

CASE NO.:
Appeal (civil) 5580-81 of 1999

PETITIONER:
Commissioner of Customs, Chennai

RESPONDENT:
Adani Export Ltd. & Anr.

DATE OF JUDGMENT: 13/04/2004

BENCH:
N Santosh Hegde, B N Agrawal & Dr.A.R.Lakshmanan.

JUDGMENT:
J U D G M E N T

SANTOSH HEGDE, J.

These appeals are preferred by the Commissioner of Customs, Chennai, against an order made by the Customs, Excise and Gold (Control) Appellate Tribunal, South Zonal Bench at Madras (the Tribunal). The short question that arises for our consideration in these cases are whether the Tribunal was justified in allowing duty credit at a rate claimed by the respondent under the Passbook Scheme in regard to the import of Vitamin Mixes in favour of the respondent by reversing the order of the Assistant Commissioner of Customs, Chennai, dated 5.2.1998 and accepting the order of the Commissioner of Appeals ?

The Assistant Commissioner of Customs by his order dated 5.2.1998 held that the value accepted by the Department at US \$ 8.2 per kg. for Vitamin Mix imported for the purpose of passbook credit against the exports made of prawns and fish products is correct, hence, he rejected the claim of the respondent for fixing the said value at US \$ 36 per kg. In an appeal filed by the respondent herein, the Commissioner of Customs (Appeals), Chennai, by his order dated 15.4.1998 allowed the same, setting aside the order of the Assistant Commissioner and held that the claim for credit at US \$ 36 per kg. made by the respondent for the said import was justified from the evidence produced by the parties, hence, granted the relief sought for by the respondent. In an appeal filed by the Department before the Tribunal, as stated above, the Tribunal accepted the view of the Commissioner of Appeals while dismissing the appeal of the appellant herein.

Mr. Raju Ramachandran, learned Additional Solicitor General strenuously contended that the Appellate Commissioner and the Tribunal erroneously shifted the onus on the Department to establish the value of Vitamin Mixes imported, by coming to the conclusion that the Department has not established that the evidence produced by the respondents, was not creditworthy, thus erroneously shifted the burden on the appellant. He contended that the Assistant Commissioner based on similar imports made by other parties had correctly come to the conclusion that the value of the Vitamin Mixes imported at the relevant time was only US \$ 8.2 per kg. He also contended that the Assistant Commissioner while coming to the said conclusion justly relied upon the publication made by the Marine Product Export Development Authority (MPEDA) which indicated what would be the active ingredients in the Vitamin Mixes imported by such importers and came to the conclusion that the price of American Dollars 8.2 per kg. was the correct price.

Mr. Ashok H. Desai and Mr. Dushyant Dave, learned senior counsel, however, controverted the said argument of learned

A.S.G. and pointed out from the order of the Commissioner of Customs (Appeals) that the material relied on by the Assistant Commissioner for arriving at the conclusion that the value of the imported goods was only US \$ 8.2 per kg. was not based on similar importation of Vitamin Mixes as was involved in the import relied on by the respondent. They also pointed out that the material relied upon by the Assistant Commissioner did not pertain to the imports made by any of the suppliers of Shrimps to the respondents. They placed strong reliance on the judgment of this Court in Collector of Customs, Bombay vs. Swastic Woolens (P) Ltd. & Ors. (1988 Suppl. SC 796) to contend this Court has always treated the Tribunal as the final forum on facts and further relied on a judgment of this Court in West Bengal Electricity Regulatory Commission vs. CESC Ltd. (2002 8 SCC 715) to contend that unless the finding of fact of such forum is perverse or not based on material-on-record, this Court would not interfere with such a finding of fact.

Having noticed the arguments of the parties, it is clear that the issue before us is one of fixation of value on imported Vitamin Mixes, credit for which is sought by the respondents. While the Department contends that the same is worth only 8.2 US \$ per kg., the respondents claim that the same is worth US \$ 36 per kg. From the above contested dispute, it is clear that the issue is one of fact and not involving a question of law and which will have to be adjudicated on the material produced by the parties.

While the Assistant Commissioner relied on the importation price paid for by some similar importers, the Appellate Commissioner as well as the Tribunal chose to rely upon the document produced by the respondent though of a single import. The Appellate Commissioner and the Tribunal in this regard came to the conclusion that the material produced by the respondents was more proximate for deciding the issue in question rather than the material relied upon by the original authority. The Tribunal and the Appellate Authority also came to the conclusion that the quality of import of Vitamin Mixes made by various importers on whose importation value the original authority relied upon, was not of a comparable quality because the chemical composition of such goods widely differed from the chemical composition of goods imported and relied on by the respondent, hence, they held it would not be correct to rely upon such incomparable material to fix the disputed valuation. The Tribunal also noticed from the analysis placed on record that the difference between the two types of imports representing 2 different costs of importation was very wide and certainly not marginal but the vitamin ingredients used in the Vitamin Mixes imported by the two parties are not the same, therefore, it came to the conclusion that when there is such a wide difference in the use of active ingredients in the products imported, same cannot reflect the true value of the products in question unless such imports are of the same quality. Therefore, the tribunal thought it safe to rely on the evidence showing the value of Vitamin Mix which was used in the production of prawn exported by the respondent.

The Tribunal also considered a letter written by the MPEDA which had stated that :

"As regards the concentration/percentage of Vitamin Mixes for preparation of shrimps feed, it is difficult to give the exact details and vary according to the brands/manufacture/ feed formulae and types of feed."

From the above also, it is clear that concentration/percentage of Vitamin Mixes for preparation of Shrimps feed differs from brands/manufacture/ feed formulae and types of feed, therefore, the safest material to rely upon would be the actual importation of

cost incurred on that type or category of Vitamin Mixes used in the preparation of Shrimps feed by the supplier of Shrimps and fish products to the respondent. Since such material was available and the same was relied upon by the Commissioner (Appeals) and the tribunal, we do not find any reason to interfere with the same.

From the above discussion, it is clear that the Tribunal has applied its mind to the material available on record and on that basis came to the conclusion that the value fixed by the Commissioner of Appeals was a just value. We are unable to agree with the contention advanced on behalf of the appellant that the finding as to the valuation made by the Tribunal either suffers from any perversity or is not based on the material-on-record calling for our interference.

For the reasons stated above, these appeals fail and the same are hereby dismissed.

JUDIS