

Present:

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

Customs Appeal No. 41 of 2008

Maruf Alam

... Appellant

-Versus-

Customs, Excise and VAT Appellate Tribunal,
Dhaka and others

... Respondents

Mr. A. M. Aminuddin with Mr. Munshi
Moniruzzaman, Advocates

... for the appellant

Mrs. Kashefa Hussain, D.A.G

... for the respondents

Judgment on 19.06.2013

Md. Ruhul Quddus, J:

This customs appeal under section 196D of the Customs Act, 1969 at the instance of an importer is directed against judgment and order dated 21.04.2008 passed by the Customs, Excise and VAT Appellate Tribunal, Dhaka in Appeal No. CEVT/Case/(Cus)-1158/2007 dismissing the same and affirming order dated 18.11.2007 passed by the Review Committee, Dhaka in Nothi No.5-Cus-12 (1400)Group-4/07.

Facts giving rise to the customs appeal, in brief, are that the appellant in course of his business opened letter of credit No.1335-07-01-0348 dated 05.07.2007 through Southeast Bank Ltd., Principal Branch, Dilkhusha, Dhaka and imported 2,00,000 pieces of plastic PVC

card with magnetic stripe (ATM card) from Malaysia under H.S. Code No. 8523.52.00. Before shipment, the goods were inspected by an approved pre-shipment inspection agency (in short PSI agent). After conducting the inspection, the PSI agent furnished a clean report of findings (in short CRF) being No. BDH 2007 8734 IC dated 03.08.2007 certifying the quality, quantity, price, description, classification, H. S. code etc. of the goods.

After arrival of the goods the appellant through his clearing and forwarding agent submitted bill of entry No. C-156555 dated 12.08.2007 for release of the goods. The Customs authority assessed the goods on the basis of a higher price fixed by it ignoring the CRF value. The appellant, however, released the goods on furnishing bank guarantee for the difference of CRF value and the value fixed by the authority, and thereafter filed an application before the Review Committee on 17.09.2007 for review of the order of provisional assessment. The Review Committee after hearing the parties rejected the review application and affirmed the provisional assessment order of the Customs authority. The importer being aggrieved thereby filed an Appeal being No.CEVT/Case/(Cus)-1158/2007 before the Customs, Excise and VAT appellate Tribunal, Dhaka. The Appellate Tribunal dismissed the appeal by the impugned judgment and order.

Mr. A. M. Aminuddin, learned Advocate for the appellant submits that the CRF certificate has got presumption of correctness. According to section 25A of the Customs Act, the Customs authority

ought to have assessed the tax and duty of the imported goods on the basis of CRF value. The Customs authority without ascertaining the fact whether the CRF value was the transaction value of the imported goods, proceeded for assessment of its tax and duty and thereby committed illegality. Mr. Aminuddin further submits that the Review Committee passed its order ignoring the majority opinion and thereby violated rule 23 (5) of the Pre-Shipment Inspection Rules, 2002.

In the second fold of argument, Mr. Aminuddin submits that the Customs authority assessed the goods taking the value of identical goods, but in doing so the authority did not take the lowest value of the identical goods, which is evident from note No. 9 of the assessment sheet. This was done in clear violation of rule 5 (4) of the Customs Valuation Rules, 2000.

Mrs. Kashafa Hussain, learned Deputy Attorney General appearing for the respondents, on the other hand, submits that in view of the data base the CRF value was not acceptable and therefore, the Customs authority rightly proceeded to assess the goods following the methods alternatively provided in the Customs Valuation Rules. There was nothing wrong in valuation of the goods. Moreover, all the authorities and Tribunal below arrived at concurrent findings of fact on the transaction value of the imported goods. Now at the fourth tier of adjudicating forum, this Court though sitting in appellate jurisdiction, cannot reassess the documentary evidence and give a reverse decision on facts. The appeal is, therefore, liable to be dismissed.

We have considered the submissions of the learned Advocates and gone through the records. It appears from the assessment sheet that the Customs authority in order to determine the transaction value of the imported goods examined the data base regarding valuation of identical goods. It further appears that the invoice value of the imported goods was U S Dollar 0.075 per piece while the CRF value was U S Dollar 0.0805 per piece. Note No.9 of the assessment sheet shows that against bill of entry No. 138539 dated 17.07.2007, the imported plastic PVC card with magnetic stripe originated from Malaysia was assessed fixing transaction value of U S Dollar 0.2817 per piece, which the Customs authority took up for assessment of the goods in question. There are some other references in the said note, but the description of the imported goods and Country of origin clearly match with the imported goods in the present consignment. We, therefore, do not accept the contention of the learned Advocate for the appellant that the presumption of correctness of CRF value was not rebutted or that the authority did not take the lowest value of the identical goods.

We have also gone through the order passed by the Review Committee. Rule 23 of the Pre-Shipment Inspection Rules provides the constitution and procedure of the Review Committee. It says that the Commissioner of Customs (Appeal) would be its Chairman and it would be comprising of the Commissioner of Customs (Appeal); an Officer to be nominated by the Chairman; another Customs Officer not below the rank of Joint Commissioner to be appointed by the National Board of Revenue, a representative from the Federation of Chamber of

Commerce and Industries (in short FBCCI); and another representative of the PSI agent. Sub-rule (5) of Rule 23 says that the quorum of the meeting will be fulfilled with at least three members and the opinion of the majority members would form the decision of the Review Committee. It further provides that in case the Committee is equally divided, the decision would be taken according to the casting vote of the Chairman.

In the present case, meeting of the Review Committee was headed by its Chairman with participation of three other members, namely, a Joint Commissioner of Customs, ICD, Dhaka; a Director of FBCCI, a representative of the PSI agent. Of them the representatives of FBCCI and the PSI agent gave their opinions in favour of CRF value, but the Chairman in capacity of a member and the Joint Commissioner of Customs, ICD, Dhaka gave their opinions to assess the goods on the basis of assessment of identical goods. So, the members were equally divided and there was no way before the Chairman, but to cast his casting vote to form the majority opinion. Thus the decision of the Review Committee was taken lawfully within the scheme of the fiscal law.

In view of the above the appeal merits no consideration. Accordingly, Customs Appeal No.41 of 2008 is dismissed. The order of stay granted earlier stands vacated. The Customs authority is directed to make final assessment of the imported goods covered by bill of entry No. C-156555 dated 12.08.2007 and encash the bank guarantee.



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Communicate the Customs, Excise and VAT Appellate Tribunal as well as the Commissioner of Customs, Customs House, Dhaka with copies of the judgment and send down the records.

Mohammad Bazlur Rahman, J:

I agree.