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2018 (362) E.L.T. 634 (Tri. - Del.)

IN THE CESTAT, PRINCIPAL BENCH, NEW DELHI
Justice Dr. Satish Chandra, President and Shri V. Padmanabhan, Member (T)

SIDDHARTH OPTICAL DISC. PVT. LTD.*Versus***COMMISSIONER OF CUS., NEW DELHI***Final Order Nos. C/A/55896-55898/2017-CU(DB), dated 10-8-2017 in Appeal Nos. C/547-548, 593/2008(DB)*

Valuation (Customs) - Import of CD Replication Machines - Enhancement of value - Quantum thereof - In adjudication order itself, adjudicating authority has himself quoted prices at which other importers had imported same item at about same time - Therefore enhancement of value much beyond these prices not sustainable on ground of principles of equality - Giving same treatment to assessee, value adopted by other importers fixed as correct value in instant case - Adjudicating authority directed to re-workout amount of demand and also re-fix penalty accordingly - Section 14 of Customs Act, 1962. [paras 8, 9]

Appeals partly allowed**CASE CITED**Uttam Mohanlal Jain v. Commissioner — [2000 \(124\) E.L.T. 661](#) (Tribunal) — *Referred* [Para 3]

REPRESENTED BY : *Dr. Prabhat Kumar and Shri S.S. Dabas, Advocates, for the Appellant.*
Shri Udhap Sengraj, DR, for the Respondent.

[Order per : Justice Satish Chandra, President]. - The present appeals are filed against the order-in-original dated 24-8-2008. The period involved is Feb., 2004.

2. The brief facts of the case are that during the period under consideration, the appellants have imported four CD Replication machines against the invoices. First machine was imported by declaring the amount of Rs. 2.10 lakh Euro and for other two machines, 10% special discount was availed so the same were declared @ 1.90 lakh Euro each. Regarding the 4th machine, it was stated that the machine was **demo machine** so it was imported at reduced price of 1.79 lakh Euro. However, the Customs Department found that there was a misdeclaration by the appellants so overseas inquiry was conducted through the Embassy of India where the Dutch Customs Authorities at Netherland had supplied necessary information and the same was forwarded to the Indian Customs Department. On the basis of report, the Customs Department concluded that the goods were imported undervaluation and hence, the duty was demanded. Being aggrieved, the appellants have filed the present appeals.

3. With this background, Dr. Prabhat Kumar, Ld. Counsel submits that the appellants have imported the machines as per the declaration made by them. He submits that the fourth machine was used for demonstration purpose in Netherland and later, the same was sent to India on a subsidized price of 1.79 lakh Euro. He also submits that the overseas inquiry made by the Department was incomplete as the vouchers and the documents relied were not signed properly. To support his contention, he relied on the decision in the case of *Uttam Mohanlal Jain v. CC, Nhava - 2000 (124) E.L.T. 661* (Tribunal). He submits that the same was upheld by the Hon'ble Supreme Court in appeal. Finally, it was his submission that in the absence of the original documents, Customs duty cannot be increased.

4. On the other hand, Shri Udhap Sengraj, Ld. DR relied on the impugned order. He further submits that the information obtained from Dutch Customs Authorities was supplied through the First Secretary of the Customs, which was located at Belgium. The covering letter was duly signed by the First Secretary (Customs), Belgium, where he has enclosed the necessary documents. As per the information received, the Customs Authorities have rightly raised the duty demand.

5. We have heard both the parties at length and gone through the materials available on record.

6. The import was made in the year 2002-03. Matter is too old. No useful purpose will be served if the matter is remanded back to the lower authorities for fresh decision. From the impugned order, we find that at page 35 of the impugned order, it appears that there was typographical error in declaring Euro 22 lakhs plus as valuation, which is impossible. It shows casualness and careless attitude on the part of the adjudicating authority.

7. Para 12 of the impugned order reads as under :-

"12. The notices imported the fourth machine vide bill of entry No. 638257, dated 17-2-2004 at an invoice value of

Euro 1,79,000/- . Some other importers imported identical machines from the same exporters at or about the same time when the noticees imported the fourth machine. One of the importers, M/s. Pearl Engineering Co. imported an identical machine for Euro 2,10,000/- vide bills of entry dated 14-9-2004 and 17-9-2004. Another importer, M/s. Rhythm Music Technologies Pvt. Ltd. imported an identical machine for Euro 2,10,000/- vide bills of entry dated 8-12-2004 and 20-12-2004 (copies of bills of entry of M/s. Pearl Engineering Co. and M/s. Rhythm Music Technologies Pvt. Ltd. were enclosed at Annexure-6). The difference in the price of the noticees and other importers was due to the fact that the machine imported by the noticees was a **demo machine** already displayed in trade fairs and also due to the fact that the noticees were old and regular importers whereas the other importers were new importers. Therefore, the contention raised in the impugned show cause notice that the noticees had undervalued the fourth machine imported by them was totally incorrect and perverse as other importers had imported identical machines from the same exporters at somewhat similar price, the difference in price being on amount of the fact the noticees had imported a **demo machine** already displayed in various trade fairs plus the fact that noticees were old and regular importers. The Department cannot ignore the price at which other importers had imported identical machines and rely upon the price at which a particular importer (STL) had imported a similar machine to conclude that the noticees had undervalued the machines imported by them. In fact, Rule 5(3) of the Customs Valuation Rules clearly provided that if more than one transaction value of identical goods is found then the lowest of such value shall be used to determine the value of imported goods. Therefore, even if the Department rejected the transaction value declared by the noticees, in the worst scenario the first three machines should be valued at Euro 1,95,000/- (transaction value of identical machine imported by M/s. Balaji Optical Disc) and the fourth machine should be valued at Euro 2,10,000/- (transaction value of identical machines imported by M/s. Pearl Engineering Co. and M/s. Rhythm Music Technologies Pvt. Ltd.). On the other hand, Department had demanded differential duty taking the value of all the four imported machines to be Euro 2,85,000/- per machine. It was not out of context to clarify here that the machines imported by M/s. Pearl Engineering Co. and M/s. Rhythm Music Technologies Pvt. Ltd. were part consignments but, taken together, they constituted a complete machine identical to the machine imported by the noticees."

8. From the above, it appears that in the case of other importers, the same item was valued at 2,10,000 Euro at the same time. By keeping in mind the principle of equality and equal protection of the law, we are of the view that the same treatment will have to be given in the assessee's case when the exporter's machine and export are at par.

9. Hence, we modify the impugned order and direct the adjudicating authority to compute the valuation of each machine @ of 2,10,000 Euro and demand the balance Customs duty as per law.

10. Regarding the penalty, the same may be made equal to the difference of the duty amount. For remaining issues, if any, the adjudicating authority will take a fresh decision but by providing reasonable opportunity to the appellants.

11. In the result, appeals filed by the appellants are partly allowed.

(Order dictated and pronounced in the open Court)