

Present:

Mr. Justice Mohammad Bazlur Rahman  
and  
Mr. Justice Md. Ruhul Quddus

Customs Appeal No. 18 of 2008

Abdul Kader Mollah

... Appellant

-Versus-

The Commissioner of Customs, Dhaka and  
others

... Respondents

Mr. Golam Mohiuddin, Advocate

... for the Appellant

Mrs. Kashefa Hussain, D.A.G

... for respondents 1-4

Mr. Abdul Baten, Advocate

... for respondent 5

Judgment on 20.06.2013

*Md. Ruhul Quddus, J:*

This customs appeal under section 196D of the Customs Act, 1969 at the instance of an importer is directed against the judgment and order dated 11.02.2008 passed by the Customs, Excise and VAT Appellate Tribunal, Dhaka in Appeal No. CEVT/Case/(Cus)-508/2007 dismissing the same and thereby affirming order dated 06.09.2007 of the Review Committee, Dhaka constituted under section 196C of the Customs Act passed in *Nothi* No. 5-Shulka/8(90)Pre-ship/Review/2007.

Facts giving rise to this appeal, in brief, are that the appellant in course of his business opened a letter of credit (No.087207010093) on 12.04.2007 through Islami Bank Bangladesh Ltd., Islampur Branch,

Dhaka and imported 20678.28 kgs. of China origin Warp Knitted Synthetic Polyester from Singapore under H. S. Code No. 6005.32.00. Before shipment from Singapore, the goods were inspected by Bureau Veritas (BIVAC) Bangladesh Ltd., a Pre-shipment Inspection Agency appointed under the Government of Bangladesh (in short the PSI agent). After so inspection, the PSI agent issued a certificate of clean report of finding being No.BDH-2007-4763 dated 31.05.2007 (in short CRF), wherein the value of the imported goods were certified as U S Dollar 1.16 per kg. On arrival of the goods the petitioner submitted bill of entry (No.C-9927) dated 10.06.2007 for release of the goods from ICD Customs House, Kamlapur, Dhaka. The Custom authority in assessing the goods ignored the CRF value and provisionally assessed the goods on the basis of U S Dollar 1.38 per kg. as transaction value. However, on furnishing bank guarantee for the difference between the CRF value and the value fixed by the Customs authority, the appellant released the goods and filed an application before the Review Committee constituted under section 196C of the Customs Act for reviewing the provisional assessment order. In the said application for review the appellant amongst other took the ground that the Customs authority assessed the goods violating the Customs Valuation Rules, 2000 and determined the transaction value of the imported goods in an arbitrary manner. The Review Committee after hearing of the parties rejected the application for review upholding the provisional assessment order of the Customs authority by its order dated 06.09.2007. Being aggrieved thereby, the appellant filed an appeal before the Customs, Excise and

VAT Appellate Tribunal, Dhaka which was also dismissed by the impugned order.

Mr. Golam Mohiuddin, learned Advocate for the appellant referring to the assessment order and note sheet of the Customs authority, and a print out of database showing valuation of identical goods from 01.01.2007 to 31.05.2007 and from 15.05.2007 to 10.06.2007 submits that the CRF value of the imported goods and the lowest value of identical goods was same i. e. U S Dollar 1.16 per kg. The database shows that the lowest value of the identical goods was U S Dollar 1.16 per kg. vide bill of entry No. 9714 dated 05.06.2007, but without taking the lowest price of identical goods or the CRF value, the Customs authority fixed an arbitrary higher rate at U S Dollar 1.38 per kg. for assessment of duty on the plea of "collecting revenue", which was quite illegal. Both the Review Committee and the Appellate Tribunal below in spite of taking a specific ground on that point did not reply it and affirmed the order of provisional assessment and thereby committed illegality which requires to be interfered with by this Court.

Mrs. Kashefa Hussain, learned Deputy Attorney General appearing for respondents 1-4 on the other hand submits that the Customs authority rightly passed the assessment order. The authority and Tribunal below arrived at concurrent findings of facts on the transaction value of the imported goods. The Customs authority had physically examined the goods and its quality and was in a position to assess as to what the imported goods actually were. The Appellate

Tribunal or the High Court Division sitting in third and fourth tier of adjudicating forum cannot decide the fact on merit and as such the appeal is liable to be dismissed.

We have considered the submissions of the learned Advocates, consulted the relevant provisions of law and gone through the records. It appears that the value of identical goods against five different consignments were recorded and referred to in the note sheet as U S Dollar 1.16, 1.19, 1.38 and 1.75 per kg. The CRF value of the imported goods against the present consignment was U S Dollar 1.16 per kg. which was equivalent to the lowest value in reference. When the Customs authority examined the database and found the lowest value of identical goods equivalent to the CRF value of the imported goods, they ought to have assessed the goods on the basis of CRF value which was also lowest value of the identical goods. Rule 5 (4) of the Customs Valuation Rules, 2000 provides to adopt the method of assessment on the basis of identical goods in the event there are reasons to ignore the CRF value. The Customs authority did not assign any reason as to why they ignored the CRF value which according to section 25 A (1) (2) of the Customs Act should be the basis of assessment. The law does not permit to fix or determine the transaction value of any imported goods only for the interest of revenue collection without following the law or the methods alternatively provided in the Customs Valuation Rules, 2000.

Under the circumstances, we are of the view that the provisional assessment of the imported goods on the basis of U S Dollar 1.38 per

kg. was beyond the scope of law and as such illegal on both counts i.e. for ignoring the provision of section 25 A of the Customs Act as well as the method of valuation on the basis of assessment of identical goods provided in rule 5 (4) of the Customs Valuation Rules. None of the authorities or the Appellate Tribunal below considered the said rule or the ground taken by the appellant to that effect.

In view of the above the appeal merits consideration. Accordingly, Customs Appeal No.18 of 2008 is allowed. The impugned judgment and order dated 11.02.2008 passed by the Customs, Excise and VAT Appellate Tribunal, Dhaka in Appeal No. CEVT/Case/(Cus)-508/2007 dismissing the same and thereby affirming order dated 06.09.2007 of the Review Committee, Dhaka passed in *Nothi* No. 5-Shulka/8(90)Pre-ship/Review/2007 is hereby set aside. The Customs authority is directed to return the bank guarantee in favour of the importer-appellant Abdul Kader Mollah, Proprietor, M/S H J Trading of 31, Ahsan Manjil, Nawab Bari Market (Ground Floor), Islampur, Dhaka subject to final assessment of the imported goods covered by bill of entry No.9927 dated 10.06.2007.

Communicate a copy of the judgment and send down the records.

Mohammad Bazlur Rahman, J:

I agree.