

A M/S. U.K. ENTERPRISES & ANR.
v.
COMMISSIONER OF CUSTOMS AND CENTRAL EXCISE &
ANR.

B NOVEMBER 22, 2007

[ASHOK BHAN AND V.S. SIRPURKAR, JJ.]

Customs Act, 1962; Ss. 112, 114A & 125:

C *Undervaluation—Import of Integrated circuits—Levy of customs
duty based upon actual price—Differential amount of duty—Demand
of—Penalty & redemption fine—Imposition of—Appeal and cross-
D appeals—Tribunal enhanced the penalty and the fine—On appeal,
Held: Imposing of enhanced penalty by the Tribunal was against the
express provisions of law—Hence, penalty reduced to the duty amount
in terms of the provision u/s.114A of the Act—In the facts and under
the circumstances of the case, no interference in the order of the
Tribunal enhancing the fine is called for.*

E **Appellants-assessee had imported Integrated Circuits (ICs) from
a firm in Hong Kong. Directorate of Revenue Intelligence (DRI) after
examining the consignment found that ICs had been manufactured by
a foreign firm. Based upon the information from the firm, the authorities
F came to the conclusion that the declared price of the goods was
undervalued. Taking into consideration the actual price of the goods in
question and after adding 10% towards profit of the dealer, the
authorities fixed the value of the goods at Rs.23.4 Lac as against the
declared value of over 2.3 Lac (CIF Goa). Accordingly, the authorities
G demanded the differential amount of duty of Rs.4,91,000/- and imposed
penalty of Rs.50,000/- under Section 114A of the Customs Act on the
firm and Rs.50,000/- on the proprietor of the firm under Section 112 of
the Act. Redemption fine of Rs.2,50,000/- under Section 125 of the Act
was also imposed on the firm. Both the assessee as well as the Revenue**

filed separate appeals before the Tribunal. The Customs, Excise and Gold (Control) Appellate Tribunal dismissed the appeal filed by the assessee and accepted the appeal filed by the Revenue and enhanced the amount of penalty on the assessee to Rs.10,00,000/-. However, the penalty imposed on the firm was set aside and the redemption fine was also enhanced to Rs.10,00,000/-. Hence the present appeals. A B

Appellants contended that the maximum penalty which could be imposed under Section 114A of the Act can be equal to the duty demanded which, in the present case, was Rs.4,91,000/- whereas the Tribunal has enhanced it to Rs.10,00,000/-; and that under Section 125 of the Act, Revenue could impose the fine in lieu of confiscation as may be deemed fit but it could not exceed the market price of the goods confiscated, less in the case of imported goods the duty chargeable thereon. But the fine in the instant case has been increased to Rs.10,00,000/- without ascertaining the market value of the goods confiscated. C D

Disposing of the appeals, the Court

HELD: 1. The amount of penalty could not be more than the amount equal to the duty chargeable. A bare perusal of Section 114A of the Customs Act makes it clear that the liability to pay penalty can be equal to the amount of duty and could not exceed the payable duty. Hence, the penalty imposed was against the express provisions of law. In these circumstances, the amount of penalty is reduced to Rs. 4,91,000/-. [Para 9] [442-D, E, F] E F

2. Though the Tribunal had enhanced the amount of fine in lieu of confiscation to Rs.10,00,000/- without determining the market price of the goods in question on the date of imposing the fine, but, in the facts and circumstances of the case, this Court is not inclined to interfere with the order of the Tribunal insofar as the enhancement of the fine is concerned, as it is evident from the facts placed before this Court that the market price of the goods could not be less than Rs.10,00,000/-. Admittedly, the value of the goods has been fixed at Rs.23.4 Lac, which includes the profit of the dealer, as against the declared value of more G H

A than Rs.2.3 Lac (CIF Goa). The purchase price would be deemed to be Rs.23.4 Lac minus 10% which was added as profit of the dealer which comes to Rs.21,06,000/- approx. Under the circumstances, it cannot be said that the market price of the goods, on the date of imposition of fine, could not be less than the purchase price thereof. Even if it is assumed
B that the appellants sold the goods at a loss, it could not be less than half of the purchase price. The Revenue shall now proceed with the computation of the amount due towards penalty and fine in lieu of confiscation in terms of this order. [Paras 10 and 11]

C CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 1389-1392 of 2002.

From the final Order No. 392 to 395/2001-A dated 6.11.2001 of the Customs, Excise & Gold (Control) Appellate Tribunal, New Delhi in Appeal No. 39-41/2001-A and C/372/2001-A.

D L.P. Asthana and Praveena Gautam (for Pramod B. Agarwala) for the Appellants.

V. Shekhar, T.V. Ratnam and Abhigya, Pradeep K. Dubey (for B. Krishna Prasad) for the Respondents.

E The Judgment of the Court was delivered by

ASHOK BHAN, J. 1. These appeals are directed against the order dated 06th December 2001 passed by the Customs, Excise & Gold (Control) Appellate Tribunal (Now known as Customs, Excise & Service
F Tax Appellate Tribunal) [for short, 'the Tribunal'] in Appeal No.C/39-41/2001-A filed by the appellants and No.C/372/2001-A filed by the Revenue whereby and whereunder the Tribunal, while dismissing the appeal filed by the appellants, accepted the appeal filed by the Revenue and enhanced the amount of penalty under Section 114A of the Customs
G Act, 1962 (for short 'the Act') from Rs.50,000/- as imposed by the Commissioner of Customs, Goa to Rs.10,00,000/- and the redemption fine under Section 125 of the Act from Rs.2,50,000/- to Rs. 10,00,000/-.

H 2. The assessee-appellants herein had imported Integrated Circuits

(ICs) from a firm in Hong Kong by declaring the value of the consignment A
at HK \$40,492.49. Directorate of Revenue Intelligence (DRI) authorities
at Goa examined the consignment and upon examination thereof, found
certain stickers and labels indicative of the particulars of the manufacture
and transport of the goods by air etc. inside the cartons in which ICs were
packed. After investigation, the authorities found that ICs had been B
manufactured by M/s. Philips Ltd., M/s. Motorola (I) Ltd. and M/s. NEC.
They sought information from the concerned manufacturers as to the cost
of the ICs. Manufacturers of six out of the seven varieties of ICs furnished
the said information to the authorities. Based upon the said information, C
the authorities came to the conclusion that the declared price of the goods
was undervalued. Hence, after adding 10% towards profit of the dealer
in Hong Kong, the authorities fixed the value of the goods at Rs.23.4 Lac
as against the declared value of over 2.3 Lac (CIF Goa). On the said
value fixed by the authorities, the differential duty of Rs.4,91,000/- was
demanded and paid by the appellant. D

3. While framing the assessment, the authority in original levied a
penalty of Rs.50,000/- under Section 114A of the Act on the firm and
Rs.50,000/- on the proprietor of the firm under Section 112 of the Act.
Redemption fine of Rs.2,50,000/- under Section 125 of the Act was also E
imposed on the firm.

4. The assessee as well as the Revenue filed separate appeals before
the Tribunal. The Tribunal dismissed the appeal filed by the assessee and
accepted the appeal filed by the Revenue and enhanced the amount of
penalty on the proprietor of the firm to Rs.10,00,000/-. The penalty F
imposed on the firm was set aside. Insofar as the redemption fine is
concerned, the same was enhanced to Rs.10,00,000/-.

5. Being aggrieved by the order of the Tribunal, the assessee has
come up in appeal before us. G

6. Shri L.P. Asthana, learned counsel appearing for the appellants
did not either dispute the value of the goods which was fixed by the
authorities at Rs.23.4 Lac or the amount of differential duty. He has
not disputed the culpability of the appellants as well. The only point raised H

A by him is regarding the enhancement of the amount of penalty as well as the redemption fine.

7. In this context it would be appropriate to refer to the relevant sections, viz., Section 114A and Section 125 of the Act which read as under :

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“114A. Penalty for short-levy or non-levy of duty in certain cases.- Where the duty has not been levied or has not been short-levied or the interest has not been charged or paid or has been part paid or the duty or interest has been erroneously refunded by reason of collusion or any wilful mis-statement or suppression of facts, the person who is liable to pay the duty or interest, as the case may be, as determined under sub-section (2) of section 28 shall, also be liable to pay a penalty equal to the duty or interest so determined:

Provided that where such duty or interest, as the case may be, as determined under sub-section (2) of section 28, and the interest payable thereon under section 28AB, is paid within thirty days from the date of the communication of the order of the proper officer determining such duty, the amount of penalty liable to be paid by such person under this section shall be twenty-five per cent of the duty or interest, as the case may be, so determined:

Provided further that the benefit of reduced penalty under the first proviso shall be available subject to the condition that the amount of penalty so determined has also been paid within the period of thirty days referred to in that proviso:

Provided also that where the duty or interest determined to be payable is reduced or increased by the Commissioner (Appeals), the Appellate Tribunal or, as the case may be, the court, then, for the purposes of this section, the duty or interest as reduced or increased, as the case may be, shall be taken into account:

Provided also that where the duty or interest determined to be payable is increased by the Commissioner (Appeals), the Appellate

Tribunal or, as the case may be, the court, then, the benefit of reduced penalty under the first proviso shall be available if the amount of the duty or the interest so increased, along with the interest payable thereon under section 28AB, and twenty-five per cent of the consequential increase in penalty have also been paid within thirty days of the communication of the order by which such increase in the duty or interest takes effect:

Provided also that where any penalty has been levied under this section, no penalty shall be levied under section 112 or section 114.

Explanation.-For the removal of doubts, it is hereby declared that-

- (i) the provisions of this section shall also apply to cases in which the order determining the duty or interest under sub-section (2) of section 28 relates to notices issued prior to the date on which the Finance Act, 2000 receives the assent of the President;
- (ii) any amount paid to the credit of the Central Government prior to the date of communication of the order referred to in the first proviso or the fourth proviso shall be adjusted against the total amount due from such person."

125. Option to pay fine in lieu of confiscation.-(1) Whenever confiscation of any goods is authorised by this Act, the officer adjudging it may, in the case of any goods, the importation or exportation whereof is prohibited under this Act or under any other law for the time being in force, and shall, in the case of any other goods, give to the owner of the goods or, where such owner is not known, the person from whose possession or custody such goods have been seized, an option to pay in lieu of confiscation such fine as the said officer thinks fit:

Provided that, without prejudice to the provisions of the proviso to sub-section(2) of section 115, such fine shall not exceed the

A market price of the goods confiscated, less in the case of imported goods the duty chargeable thereon.

(2) Where any fine in lieu of confiscation of goods is imposed under sub-section (1) the owner such goods or the person referred to in sub-section(1) shall, in addition, be liable to any duty and charges payable in respect of such goods.”

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8. According to the learned counsel for the appellants, the maximum penalty which could be imposed under Section 114A of the Act can be equal to the duty demanded which, in the present case, was Rs.4,91,000/- whereas the Tribunal has enhanced it to Rs.10,00,000/-. It is further submitted by him that under Section 125 of the Act the Commissioner could impose the fine in lieu of confiscation as he deemed fit but it could not exceed the market price of the goods confiscated, less in the case of imported goods the duty chargeable thereon. According to him, the fine under the said Section has been increased to Rs. 10,00,000/- without ascertaining the market value of the goods confiscated.

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9. After hearing learned counsel for the parties, we find substance in the first submission of the learned counsel for the appellants, that the amount of penalty could not be more than the amount equal to the duty chargeable. A bare perusal of Section 114A makes it clear that the liability to pay penalty can be equal to the amount of duty and could not exceed the payable duty. Hence, the penalty imposed was against the express provisions of law. In these circumstances, we reduce the amount of penalty under Section 114A to Rs.4.91,000/-.

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10. Although we agree with the learned counsel for the appellants that the Tribunal had enhanced the amount of fine in lieu of confiscation to Rs.10,00,000/- without determining the market price of the goods in question on the date of imposing the fine, but, in the facts and circumstances of the case, we are not inclined to interfere with the order of the Tribunal insofar as the enhancement of the said fine is concerned, as it is evident from the facts placed before us that the market price of the goods could not be less than Rs.10,00,000/-. Admittedly, the value of the goods has been fixed at Rs.23.4 Lac, which includes the profit of

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the dealer, as against the declared value of more than Rs.2.3 Lac (CIF A
Goa). The purchase price would be deemed to be Rs.23.4 Lac minus
10% which was added as profit of the dealer which comes to
Rs.21,06,000/- approx. Under the circumstances, it cannot be said that
the market price of the goods was not known or determinable. Even
otherwise, taking a common sense view, we conclude that the market price B
of the goods, on the date of imposition of fine, could not be less than the
purchase price thereof. Even if it is assumed that the appellants sold the
goods at a loss, it could not be less than half of the purchase price.

11. For the reasons stated above, the appeals are disposed of in C
the above terms. The Department shall now proceed with the computation
of the amount due towards penalty and fine in lieu of confiscation in terms
of this order.

S.K.S.

Appeals disposed of.