

Present:
Mr. Justice Shamim Hasnain
and
Mr. Justice Md. Ruhul Quddus

Writ Petition No.4251 of 2004

Mohammad Elias

...Petitioner

-Versus-

The Commissioner of Customs, Chittagong and
others

...Respondents

Mr. Ramzan Ali Sikder with Mr. Abdullah
Mahmud Hassan, Advocates

... for the petitioner

Mrs. Ishrat Jahan, Assistant Attorney General

... for respondent No.1

Judgment on 28.01.2013

Md. Ruhul Quddus, J:

This *rule nisi* at the instance of an importer was issued calling in question the order dated 03.06.2004 of the Customs authority passed in *nothi* No.S-2/ 69/ Misc./ AP/ Section-1/ 2003-2004 determining minimum value of the petitioner's imported Brazil origin white sugar (annexure-A) and subsequent proposal of assessment of the goods for levying duties and taxes as contained in *nothi* No. 52/AP/Section-1/04-05 [annexure-A(1)], and seeking direction for levying customs duties and taxes of the goods on the basis of commercial invoices.

At the time of issuance of the Rule, an interim order was passed to allow the petitioner to release the goods on payment of duties on the basis of invoice value and on furnishing bank guarantee for the difference between the invoice value and the value that was determined by the Customs authority. In compliance of the interim order, the petitioner reportedly released the goods on provisional assessment.

Facts necessary for disposal of the Rule, in brief, are that the petitioner in course of his business opened letters of credit being Nos.175004010014 dated 14.02.2004 and 175004010018 dated 03.03.2004 through Mercantile Bank Ltd. for importing Brazil origin white sugar at the rate of US Dollar 190.00 per metric ton under H.S. Code No. 1701.11.00. Ultimately the goods arrived at Chittagong Port and the petitioner submitted bills of entry Nos.C-176847, C-176841, C-176862, C-176834, C-176828 all dated 26.07.2004 for releasing the same on the basis of invoice value, but the Customs authority proposed to assess its duty and taxes on the basis of US Dollar 216.00 per metric ton ignoring the invoice value.

Mr. Ramzan Ali Sikder, learned Advocate appearing for the petitioner submits that for the purpose of determination of minimum value of Brazil origin white sugar the Customs authority had referred the matter to an assessment committee. Constitution of any such committee

is unknown to law and as such the impugned assessment on recommendation of the assessment committee is without lawful authority. Mr. Sikder further submits that section 25 (3) of the Customs Act provides an official notification of minimum value for any particular goods by the Government, in absence of which the determination of minimum value as done in the present case is wholly without lawful authority. Moreover, the assessments of identical goods as referred to in annexure-A having not been done within 90 (ninety) days prior to submitting the present bills of entry, fixation of transaction value following assessments of identical goods as provided in rule 5 read with rule 2 (GaGa) of the Customs Valuation Rules, 2000 was not in accordance with the law.

Mrs. Ishrat Jahan, learned Assistant Attorney General appearing for respondent No.1 without filling any affidavit-in-opposition makes her submissions on law point contending, *inter alia*, that the Customs authority was yet to assess the imported goods finally and as such the writ petition being pre-matured is not maintainable.

In reply thereto Mr. Sikder refers to the case of Abul Khair Condensed Milk and Beverage Ltd. Vs. Commissioner of Customs and others, 60 DLR 450, wherein under similar circumstances the High Court Division ignored the point of maintainability and directed the Customs authority to assess the goods finally in accordance with the Customs Valuation Rules, 2000 considering the documents of the petitioner and

to return the bank guarantee, if the amount was due after such final assessment.

Mr. Sikder also refers to an unreported decision of the Appellate Division passed analogously in Civil Petitions for Leave to Appeal No.993-95, 1017-32, 1044-48, 1067-90 and 1184-85 of 2008. In the said decision, the Appellate Division affirmed an analogous judgment of the High Court Division passed in several writ petitions with direction upon the Customs authority in similar manner.

We have gone through the records as well as the decisions cited and consulted the law. Section 25 (3) of the Customs Act contemplates an official notification by the Government fixing tariff value or minimum value for any imported goods for the purpose of levying customs duties, while the Customs Valuation Rules, 2000 provides different alternative methods of determining transaction value of any imported goods, when the value quoted in the commercial invoice or certified in the clean report of finding cannot be accepted as its real transaction value.

It does not appear that the Government made any notification fixing tariff value or minimum value for white sugar for the purpose of levying customs duties, so the Customs authority had to follow the Customs Valuation Rules, 2000 when the invoice value of the imported Brazil origin white sugar could not be accepted and accordingly it assessed the customs duties following the first option of

assessment of identical goods as provided in rule 5 of the Customs Valuation Rules. The words 'tariff value' and 'minimum value' used in section 25 (3) of the Customs Act and the lowest value of identical goods as mentioned in rule 5 read with rule 2 (GaGa) of the Customs Valuation Rules have different meanings in different contexts. In the present case we do not find any wrong in levying the customs duties on the basis of lowest value of identical goods as provided in the Customs Valuation Rules, when no notification was made under section 25 (3) of the Customs Act.

It further appears from annexure-A, clause-2 that there are three references of assessments of identical goods, of which the first one against bill of entry No. 82955 dated 21.04.2004 was out of time by six days as in the present case the bills of entry were submitted on 26.07.2004. But the two other assessments against bills of entry No.10823 dated 23.05.2004 and C-111926 dated 26.05.2004 were within 90 days prior to 26.07.2004 i.e within time. The transaction value that had been determined following the assessment of identical goods was also supported by the price information available in internet. We are, therefore, unable to accept the contention of Mr. Sikder that the determination of value and assessment based thereon was illegal.

However, since under similar circumstances, another Division Bench of this Court disposed of some other matters



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with necessary direction upon the Customs authority, which were also affirmed by the Appellate Division, we are of the view that the instant Rule may also be disposed of with necessary direction.

Accordingly, the Rule is disposed of. The concerned customs authority is directed to assess finally the duties and taxes of the petitioner's imported Brazil origin white sugar covered by bills of entry Nos. C-176847, C-176841, C-176862, C-176834, C-176828 all dated 26.07.2004 in accordance with the Customs Valuation Rules considering the documents/papers produced with the bills of entry and to return the bank guarantee if the amount becomes due after such final assessment within a period of four months from receipt of this order.

Communicate the judgment to respondents No.1-4.

Shamim Hasnain, J:

I agree.