

M/S. M.S. SHOES EAST LTD.  
v.  
THE COMMISSIONER OF CUSTOMS, ICD, NEW DELHI

APRIL 4, 2007

[S.B. SINHA AND MARKANDEY KATJU, JJ.]

*Customs Act, 1962; Ss. 2(4), 2(23), 2(26), 14, 15 and 46:*

*Valuation—Import of Car—Valuation whether based on the price of the car as declared at the time of import/presentation of bill of entry or on the date of assessment by authority—Held: In terms of provisions of the Act, valuation of the imported goods has to be determined as on the date of presentation of bill of entry—Tribunal was right in holding that post-import depreciation cannot be taken into account and that the lapse of time before assessment by the authorities and after the bill of entry filed, is irrelevant—However, assessee could file a suit for damage against Revenue for causing delay in giving clearance for the car.*

The question which arose for determination in this appeal was as to whether the assessable value of a 1993 model Rolls Royce car as imported by the appellant in 1996 has to be assessed based on the price declared in the Bill of Entry of the car as filed at the customs barrier by the assessee on 31.8.1996 or as to whether depreciation should be allowed on the car for the purpose of valuation for the post import period.

Dismissing the appeal, the Court

**HELD:** 1. The Tribunal was right in holding that post import depreciation cannot be taken into account, despite the fact that while the Bill of Entry of the car was presented in 1996, the clearance was given on 28.3.2005.

[Para 3] [793-B]

*M/s. Shah Devchand & Co. and Anr. v. Union of India and Anr., AIR (1991) SC 1931, relied on.*

2.1. Delay of nine years on the part of the authorities in releasing the car from the date of import has no relevance at all as the value has to be

**A** determined under Section 14 of the Customs Act for delivery at the time and place of importation, which date is 31.8.1996. Hence, the Tribunal was right in coming to the conclusion that the transaction value had to be declared by the appellant as on 31.8.1996, and the lapse of time before assessment by the authorities and after the Bill of Entry was filed is irrelevant.

[Para 4] [793-C]

**B**

*Bharat Surfactants Pvt. Ltd. and Anr. v. Union of India and Ors.*, [1989] 3 SCR 367; *M/s. Shah Devchand & Co. and Anr. v. Union of India and Anr.*, and *Commissioner of Customs, Kolkata v. J.K. Corporation.*, (2007) 2 SCALE 459, relied on.

**C**

2.2. It is open to the appellant to file a suit for damages or seek other remedies against the respondents for the delay in giving the clearance for the car. [Para 9] [796-C]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4426 of 2006.

**D**

From the Final Order No. 158/2006-Cus. dated 24.05.2006 of the Customs, Excise & Service Tax Appellate Tribunal, New Delhi in Appeal No. Cus./895/2004.

J.S. Sinha, Braj Kishore Mishra, Aparna Jha, Abhishek Yadav and Vikram for the Appellant.

**E**

A. Subba Rao and B.K. Prasad for the Respondent.

The Judgment of the Court was delivered by

**F**

**MARKANDEY KATJU, J.** 1. This appeal has been directed against the judgment and order No. 158/06-Cus dated 24.5.2006 in Appeal No. Cus/895/2004 of the Customs, Excise and Service Tax Appellate Tribunal, New Delhi.

**G**

2. The dispute in this case is about the assessable value of a 1993 model Rolls Royce car imported by the appellant in 1996. The Bill of Entry of the car was filed at the customs barrier by the appellant on 31.8.1996. The dispute is about the question whether depreciation should be allowed on the car for the purpose of valuation for the post import period.

**H**

3. Under Section 14 of the Customs Act, 1962 (hereinafter referred to as 'the Act'), the valuation of the car must be based on the price at the time of the import of the goods. Section 15 of the Act makes it clear that the rate of

duty and tariff valuation has to be determined on the date on which the Bill of Entry in respect of such goods is presented under Section 46 of the Act vide *M/s. Shah Devchand & Co. and anr v. Union of India and anr.*, AIR (1991) SC 1931. Hence, in our opinion, the Tribunal was right in holding that post import depreciation cannot be taken into account, despite the fact that while the Bill of Entry of the car was presented in 1996, the clearance was given on 28.3.2005. A B

4. The submission of the appellant that there was delay of nine years in releasing the car from the date of import has in our opinion no relevance at all as the value has to be determined under Section 14 of the Customs Act for delivery at the time and place of importation, which date is 31.8.1996. Hence in our opinion, the Tribunal was right in coming to the conclusion that the transaction value had to be declared by the appellant as on 31.8.1996, and the lapse of time before assessment by the authorities and after the Bill of Entry was filed is irrelevant. C

5. In *Bharat Surfactants Pvt. Ltd. and anr v. Union of India and ors.*, [1989] 3 SCR 367, a Constitution Bench of this Court held that the rate of duty and tariff valuation applicable to the imported goods is governed by Clause (a) of Section 15(1) of Customs Act. In the case of goods entered for home consumption under Section 46 of the Customs Act, it is the date on which the Bill of Entry in respect of the goods is presented under that Section which is relevant. D E

6. In this connection the following provisions of the Customs Act are relevant :-

"2. Definitions :

(4) 'bill of entry' means a bill of entry referred to in Section 46; F

(23) 'import' with its grammatical variations and cognate expressions, means bringing into India from a place outside India; G

(26) 'importer' in relation to any goods at any time between their importation and the time when they are cleared for home consumption, includes any owner or any person holding himself out to be the importer; H

(40) 'tariff value' in relation to any goods, means the tariff value fixed in respect thereof under sub-section (2) of Section 14; H

A (41) 'value' in relation to any goods, means the value thereof determined in accordance with the provisions of sub-section (1) of Section 14.

B 14. *Valuation of goods for purposes of assessment* : (1) For the purposes of the Customs Tariff Act, 1975 (51 of 1975), or any other law for the time being in force whereunder a duty of customs is chargeable on any goods by reference to their value, the value of such goods shall be deemed to be the price at which such or like goods are ordinarily sold, or offered for sale, for delivery at the time and place of importation or exportation, as the case may be, in the course of international trade, where -

C (a) the seller and the buyer have no interest in the business of each other; or

(b) one of them has no interest in the business of the other, and the price is the sole consideration for the sale or offer for sale.

D Provided that such price shall be calculated with reference to the rate of exchange as in force on the date on which a bill of entry is presented under Section 46, or a shipping bill or bill of export, as the case may be, is presented under Section 50.

E (1A) Subject to the provisions of sub-section (1), the price referred to in that sub-section in respect of imported goods shall be determined in accordance with the rules made in this behalf.

F (2) Notwithstanding anything contained in sub-section (1) of sub-section (1A), if the Board is satisfied that it is necessary or expedient so to do it may, by notification in the Official Gazette, fix tariff values for any class of imported goods or exported goods, having regard to the trend of value of such or like goods, and where any such tariff values are fixed, the duty shall be chargeable with reference to such tariff value.

(3) For the purposes of this Section -

G (a) 'rate of exchange' means the rate of exchange-

(i) determined by the Board, or

(ii) ascertained in such manner as the Board may direct, for the conversion of Indian currency into foreign currency into Indian currency;

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(b) 'foreign currency' and 'Indian currency' have the meanings respectively assigned to them in clause (m) and clause (q) of Section 2 of the Foreign Exchange Management Act, 1999 (42 of 1999). A

15. *Date of determination of rate of duty and tariff valuation of imported goods* : (1) The rate of duty and tariff valuation, if any, applicable to any imported goods, shall be the rate and valuation in force - B

(a) in the case of goods entered for home consumption under Section 46 on the date on which a bill of entry in respect of such goods is presented under that Section;

(b) in the case of goods cleared from a warehouse under Section 68, on the date on which a bill of entry for home consumption in respect of such goods is presented under that Section; C

(c) in the case of any other goods, on the date of payment of duty;

Provided that if a bill of Entry has been presented before the date of entry inwards of the vessel or the arrival of the aircraft by which the goods are imported, the Bill of entry shall be deemed to have been presented on the date of such entry inwards or the arrival, as the case may be." D

7. A perusal of the above provisions as interpreted by this Court in *M/s. Shah Devchand & Co. and Anr. v. Union of India and Anr* (Supra) shows that valuation has to be done at the time of importation of the goods, which is the date of presentation of the bill of entry by the importer. E

8. In *Commissioner of Customs, Kolkata v. J.K. Corporation, 2007(2) SCALE 459*, this Court held as under : F

"The basic principle of levy of customs duty, in view of the aforementioned provisions, is that the value of the imported goods has to be determined at the time and place of importation. The value to be determined for the imported goods would be the payment required to be made as a condition of sale. Assessment of customs duty must have a direct nexus with the value of goods which was payable at the time of importation. If any amount is to be paid after the importation of the goods is complete, *inter alia* by way of transfer of licence or technical know-how for the purpose of setting up of a plant from the G

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A machinery imported or running thereof, the same would not be computed for the said purpose. Any amount paid for post-importation service or activity, would not, therefore, come within the purview of determination of assessable value of the imported goods so as to enable the authorities to levy customs duty or otherwise. The Rules have been framed for the purpose of carrying out the provisions of the Act. The wordings of Sections 14 and 14(1A) are clear and explicit. The Rules and the Act, therefore, must be construed, having regard to the basic principles of interpretation in mind.”

9. We thus see no reason to interfere with the impugned judgment and order of the Tribunal. The appeal fails and is hereby dismissed accordingly. No costs. However, we leave it open to the appellant to file a suit for damages or seek other remedies against the respondents for the delay in giving the clearance for the car.

S.K.S.

Appeal dismissed.

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