

In the Supreme Court of Bangladesh
High Court Division
Special Original jurisdiction

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

Customs Appeal Nos. 46-49 of 2008

Abdul Kader Mollah
... Appellant in Customs Appeal 46 of 2008

Neseruddin Mollah
... Appellant in Customs Appeals 47-49 of 2008

-Versus-

President, Customs, Excise and VAT Appellate
Tribunal, Dhaka and others
... Respondents in all the customs appeals

Mr. Golam Mohiuddin, Advocate
... for the appellant
Mrs. Kashefa Hussain, D.A.G
... for respondent 2
Mr. Abdul Baten, Advocate
... for respondent 5

Judgment on 09.07.2013

Md. Ruhul Quddus, J:

These four customs appeals involving common questions of law and similar facts have been heard together and are being disposed of by one judgment.

Customs Appeal 46 of 2008 was preferred against judgment and order dated 02.04.2008 passed by the Customs, Excise and VAT Appellate Tribunal, Dhaka in Appeal No.CEVT/Case (Cus)1118/ 2007 dismissing the same and

affirming an order of the Review Committee, Dhaka passed in Nothi No.5-Shulka/8 (198) Pre-ship/Review/2007 and communicated on 03.12.2007.

Customs Appeal 47 of 2008 was preferred against judgment and order dated 02.04.2008 passed by the Customs, Excise and VAT Appellate Tribunal, Dhaka in Appeal No.CEVT/Case (Cus)1124/2007 dismissing the same and affirming an order of the Review Committee, Dhaka passed in Nothi No.5-Shulka/8 (196) Pre-ship/Review/2007 and communicated on 03.12.2007.

Customs Appeal 48 of 2008 was preferred against judgment and order dated 02.04.2008 passed by the Customs, Excise and VAT Appellate Tribunal, Dhaka in Appeal No.CEVT/Case (Cus)1121/2007 dismissing the same and affirming an of the Review Committee, Dhaka passed in Nothi No.5-Shulka/8 (195) Pre-ship/Review/2007 and communicated on 03.12.2007.

Customs Appeal 49 of 2008 was preferred against judgment and order dated 02.04.2008 passed by the Customs, Excise and VAT Appellate Tribunal, Dhaka in Appeal No.CEVT/Case (Cus)1123/2007 dismissing the same and affirming an order of the Review Committee, Dhaka passed in Nothi No.5-Shulka/8 (194) Pre-ship/Review/2007 and communicated on 03.12.2007.

Facts giving rise to Customs Appeal 46 of 2008, in brief, are that the appellant Abdul Kader Mollah being Proprietor of M/S J. H. Trading imported 21,622.50 kgs of China origin ÷Warp 100% Polyester Knitted Synthetic Dying Fabricsö from Singapore under H. S. Code 6005.32.00. Before shipment, the goods were inspected by an approved pre-shipment inspection agency (in short PSI agent). After conducting the inspection, the PSI agent issued a clean report of findings (in short CRF) being No.BDH-

2007-10255 1C dated 20.08.2007 certifying the quality, quantity, price, description etc. of the goods. In invoice the value of the goods was quoted as U S Dollar 0.87 per kg, but in CRF that was certified as U S Dollar 1.28.

After arrival of the goods, the appellant submitted bill of entry No. C-15874 dated 01.09.2007 for release of the same. The Customs Authority assessed customs duty and taxes against the imported goods fixing its value as U S Dollar 1.90 per kg ignoring both the invoice and CRF value. The appellant released the goods on furnishing bank guarantee for the difference and filed a review petition before the Review Committee constituted under section 193C of the Customs Act challenging the assessment order.

The Review Committee after hearing the parties rejected the review petition by order dated 29.11.2007 upholding the assessment order of the Customs authority, which was communicated on 03.12.2007. Being aggrieved thereby the importer preferred Appeal No. CEVT/Case (Cus)-1118/2007 before the Customs, Excise and VAT Appellate Tribunal on the grounds taken therein. The Appellate Tribunal heard the parties and dismissed the appeal by the impugned judgment and order dated 02.04.2008.

Facts in Customs Appeal No. 47 of 2008, in brief, are that the appellant Naseruddin Mollah being Proprietor of M/S H. R. Trading imported 14,767 kgs of China origin 100% Polyester Knitted Fabrics, Dyed from Singapore under H. S. Code 5804.10.00. Before shipment, the goods were inspected the PSI agent, who issued a CRF being No.BDH-2007-11381 1C dated 10.09.2007 certifying every detail of the goods. In invoice the value of the

goods was quoted as U S Dollar 0.95 per kg, but in CRF that was U S Dollar 1.30.

After arrival of the goods, the appellant submitted bill of entry No.C-17601 dated 22.09.2007 for release of the same. The Customs Authority assessed customs duties and taxes against the imported goods fixing its value as U S Dollar 2.45 per kg ignoring both the invoice and CRF value. The appellant released the goods on furnishing bank guarantee for the difference and filed a review petition before the Review Committee.

The Review Committee after hearing the parties rejected the review petition by order dated 29.11.2007 upholding the assessment order, which was communicated on 03.12.2007. Being aggrieved thereby the importer preferred Appeal No. CEVT/Case (Cus)-1124/2007 before the Customs, Excise and VAT Appellate Tribunal on the grounds taken therein. The Appellate Tribunal heard the parties and dismissed the appeal by the impugned judgment and order dated 02.04.2008.

Facts in Customs Appeal 48 of 2008 in brief are that the appellant imported (i) 6890.30 kgs of China origin Warp 100% Polyester Knitted Fabrics, Dyed, and (ii) 7574.70 kgs of 100% Polyester Woven Dyed Fabrics, Textured from Singapore. Before shipment, the goods were inspected by the PSI agent, who issued a CRF being No.BDH-2007-10208 IC dated 21.10.2007 certifying every detail of the goods. In invoice the value of the goods against item No.1 was quoted as U S Dollar 1.10 per kg and that against item No.2 was quoted as U S Dollar 1.52, but in CRF the value was certified as U S Dollar 1.80 and 2.35 respectively.

After arrival of the goods, the appellant submitted bill of entry No. C-15880 dated 01.09.2007 for release of the same. The Customs Authority assessed customs duties and taxes of the imported goods against item Nos.1 and 2 fixing its value as U S Dollar 1.90 and 3.05 per kg ignoring both the invoice and CRF value. The appellant released the goods on furnishing bank guarantee for the difference and filed a review petition before the Review Committee challenging the assessment order.

The Review Committee after hearing the parties rejected the review petition by order dated 29.11.2007 upholding the assessment order, which was communicated on 03.12.2007. Being aggrieved thereby the importer preferred Appeal No. CEVT/Case (Cus)-1121/ 2007 before the Customs, Excise and VAT Appellate Tribunal on the grounds taken therein. The Appellate Tribunal heard the parties and dismissed the appeal by the impugned judgment and order dated 02.04.2008.

Facts in Customs Appeal 49 of 2008 in brief, are that the appellant imported 29541 kgs of China origin ÷Warp 100% Polyester Knitted Fabrics, Dyed÷ from Singapore under H.S. Code 6006.32.00. As usually the goods were inspected by the PSI agent, who issued a CRF being No.BDH-2007-10212 1C dated 16.08.2007 certifying every details of the goods. In invoice the value of the goods was quoted as U S Dollar 0.82 per kg, but in CRF that was U S Dollar 1.26.

After arrival of the goods, the appellant submitted bill of entry No. C-15871 dated 01.09.2007 for release of the same. The Customs Authority assessed customs duty and taxes against the imported goods fixing its value as U S Dollar 1.90 per kg ignoring both the invoice and CRF value. The

appellant released the goods on furnishing bank guarantee for the difference and filed a review petition before the Review Committee against the assessment order.

The Review Committee after hearing the parties rejected the review petition by order dated 29.11.2007 upholding the assessment order, which was communicated on 03.12.2007. Being aggrieved thereby the importer preferred Appeal No. CEVT/Case (Cus)-1123/ 2007 before the Customs, Excise and VAT Appellate Tribunal on the grounds taken therein. The Appellate Tribunal heard the parties and dismissed the appeal by the impugned judgment and order dated 02.04.2008.

Mr. Golam Mohiuddin, learned Advocate for the appellants in all the four appeals takes us through the grounds taken therein and submits that the PSI agent without following the provisions of rule 13 (2) (3) of the Pre-shipment Inspection Rules, 2002 issued the CRF certificate quoting a higher value than that of the invoice and therefore, the CRF value could not be accepted for the purpose of assessment of duty and taxes of the imported goods. Under the circumstances, the Customs authority ought to have assessed the goods on the basis of the invoice value, but without doing so the authority assessed the goods on the basis of a higher value arbitrarily fixed by it even ignoring the CRF value. In the same breath Mr. Mohiuddin submits that there must be some factual basis to ignore the CRF value in assessing customs duty and taxes on the basis of the Valuation Rules, 2002. He further submits that the Review Committee as well as the lower Appellate Tribunal passed their respective orders in a slipshod manner without considering the

lowest value of the identical or similar goods and committed illegality on that count as well.

With reference to a photocopy of the assessment sheet, which is neither incorporated in the paper book nor available in the records, Mr. Mohiuddin advances an additional argument in Customs Appeal 46 of 2008 that the concerned customs officials initially proposed to assess the duty and taxes taking U S Dollar 1.60 per kg as transaction value of the imported goods, but the higher authority without assigning any reason assessed the goods on the basis of U S Dollar 1.90 per kg, which is another illegality on the face of record. So the value mentioned in the CRF certificate having not been properly issued cannot be considered as real transaction value and as such the Customs authority could have considered the invoice value. The authority did not do so and arbitrarily assessed the imported goods on much higher value, even without considering the CRF value. The Review Committee as well as the Appellate Tribunal did not consider this point and committed illegality.

On the other hand, Mrs. Kashefa Hussain, learned Deputy Attorney General appearing for respondent 2 submits that the CRF value having presumption of correctness should generally be taken into consideration, but on the basis of assessment of identical or similar goods or from the information available on National Database of the National Board of Revenue (in short NBR), the Customs authority lawfully can ignore the CRF value as well as the invoice value. In all the present cases the Customs authority assessed the goods on definite reason of ignoring the CRF and invoice value, and followed the mode of valuation provided in the Valuation Rules, 2000. The assessment of customs duty and taxes of particular goods depends also on

the quality of the imported goods, which is best known to the Customs authority, which physically verifies the goods before assessment.

Learned Deputy Attorney General further submits that the scope in a Customs appeal before the High Court Division to assess or reassess the evidence is very narrow. When three tiers of adjudicating authority including the lower Appellate Tribunal already rejected the importer's contention, there is little scope to interfere with the assessment order of the Customs authority of first instance by this Court sitting on fourth tier unless there is any legal infirmity. The appeals are, therefore, liable to be dismissed.

We have considered the submissions of the learned Advocates and gone through the records including photocopies of the assessment sheets produced by the appellants' learned Advocate. Since the learned Deputy Attorney General has not raised objection to the authenticity of the photocopies, we have also examined those assessment sheets. The discrepancy on the proposal of assessment taking U S Dollar 1.60 per kg as transaction value of the imported goods in Customs Appeal 46 of 2008 having not been supported by any ground taken either before the Appellate Tribunal or the High Court Division, we are not inclined to consider the point especially when the materials are not incorporated in the paper book or available in the records. Moreover, there is no material to show that the assessment on the basis of U S Dollar 1.90 per kg of the imported goods in Customs Appeal 46 of 2008 was illegal or made without any basis and as such we are not ready to accept the submission of the learned Advocate for the appellant on that point.

It appears that in all the cases the Customs authority assessed the duty and taxes of the imported goods on the basis of assessment of identical goods or similar goods or information available in the National Database of NBR or following the other modes of assessment alternatively provided in the Customs Valuation Rules, 2000. The appellant hopelessly failed to produce any rebuttal materials before the Review Committee as well as the Appellate Tribunal to prove that the invoice value or the CRF value was the transaction value of the imported goods, and as such we are not inclined to interfere with the impugned orders only because these were written in slipshod manner. A case cannot be sent on remand only for writing a long judgment if the importer fails to provide with sufficient materials to support his claim.

For all the reasons stated above, we do not find any merit in any of the appeals. Accordingly, all the customs appeals, namely Customs Appeal Nos.46 of 2008, 47 of 2008, 48 of 2008 and 49 of 2008 are dismissed. The Customs authority is at liberty to encash the bank guarantees furnished for release of the imported goods covered by Bill of Entry Nos.C-15874 dated 01.09.2007, C-17601 dated 22.09.2007, C-15880 and C-15871 both dated 01.09.2007.

Mohammad Bazlur Rahman, J:

I agree.