CASE NO.:
Appeal (civil) 4498 of 2006

PETITIONER:
Rabindra Chandra Paul

RESPONDENT:
Commr. of Customs (Preventive) Shillong

DATE OF JUDGMENT: 27/02/2007

BENCH:
S. H. Kapadia & B. Sudershan Reddy

JUDGMENT:
J U D G M E N T
with
Civil Appeal No. 4753 of 2006

KAPADIA, J.

Civil Appeal No. 4498/2006

This is an appeal under Section 130 E of the Customs Act, 1962 against judgment and order No. M-299/Kol /06 dated 6.7.2006 passed by the Customs, Excise & Service Tax Appellant Tribunal, Kolkata ("the Tribunal"). It is an appeal filed by the assessee.

A short question which arises for determination in this civil appeal is whether the Department, in the facts and circumstances, was justified in invoking Rule 7A of Customs Valuation (Determination of Price of Imported Goods) Rules, 1988 framed under section 156 of the said 1962 Act.

Appellant-assessee purchased two consignments of Refined Soyabean Oil from M/s United Edible Oils Ltd., Bangladesh. The goods imported were accompanied with Invoice dated 4.10.2003 and Invoice dated 30.10.2003. The C & F value of the Soyabean Oil (final product) showed the price to be Rs. 24.50 per kg. calculated at the prevailing rate of US $. The Department called upon the appellant to give the cost break-up of the imported goods. The details were forwarded by the appellant to the Department vide letter dated 19.10.2003 along with copy of the bills of entry. The appellant also obtained a certificate from the Superintendent of Customs which stated that the consignments imported stood assessed by the Assistant Commissioner of Customs at Rs. 27.17 and Rs. 31.96 respectively. The Department, however, refused to accept the rate of Rs. 27.17 and Rs. 31.96 respectively. On 5.12.2003 the Assistant Commissioner of Customs gave a hearing to the appellant in the matter of finalization of the assessable value of the said two consignments. The appellant contended that M/s United Edible Oils Ltd., Bangladesh was the manufacturer of Refined Soyabean Oil. The said goods were manufactured from imported Crude Soyabean Oil (raw material). The said raw material was imported by M/s United Edible Oils Ltd., Bangladesh from a foreign country under a valid invoice and bills of entry, copies whereof were also submitted by the appellant herein to the Assistant Commissioner of Customs. M/s United Edible Oils Ltd., Bangladesh processed the said raw material in their factory in Bangladesh into Refined Soyabean Oil (final product) which was exported to the appellant. Before the Assistant Commissioner, the appellant presented the actual price of the above raw material plus processing charges plus transportation charges from the factory gate to the point of exportation. The price declared, therefore, was the price at the point of exportation. Before the Assistant Commissioner, the appellant submitted the above documents. The appellant contended before the Assistant Commissioner that the Assistant Commissioner was not entitled to invoke Rule 7A on the basis of the cost break-up, particularly when there was no allegation that the price declared was tainted. The

appellant contended before the Assistant Commissioner that the Department was not entitled to invoke Rule 7A and that the Department was not justified in invoking Rule 7A when the declared price tallied with the price of the Indian Refined Soyabean Oil (see page 'E' of the synopsis). By Order dated 26.12.2003 the Assistant Commissioner of Customs confirmed the demand raised by the Department fixing the assessable value at Rs. 31.66 per kg. The Assistant Commissioner came to the conclusion that the Declared Price of the final product was less than the Tariff Value indicated in the letter issued by the Central Board of Excise and Customs dated 15.12.2004 under which the Board had stated that the Tariff Value for Crude Soyabean Oil stood at US $ 565 PMT vide Notification No. 105/2004-Customs (NT) dated 15.9.2004. In the said letter, the Board further stated that it was logical to value the raw material at prices higher than the Crude Soyabean Oil. On the basis of said letter dated 15.12.2004 and Notification dated 15.9.2004 the Assistant Commissioner of Customs fixed the assessable value of the Refined Soyabean Oil at the above rate of Rs. 31.66 per kg.. Accordingly, the Assistant Commissioner directed the Department to complete the assessment and confiscate the goods under section 111(m) of Customs Act, 1962.

Being aggrieved by Order dated 26.12.2003 passed by the Assistant Commissioner of Customs, the appellant preferred an appeal under Section 128A (3) of Customs Act, 1962. This appeal was filed before the Commissioner (A). By Order dated 30.6.2004 the Commissioner came to the conclusion that there was no reason for the Assistant Commissioner of Customs to invoke Rule 7A, particularly when the Department had not alleged that the sale was not in the ordinary course of trade. It was further held that there was no reason to invoke Rule 7A since the import did not attract any of the circumstances enumerated in Rule 4(2) (c) to (h). According to the Commissioner (A), the only ground on which the Assistant Commissioner had invoked Rule 7A was that the appellant was given abnormal discounts. According to the Commissioner (A), in the present case there was nothing to show that the discounts obtained were abnormal. In the circumstances, the Commissioner held that the Department was not correct in rejecting the transaction value in terms of Rule 4(1).

Aggrieved by the decision of the Commissioner (A), the matter was carried in appeal to the Tribunal (CESTAT). The matter was carried in appeal by the Department. By a cryptic order, the Tribunal stated that on the facts and circumstances of the case, the Department was right in invoking Rule 7A. Hence this civil appeal.

In the case of Eicher Tractors Ltd. v. Commissioner of Customs, Mumbai reported in 2000 (122) E.L.T. 321 this Court held that the principle for valuation of imported goods is found in Section 14(1) of Customs Act, 1962 which provides for the determination of the assessable value on the basis of the international sale price. Under the said Act, customs duty is chargeable on goods. According to section 14(1), the assessment of duty is to be made on the value of the goods. The value may be fixed by the Central Government under section 14(2). Where the value is not so fixed it has to be decided under section 14(1). The value, according to section 14(1), shall be deemed to be the price at which such or like goods are ordinarily sold or offered for sale, for delivery at the time and place and importation in the course of international trade. The word "ordinarily" implies the exclusion of special circumstances. This position is clarified by the last sentence in section 14(1) which describes an "ordinary" sale as one where the seller or the buyer have no interest in the business of each other and the price is the sole consideration for the sale or offer for sale. Therefore, when the above conditions regarding time, place and absence of special circumstances stand fulfilled, the price of imported goods shall be decided under section 14(1A) read with the rules framed thereunder. The said Rules are the Customs Valuation Rules, 1988. It was further held that in cases where the circumstances mentioned in Rule 4(2) (c) to (h) are not applicable, the Department is bound to assess the duty under Transaction value. Therefore, unless the price actually paid for the particular transaction falls within the

exceptions mentioned in Rule 4(2) (c) to (h), the Department is bound to assess the duty on the Transaction value. It was further held that Rule 4 is directly relatable to section 14(1) of Customs Act, 1962. Section 14(1) read with Rule 4 provides that the price paid by the importer in the ordinary course of commerce shall be taken to be the value in the absence of any special circumstances indicated in section 14(1). Therefore, what should be accepted as the value for the purpose of assessment is the price actually paid for the particular transaction, unless the price is unacceptable for the reasons set out in Rule 4(2). It was further held that the word "payable" in Rule 4(1) must be read as referring to the "particular transaction" and payability in respect of the transaction contemplates as situation where payment of price stands deferred. Therefore Rule 4 is limited to the transaction in question. It was further held that Rule 5 allows the transaction value to be determined on the basis of identical goods imported into India about the same time; Rule 6 allows fixation of transaction value on the basis of the value of similar goods imported into India about the same time. Where there are no contemporaneous imports into India, the value is to be decided under Rule 7 by a process of deduction in the manner provided therein. If this is not possible, then the value shall be computed under Rule 7A. It was further held that it is only when the transaction value under Rule 4 is rejected, only then under Rule 3(ii) the value shall be determined by proceeding sequentially through Rules 5 to 8. Conversely, if the transaction value can be decided under Rule 4(1) and does not fall under any of the circumstances given in Rule 4(2), there is no question of determining the value under the subsequent rules. It was further held that discount is a recognized feature of international trade and as long as those discounts are uniformly available and as long as they are based on commercial considerations, they cannot be denied under section 14.

The primary base for Customs Valuation is the Transaction Value, i.e., the price actually paid or payable for the goods when sold for export to the country of importation, subject to adjustment. The said price should not be subject to any condition or consideration that could prevent the value from being determined under Rule 4(1). Where the Department has reason to doubt the truth or accuracy of a declared value, it may ask the importer to provide further explanation to the effect that the declared value represents the total amount actually paid or payable for the imported goods. If the declared value is lower than the declared value of similar goods imported by other buyers at or about the same time, it can constitute "reason to doubt" the truth or accuracy of the declared value indicated in the commercial invoice (see Rule 10A). Under Rule 8(2)(i) no value shall be determined based on the selling price of the goods produced in India. In cases where the Department fails to establish circumstances mentioned in Rule 4(2), the transaction value declared by the assessee cannot be rejected and the price mentioned in the Invoice should be held to represent the transaction value.

Applying the above principles to the facts of the present case, we find that the Department had erred in invoking Rule 7A. Firstly, there was no allegation made by the Department stating that the transaction was tainted. The appellant has proved that the transaction was at arm’s length. There was no evidence before the Department to show that the price was pegged at a lower level on account of the circumstances mentioned in Rule 4(2). Secondly, the Department has not even alleged that on account of discounts the price stood pegged at a lower level. Thirdly, we may point out that in a given case, the Department would be entitled to invoke Rule 7A. For example, in matters of agro-processing, processing of seeds, refined oil from crude oil etc., the cost of the raw material has a crucial role to play in the method of costing. In such cases, crude oil which is the raw material is the major component of the refined oil (final product). In such cases, if the cost of the raw material exceeds the price of the final product then in that event the Department can invoke Rule 7A. However, in the present case, even assuming for the sake of argument that Rule 7A applies, the Assistant Commissioner of Customs while applying Rule 7A has followed a peculiar method. She has examined the cost break-up. She rejects the cost of the raw material but, at the same time, she accepts the processing charges (figures

supplied by the appellant). Rule 7A refers to Computed Value in contradistinction to Rule 7 which refers to Deductive Value. Computed value under Rule 7A is the value of the imported goods consisting of the cost or value of materials plus amount for profit and cost or value of all other expenses under Rule 9(2). Further, Rule 7A is subject to the provisions of Rule 3. Rule 3 applies in cases where the buyer and seller are related. In the present case, there is no finding given that the buyer and seller are related. In the interpretative note to Rule 7A, value of imported goods is to be determined by examining the costs of production of the goods and the said interpretative note clarifies that Rule 7A should be applied to those cases where the buyer and seller are related. Further, if the officer wants to proceed under Rule 7A, the cost or value has got to be decided on the basis of the commercial accounts of the producer, provided that such accounts are consistent with the accounting standards applicable in the country where the goods are produced. In the present case, the producer is from Bangladesh. There is no finding that M/s United Edible Oils Ltd. has not followed the accounting system of that country (Bangladesh). In such cases, normally the Department should call upon the assessee to furnish the value/ cost of raw materials plus all costs (direct, indirect, fixed and variable) plus profit at an average rate. In such cases, the Department should call upon the assessee to produce a certificate from the Chartered Accountant of the foreign seller indicating the turnover, profit and other details on the basis of which computation of the Deductive Value under Rule 7 could be determined. This exercise had not been done in the present case. As stated above, in the present case, the Assistant Commissioner has rejected the cost of raw materials and, at the same time, she has accepted the value of the processing charges. Therefore, even if Rule 7A was to be applied, which, in our opinion, is not attracted, still the computation made under Rule 7A by the Assistant Commissioner was erroneous. None of these aspects have been considered by the Tribunal in the impugned judgment.

Accordingly, the civil appeal stands allowed, the impugned judgment of the Tribunal (CESTAT) in Appeal No. M-299/Kol/06 dated 6.7.2006 is set aside and the Order of the Commissioner (A) stands confirmed with no order as to costs.

Civil Appeal No. 4753 of 2006

In view of our judgment in Civil Appeal No. 4498/06 (supra), the impugned judgment of the Tribunal (CESTAT) in Appeal No. A-76/Kol/2005 dated 17.1.2005 is also set aside. This civil appeal is allowed with no order as to costs.