

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. 1 of 2003

M/S S. Akter & Sons

... Appellant

-Versus-

Commissioner (Appeal) & President Review
Committee, Chittagong and others

... Respondents

Mr. Sowebuddin Khan, Advocate for Mr. Mizanul
Huq Chowdhury, Advocate

... for the Appellant

Mrs. Kashefa Hussain, Deputy Attorney
General

... for respondent 2

Judgment on 30.07.2013

Md. Ruhul Quddus, J:

This appeal under section 196D of the Customs Act, 1969 at the instance of an importer is directed against judgment and order dated 13.11.2002 of the Customs, Excise and VAT Appellate Tribunal passed in Appeal No. CEVT/Case/(Cus)-39/2002 dismissing the same and affirming order dated 22.01.2002 passed by the Review Committee, Chittagong rejecting an application for review filed by the importer-appellant.

Facts giving rise to the instant appeal, in brief, are that the appellant in course of his business imported D Grade Hardboard from Thailand under a letter of credit dated 16.10.2001 showing the value of the goods as U S Dollar 1.20 per piece in the invoice. Before shipment, the goods were inspected by a pre-shipment inspection agency (in short PSI agent), who issued a clean report of findings (in short CRF) certifying amongst others the value of the goods as U S Dollar 1.2091 per piece. After arrival of the goods at Chittagong Port, the importer through his clearing agent submitted bill of entry No. C-36450 dated 08.11.2001 for release of the same. The Customs authority did not accept the CRF value and formed an Assessment Committee for the purpose of determination of the transaction value of the imported goods. The Assessment Committee proposed to fix U S Dollar 2.05 per piece as the transaction value, on which the authority assessed the goods to duty. The appellant released the goods on furnishing bank guarantee for the difference between the CRF Value and the value fixed by the Customs authority, and thereafter filed an application for review before the Review Committee constituted under section 193C of the Customs Act. The Review Committee by order dated 22.01.2002 unanimously rejected the review application affirming the order of assessment of the Customs authority. Being aggrieved thereby the importer-appellant preferred Appeal No. CEVT/Case/(Cus)-39/2002 before the Customs, Excise and VAT Appellate Tribunal, Dhaka. The Appellate Tribunal heard the appeal and dismissed the same by the impugned judgment and

order, against which importer-appellant preferred this appeal before the High Court Division under section 196D of the Customs Act.

Mr. Sowebuddin Kahn appearing for Mr. Mizanul Huq Chowdhury, learned Advocate for the appellant submits that under the scheme of law the value certified by the PSI agent has got presumption of correctness and the Customs authority ought to have assessed the goods to duty on the basis of CRF value. But without doing so, the authority arbitrarily imposed a higher value for the imported goods and assessed it to duty which is absolutely illegal. The Review Committee as well as the Appellate Tribunal below passed their respective orders without answering this point and as such the impugned judgment is liable to be set aside.

On the other hand, Mrs. Kashefa Hussain, learned Deputy Attorney General appearing for respondent 2 submits that the goods in question were assessed to duty on proposal of the Assessment Committee specially formed for the purpose of determination of transaction value of the goods in question. The said Assessment Committee after examining the prevailing international market price fixed the transaction value, on which the Customs authority assessed the duty and taxes. There was nothing wrong to interfere with by this Court.

We have gone through the record including the proposal of the Assessment Committee and considered the submissions of the learned Advocates. In its proposal, the Assessment Committee has assigned reasons as to why the CRF value was ignored and U S Dollar 2.05 per

piece was proposed as transaction value for the purpose of assessment of the imported goods to duty. The Assessment Committee made a thorough enquiry into the matter and found that the same goods were being imported from different countries with CRF value U S Dollar 1.00 per piece. The state owned Hard Board Company, namely, M/S Khulna Hard Board raised allegations of underinvoicing against such CRF and substantiated it from record. Since there was no contemporary shipment of identical/similar goods, the Assessment Committee under instruction of the Commissioner of Customs enquired into the retail price at local market and found it as U S Dollar 2.10 per piece, which comes to U S Dollar 1.21 per piece on the basis of deductive value. The Committee also found that the said price based on deductive method was very low because of underinvoicing. Therefore, they contacted with some principals in Singapore, Thailand and Pakistan, who were the major suppliers of hard board in their respective Country and got offer as U S Dollar 2.05-2.50 per piece. Thus the Assessment Committee arrived at a conclusion that in any view of the manner the price of the imported goods cannot be less than U S Dollar 2.05 per piece. Then the Customs authority provisionally assessed the goods to duty on the basis of the proposal of the Assessment Committee. The Review Committee unanimously approved the said order of provisional assessment and the lower Appellate Tribunal on affirmance of the order of Review Committee dismissed the appeal. The original proposal of the Assessment

Committee appears to be reasonable and justified. We do not find any illegality in the same as well as in the impugned judgment and order.

It further appears that the instant appeal has been brought in the name of M/S S. Akter & Sons without any mention of its legal entity, but the vokatnama attached with the application of appeal is executed by one Shirin Akter without describing as to how she is linked up with the appellant. The Customs, Excise and VAT Appellate Tribunal, which passed the impugned order, has not been made a respondent in the instant appeal. So the appeal is not in form and also defective for non-joinder of necessary party.

The customs appeal being not in form and also for having no merit is thus dismissed. The 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-36450 dated 08.11.2001.

Send down the records and communicate the judgment to be the Customs, Excise and VAT Appellate Tribunal, Dhaka as well as to the respective Commissioner of Customs, Chittagong.

Mohammad Bazlur Rahman, J:

I agree.