the importers have tried to evade duty to the tune of Rs. 1,24,62,949.53 by misdeclaring country of origin as DPR Korea and by claiming assessment on lower value;
- C (5) that the importers have produced import licences to cover importation of goods valued Rs. 11,29,426 whereas they have imported goods worth Rs. 75,40,386;
- (6) that thus they have imported goods valued Rs. 64,10,989 without the cover of any valid import licence;
- D (7) that they have manipulated import documents, submitted forged and incorrect certificates of origin, wilfully misdeclared value; did not submit the original copies of certificates of origin when asked to and thereby did not also co-operate in the investigation;
- E (8) that the claim of the importers to have purchased the goods from M/s. Greenland Textiles Pte. Ltd., Singapore, who in turn claim to have purchased the same from M/s. Korea Building National Exp. and Imp. Corporation are not acceptable as there are only 2 dealers in DPR Korea Zip rolls in Singapore for South East Asia and Far East, namely, M/s. D & N Textiles and General Exporters and M/s. Multimill Impex Singapore Pte. Ltd. who have been authorised by Korea Namyang Trading Corporation (DPR Korea).
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- G (9) that on a reference to the Commercial Section, Embassy of the DPR Korea in the Republic of Singapore, the certificates of origin produced by the importers and purported to have been issued by the Korea Foreign Commodity Inspection Committee, Pyongyang, Korea, have been found to be incorrect and forged;
- H (10) that the goods under import have been imported not in normal export-worthy packing but only in plastic bags without showing any

marks and numbers and other usual particulars such as trader's name, country of origin etc." A

The importer was directed to show cause why the imported goods should not be confiscated under Section 111(d) and (m) of the Customs Act, 1962 read with Imports and Exports (Control) Act, 1947 and the Imports (Control) Order 55. Importer was also asked to show cause why penal action should not be taken under Section 112 of the Customs Act and extra duty to the tune of Rs. 1,24,62,949.53 should not be realised from them on the basis of the ascertained value of goods of Japanese origin. After hearing the importer and considering the evidence and materials on record, the Assistant Collector held:- B

"The prices are definitely very low compared to the prices normally noticed for zipper rolls. This claim of lower price is due to the fact that the goods are reported to be of North Korean origin. In effect, if it is proved that the goods are of North Korean origin, the Department may have to accept the low price of US\$ 2.28 per 100 yards. However, if it is conclusively proved that the goods are not of North Korean origin, then the prices declared are definitely low and should be revised." C

The Assistant Collector considered the evidence on record, in particular a letter issued by the North Korean Embassy, New Delhi, dated 20th February, 1990 to the effect that the certificates allegedly issued by North Korean Embassy at Singapore, furnished by the importer, were incorrect or forged. The Assistant Collector came to the conclusion that the importer had made elaborate arrangements to produce invalid and forged country of origin certificates in collusion with M/s. Greenland Textiles. They had attempted to indicate that the goods were of North Korean origin and they had declared a very low value of the goods. D

It was held by the Assistant Collector, "Since the country of origin claimed by them as of North Korea has been proved to be incorrect and false, the obvious conclusion is that the price declared by them is also incorrect and proved to be a very low price." E

There was also another curious factor. The importer had submitted only copies of the country of origin certificates issued to M/s. Greenland Textiles by the North Korean suppliers. Customs House and the Direc- F

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A torate of Revenue Intelligence repeatedly asked the importer to produce the original certificates. The importer, however, pleaded that original certificates had been sent back to the Singapore suppliers and nothing but the photocopies could be produced. No explanation was given as to why the country of origin certificates had to be sent back to the Singapore suppliers. These certificates had to be given to the importer.

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The Collector of Customs thereafter went into the question of what should be proper value of the Zip Rolls imported by the appellant for determination of Customs Duty. Prices of similar goods of Japanese, Taiwanese and South Korean origin were taken into consideration. It has been stated that these are the countries from which Zip Rolls are usually purchased in the international trade. It was found that the prices of South Korean Zip rolls were the lowest. Since there was no clear evidence of the country of origin of imported goods, the importer was given the benefit of the lowest price quoted by South Korean exporters. In the absence of any other evidence, the South Korean price of US\$ 5.97 per 100 yards was adopted for arriving at the value of the Zip Rolls imported by the appellant.

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Various consequential orders levying duty and penalty were passed. On appeal, the Customs, Excise & Gold (Control) Appellate Tribunal (CEGAT), after the review of the facts, came to the conclusion that the certificates of origin, furnished by the appellant, were not genuine. It also came to the conclusion that "we are of the view that the goods are not imported from DPR Korea."

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Thereafter, CEGAT posed the question: "What should be the assessable value as the country of origin from which the goods are imported is not ascertainable?" After referring to Section 14 of the Customs Act, which lays down that the value of the imported goods shall be deemed to be the price at which such or like goods are ordinarily sold or offered for sale 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, CEGAT came to the conclusion that since the country of origin of the goods was not known, the price must be arrived at according to the Customs Valuation (Determination of Price of Imported Goods) Rules.

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H Thereafter, CEGAT held:-

"... the Department was not sure about the correct country of origin of the impugned goods and the Department was also not sure as to what should be the correct price of the goods. That is why it was alleged in the show cause notice that the price should be determined on the basis of the value of the goods of Japanese origin or Taiwan origin or South Korean origin. Further, there is no allegation in the show cause notice that the impugned goods are comparable in quality with the goods of Japanese or Taiwan or South Korean origin, nor has the collector given any such finding in his order. He has also not stated under which clause of section 14 of the Customs Act or under which Rule of the Valuation Rules he has determined the value for the assessment."

The Tribunal came to the conclusion that if the transaction value was available i.e. the price actually paid or payable was available, then the assessable value had to be determined by accepting the price actually paid or payable unless it was found to be not genuine. The Tribunal concluded:-

"Since there is no evidence of contemporary imports of comparable goods at higher rate and since there is no evidence that the appellants have remitted to the supplier any amount clandestinely more than the amount they have actually paid 'transaction value' under Rule 4 is available and, therefore, it has to be accepted."

It is difficult to comprehend how the CEGAT, after coming to the conclusion that certificates of origin furnished by the appellant were not genuine and after upholding that "we are of the view that the goods are not imported from DPR Korea", could come to the conclusion that the declared price of importer which was the market price of DPR Korea, should be accepted as the transaction value of the goods.

CEGAT failed to appreciate that Rules 3 and 4 could not be applied in the facts of this case. The importer had declared that the goods were of North Korean origin and a price of US\$2.28 per 100 yards was shown as the price paid for the imported goods. This was the price prevalent in North Korea and was very much lower than the price of Zip Rolls imported from Japan, Taiwan and South Korea.

CEGAT in its order has relied on Rule 3 and Rule 4, but failed to appreciate that these Rules are not applicable in the facts of this case.

A Rules 3 and 5 of the Customs Valuation (Determination of Price of Imported Goods) Rules 1988 are as under:-

"3. Determination of the method of valuation.- For the purpose of these rules,

- B (i) the value of the imported goods shall be the transaction value;
- (ii) if the value cannot be determined under the provisions of clause (i) above, the value shall be determined by proceeding sequentially through Rules 5 to 8 of these rules.

C 4. Transaction value.- (1) The transaction value of imported goods shall be the price actually paid or payable for the goods when sold for export to India, adjusted in accordance with the provisions of Rule 9 of these rules.

D (2) The transaction value of imported goods under sub-rule (1) above shall be accepted.

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E These rules are based on the assumption that the price actually paid or payable for the goods has been genuinely disclosed by the importer. But, if the certificates of origin of the goods have been found to be false, the value declared in the invoices cannot be accepted as genuine. The importer had represented that the goods were of North Korean origin and had provided documents to justify its claim. The price of the goods that was declared, was the market price of DPR Korea. But, the documents

F produced by the appellant to support its contention that the goods were of North Korean origin, were found to be forged. The Tribunal's finding is that the goods were not imported from DPR Korea. If that be the finding, as a logical corollary, it follows that the price of the goods cannot be the price which was payable in or equivalent to the price in the North Korean market. The purchase value declared by the importer cannot be accepted

G as genuine under these circumstances.

Section 14 of the Customs Act lays down that the value of the imported goods shall be deemed to be the price at which such or like goods are ordinarily sold or offered for sale in the course of international trade.

H If the goods are not of North Korean origin, then there is no point in

finding out the price of such goods in DPR Korea. Once the Tribunal came to the finding that the goods were not imported from DPR Korea, the only way to ascertain the value of the goods was to find out the price at which 'such or like goods are ordinarily sold or offered for sale in the course of international trade'. This is precisely what the Collector of Customs did in this case. He found out the prices of similar Zip Rolls of Japanese, Taiwanese and South Korean origin. These are the countries from which the Zip Rolls are generally purchased in international trade. It was found that amongst these, the prices of South Korean Zip Rolls were the lowest. The Collector, therefore, took the South Korean prices as the value of the goods.

The Tribunal clearly misread Rule 3. This is not a rule of invariable application regardless of the circumstances. It cannot be applied when forged documents are produced to show the place of origin of the goods. The irresistible conclusion from the facts found in this case is that the real value of the imported goods has not been shown in the invoices. Therefore, the value of the imported goods, as declared by the importer cannot be taken as the transaction value.

The Tribunal also observed that there was no finding by the Collector that Zip Rolls imported by other parties from Japan, South Korea or Taiwan were identical in all respects. Therefore, these goods could not be valued on the basis of price of the goods of South Korean, Taiwanese or Japanese origin.

In the facts of this case, this reasoning cannot also be sustained. What the Collector has done is to reject the North Korean price or the imported goods declared by the importer in the invoices because the goods were found not to be of North Korean origin. He had thereafter taken into consideration the prices of similar goods of three other countries - Japan, Taiwan and South Korea - and has taken the lowest amongst these as the value of the goods imported. Under Rule 8 of the Customs Valuation Rules, 1988, the value of the imported goods may be determined 'using reasonable means consistent with the principles and general provisions of these rules and sub-section (1) of Section 14 of the Customs Act, 1962 (52 of 1962) and on the basis of data available in India'. This is a residual rule to be resorted to when valuation cannot be made under any of the other foregoing rules. We are unable to uphold the reasoning of the Tribunal

- A that since there is no finding by the Collector of Customs that the Zip Rolls purchased from South Korea, Japan or Taiwan are identical in all respects with what has been falsely declared to be Zip Rolls of North Korean origin, Rules 3 and 4 must be applied. In our view, the Tribunal has overlooked not only Rule 8 but also Section 14 of the Act which provides that the value of the imported goods 'shall be deemed to be the price at which such or like goods are ordinarily sold..... in the course of international trade.....'.
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- We are of the view that in the facts of this case, the order passed by CEGAT was clearly erroneous. It took note of the fact that the certificates of origin produced by the importer were not genuine and could not be relied upon and yet came to the conclusion that the price of the goods must be of the same place of origin as was claimed by the importer.
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This appeal, therefore, is allowed. The order under appeal passed by CEGAT is set aside. There will be no order as to costs.

B.K.M.

Appeal allowed.