

In the Supreme Court of Bangladesh
High Court Division
(Statutory Appellate Jurisdiction)

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

Customs Appeal No. 58 of 2008

Doyel Enterprise represented by its proprietor
Farid Ahmed

... Appellant

-Versus-

National Board of Revenue and others

... Respondents

Mr. Md. Saidur Rahman with Mrs. Chaman Akhter,
Advocates

... for the Appellant

Mrs. Kashefa Hussain, Deputy Attorney
General

... for respondent 1

Judgment on 28.07.2013

Md. Ruhul Quddus, J:

This appeal under section 196D of the Customs Act, 1969 at the instance of an importer has been preferred against judgment and order dated 09.04.2008 passed by the Customs, Excise and VAT Appellate Tribunal, Dhaka in Appeal No. CEVT/Case/(Cus)1087/2007 dismissing the same and affirming order dated 06.11.2007 passed by the Review Committee, Dhaka in Nothi No.5-Shulka/8 (151) Pre-ship/Review/ 2007/1710 (6).

Facts giving rise to this appeal, in brief, are that the appellant imported Pakistan origin various goods, namely, *Jainamaz, Orna*

Jorjet, Fabric P/C, *Chumki*, Toilet Water Perfumed, Dandruff Shampoo, Skin Bleach Cream and Ceiling Fan Blade. Before shipment, the goods were inspected by an approved pre-shipment inspection agency, which issued a clean report of findings (in short CRF) certifying amongst others the value of the goods. The goods reached the Inland Container Depot (ICD), Kamlapur, Dhaka and the importer submitted bill of entry No.C-14080 dated 07.08.2007 for release of the same. The Customs Authority assessed the duty and taxes of the goods taking a higher price as transaction value ignoring the invoice or CRF value. The importer, however, released the goods on furnishing bank guarantee for the difference and filed an application for review of the assessment order before the Review Committee constituted under section 193C of the Customs Act. The Review Committee by order dated 06.11.2007 rejected the review application and thereby affirmed the order of assessment. Being aggrieved thereby the appellant preferred Appeal No.CEVT/Case/(Cus)1087/2007 before the Customs, Excise and VAT Appellate Tribunal, Dhaka on the grounds taken therein. The Appellate Tribunal after hearing of the parties dismissed the appeal by the impugned judgment and order on the grounds, *inter alia*, that the declared value as well as the CRF value of the imported goods appear to be very low in comparison with the identical/similar goods and that the appellant failed to produce/furnish any materials to show that the declared value or the CRF value of the imported goods was correct.

Mr. Saidur Rahman, learned Advocate for the appellant submits that according to section 25A of the Customs Act, the Customs authority ought to have assessed the imported goods to duty on the basis of CRF value, but in the present case the Customs authority assessed the goods to duty on the basis of higher price following rule 7 of the Customs Valuation Rules, 2000 (in short Valuation Rules) without assigning any reason as to why they ignored the invoice or CRF value. Even if there is any valid reason to ignore the CRF value, the authority has to chronologically follow the methods alternatively provided in the Valuation Rules, but the authority jumped over the provision of rule 7 without exhausting the provisions of the preceding rules 4-6 of the Valuation Rules. In support of his contention, Mr. Rahman refers to the case of Amirul Islam Vs. Commissioner of Customs and others reported in 18 BLC, 77.

Mr. Saidur Rahman further submits that the Review Committee as well as the Appellate Tribunal in their respective orders did not discuss as to why the Customs authority ignored the CRF value and wrongly shifted the onus of proof upon the importer.

On the other hand Mrs. Kashefa Hussain, learned Deputy Attorney General appearing with leave of the Court for the respondent 1 submits that the order of Review Committee is not a judicial order, but an order of administrative nature passed on the documents placed before it and such it is not under any obligation to discuss each and everything in support of its order. It does not appear from the record

that the importer filed any rebuttal materials before the Review Committee as well as the Appellate Tribunal to show that the invoice or CRF value was the transaction value of the imported goods or that the order of assessment was not based on proper consideration of the materials placed before the Customs authority. The Appellate Tribunal below rightly passed the impugned order and as such there is nothing wrong that can be inferred with by this Court.

We have considered the submissions of the learned Advocates and gone through the records. The submissions advanced by the learned Advocate for the appellant are not supported by any grounds taken in the appeal. The appellant pursued the appeal before the Appellate Tribunal below on assertion of correctness of the invoice value. It appears from office notes dated 01.03.2009 and 27.04.2009 that on arrival of the record of the lower Appellate Tribunal the appellant prepared and deposited the paper books. The record of the lower appellate Tribunal is not accompanied with the original record of the Customs authority or any copy thereof. The review application and the original order of assessment by the Customs authority are neither available in the said record nor have been incorporated in the paper book to enable this Court to examine whether the Customs authority ignored the CRF value without any valid reason. The appellant neither filed any application for calling the original record of the Customs authority, nor incorporated the review application and the assessment sheet in the paper book by obtaining certified copies of the

same. The Appellate Tribunal as well as the Review Committee in a few words assigned the reason of ignoring the invoice and CRF value in their own way. Moreover, Rule 11 of the Valuation Rules gives a right to the importer to get an explanation as to how his imported goods have been assessed to duty. It does not appear that the appellant sought for any such explanation. In such a position, without examining materials including the assessment sheet, it is difficult for this Court to say that the assessment was illegal only because the Review Committee or the Appellate Tribunal below did not discuss in detail as to why they ignored the invoice and CRF value in assessing the goods to duty. For the same reason, this Court is not in a position to examine the impugned order with the test of the decision cited by the learned Advocate for the appellant.

It further appears from the memo of appeal before the Appellate Tribunal that some goods could be assessed to duty following the value of identical goods. The bills of entry in those cases were filed beyond ninety days before filing of the present bill of entry and therefore, the references made in the memo of appeal does not come within the scope of filing at same time (একই সময়ে) as defined in the Valuation Rules. This ground also gives an indication as to why the Customs authority jumped over the rule of deductive method bypassing the preceding rules of assessment of identical goods or similar goods as provided in rules 5 and 6 of the Valuation Rules. However, since no assessment sheet is before us, we are not in a position to make a final comment on that point.

For the reasons stated above we do not find any merit in the instant appeal. Accordingly, Customs Appeal No. 58 of 2008 is dismissed. The order of stay granted earlier stands vacated. The Customs authority is at liberty to encash the bank guarantee that was furnished for release of the imported goods covered by bill of entry No.C-14080 dated 07.08.2007.

Send down the record and communicate copies of this judgment to the Customs, Excise and VAT Appellate Tribunal as well as to the respective Commissioner of Customs, Dhaka.

Mohammad Bazlur Rahman, J:

I agree.