

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

CUSTOMS APPEAL NO. 7 OF 2019

Additional Director General
Directorate of Revenue Intelligence, Mumbai .. Appellant

v/s.

Knowledge Infrastructure Systems Pvt. Ltd. & Ors. .. Respondents

Mr. Hitendra Venegaonkar, Special Counsel a/w Ms. Sneha Prabhu for
the appellant

Mr. Vikram Nankani, Senior Counsel a/w Mr. Prakash Shah, Mr. Sanjay
Agarwal, Mr. Jas Sanghavi, Ms. Divyasha Mathur I/b PDS Legal for the
respondents

**CORAM : M.S. SANKLECHA &
M.S. SONAK, J.J.**

DATED : 18th JUNE, 2019

P.C.

1. This appeal under Section 130 of the Customs Act, 1962 (Act) impeaches the order dated 31st May, 2018 passed by the Customs, Excise and Service tax Appellate Tribunal (Tribunal).

2. The appellant has urged the following questions for our consideration :-

(a) Whether in the facts and circumstances of the case and despite

(i) the provisions of Section 111(m) of the Customs Act, 1962 being in relation to 'any goods' not corresponding in

respect of value with the entry made under the Act which implicitly covers all types of mis-invoicing cases: which could be under-invoicing or over-invoicing as the case may be; and
(ii) the provisions of Section 112(iii) being in relation to goods, in respect of which the declared value was higher than the value thereof –

was the appellate Tribunal correct in holding that the provisions of Section 111(m) of Customs Act, 1962 were not to be considered as a law to deal with over-invoicing in imports?

(b) Whether, despite

(i) the provisions of Section 111(m) being in relation to 'any goods, i.e. goods including, but not restricted to, dutiable or prohibited goods; and

(ii) the emerging trend of international trade mis-pricing (over-invoicing) as a means of capital flight abroad, which Section 112(iii) seeks to penalize –

was the Hon'ble Tribunal justified in holding that – the applicability of Section 111(m) was restricted to dutiable or prohibited goods, and goods could not be held liable to confiscation sans nexus with assessment and collection of duty and enforcement of prohibitions?

(c) Whether, despite the provisions of Section 111 being in relation only to 'goods brought from a place outside India' and not excluded goods cleared for home consumption – was the Hon'ble Tribunal justified in holding that there was no scope for invoking jurisdiction to hold goods cleared for home consumption liable for confiscation under the provisions of Section 111, thereby rendering the law limited only to infractions detected prior to clearance and not to cases where infractions (made prior to clearance) come to be detected subsequent to clearance and whether it is legal to adopt such a narrow and one-sided interpretation that would render law enforcement dependent on time and chance of detection? Can clearance of goods absolve an offender of the offence and consequent penalty, merely because the offence could not be detected prior to clearance?

(d) Whether, despite

(i) the 'liability to confiscation' under Section 111 alone sufficing the imposition of the penalty under Section 112; and

(ii) Section 124 of the Customs Act, 1962 not imposing any restriction or limitation as regards the time for intimation of proceedings or issuance of notice –
was the Hon'ble Tribunal justified in holding that – the goods cleared for home consumption were beyond the jurisdiction of the Customs Act, 1962, ignoring the overall object and purpose of the Act thereby rendering the customs law enforcement infructuous, more so in the era of self-assessment where the onus of compliance is on the importer?

(e) Whether, despite

(i) the penalty under Section 114A being imposable only in relation to non-levy or short-levy of duty etc; and
(ii) the penalty in relation to goods liable to confiscation being specified only under the provisions of Section 112 –
was the Hon'ble Tribunal justified in holding that – in the case of goods cleared for home consumption and unavailable for confiscation, penalty could be imposed only under the provisions of Section 114A and not the provisions of Section 112, thus effectively ruling out penalty on non-duty related offences, contrary to the provisions of law as enumerated in Section 112 in general and Section 112(iii) in particular?

(f) Whether, despite

(i) the provisions of Section 111 of the Customs Act, 1962 pertaining to liability to confiscation, not being restricted to, dutiable or prohibited goods;
(ii) Section 47 specifying that the proper officer may, on satisfaction that the goods entered for home consumption were not prohibited goods and duty had been paid by the importer, make an order permitting clearance of the goods for home consumption; and
(iii) the expression “may”, unlike the expression “shall”, clearly indicating vesting of discretion –
was the Hon'ble Tribunal justified in holding that – the duty liability and prohibited nature of the goods were the only two aspects that could deny clearance for home consumption under the provisions of Section 47?

(g) Whether, despite

(i) the provisions relating to liability to confiscation being

specified under the provisions of Section 111 of the Act and the same being equally applicable to the goods cleared for home consumption; and

(ii) the clearance under Section 47 being unable to oust the jurisdiction of the Customs authorities to confiscate goods under Section 111 of the Act –

was the Hon'ble Tribunal justified in holding that – the liability under section 111 could not be invoked unless the clearance under section 47 had been withheld or subsequently deemed to be revoked?

(h) Whether, despite

(i) the provisions of Customs Valuation (Determination of Valuation of Imported Goods) Rules, 2007 (CVR, 2007) being applicable to imported goods;

(ii) the provisions of Section 14, pertaining to valuation of the goods, specifying the value of the imported goods; and

(iii) the definition of 'imported goods' not restricting the scope of the goods to 'dutiable goods' –

was the Hon'ble Tribunal justified in holding that – the applicability of the CVR, 2007 was restricted only to such goods as were dutiable?

(i) Whether, despite

(i) the value of the goods being essential to quantify the penalty under Section 112 and 114AA of the Act;

(ii) the provisions of the CVR, 2007 relating to the valuation of imported goods; and

(iii) the provisions relating to the liability to confiscation of the goods under Section 111 not being subject to revocation of the assessment of duty or the order permitting clearance for home consumption –

was the Hon'ble Tribunal justified in holding that – the scheme for valuation provisions under Customs Act, 1962 could not be resorted to without revoking the assessment?

(j) Whether, despite

(i) the transaction value of the imported goods, in terms of section 14 of the Act, being the price actually paid or payable for the goods when sold for export to India for delivery at the time and place of importation, where the buyer and seller of

the goods were not related and price was the sole consideration for the sale;

(ii) Rule 12 of CVR, 2007 enabling the rejection of declared value on the reasonable doubt that the declared value did not represent the transaction value;

(iii) the goods invoiced to the importer in the intermediary – importer transaction, in the present case, being the goods already been contracted for export to India by the importer's wholly owned subsidiary, at a price much lower than the value declared by the importer and the transaction not being a transaction in the ordinary course of commerce, where the price was the sole consideration of the sale; and

(iv) the documentary evidences of value inflation brought on record by the investigation subsequent to clearance –

was the Hon'ble Tribunal justified in holding that – the price paid or payable by the importer was itself the transaction value and what was privy only to the parties in a commercial transaction could not be substituted ?

(k) Whether, in view of the extant CESTAT Rules and objections raised by Revenue, including application for recusal on which no separate order was passed by the Hon'ble Tribunal, was it proper and justified on the part of the Hon'ble Tribunal to proceed ahead in deciding the impugned case in gross violation of the rules of procedure and the Principles of Natural Justice?

3. At the very outset, Mr. Nankani, learned Senior Counsel appearing for the respondents raised a preliminary objection with regard to jurisdiction. In particular, he invited our attention to the questions (h), (i) and (j) raised by the Revenue, which pertain to valuation of imported goods. It is submitted that in view of Section 130 of the Act, this Court would not have jurisdiction to entertain this appeal as the issues raised herein relate to valuation of imported goods

for the purpose of assessment.

4. As against the above, Mr. Venegaokar, learned Counsel appearing in support of the appeal submits that this Court would have jurisdiction to entertain the appeal. This for the reason that the valuation of the goods in this case as reflected in question nos. (h), (i) and (j) hereinabove are not for the purpose of assessment of duty but for the purpose of confiscation of the imported goods and consequent penalty under Section 111(m) of the Act and consequent penalty under Section 114 of the Act. In particular, he invited our attention to Section 130 of the Act to urge that what is excluded from the jurisdiction of this Court is only assessment of goods for the purpose of duty and not assessment of goods for purpose of confiscation of imported goods and / or consequent penalty. It is further submitted that the valuation of the goods being done in terms of amended Section 14 of the Act. The above Section 14 of the Act entitles the Revenue to value the goods not only for the purpose of assessment to duty but for any other purpose under the Act. It is, therefore, submitted that this Court would have jurisdiction to entertain the appeal. He further place reliance upon the decision of the Gujarat High Court in ***Ruchi Soya Industries Ltd. Vs. Commissioner of Customs, (2017) 346 ELT 372.***

5. We note that the show-cause notice dated 3rd August, 2016 issued to the respondents which forms the basis in the present proceedings, called upon the respondents to show-cause as under :-

“(a) The declared CIF value as detailed in Column (4) of 'Table-14' above, of the goods under the Bills of Entry as detailed in Column (3) of the said 'Table-14', and the quality parameters depicted in Column (4) of 'Table-10' should not be considered as a wrong declaration in terms of the provisions of Rule 11 of the CVR, 2007 and declared CIF value as detailed in Column (4) of 'Table-14' above should not be rejected under Rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007;

(b) The value of the goods, covered under the respective Bills of Entry mentioned in Column (3) of the 'Table-14' above, should not be determined as detailed in Column (5) of 'Table-14' above, in terms of Rule 9 of the CVR 2007;

(c) Goods covered under the respective Bills of Entry mentioned in Column (3) of the 'Table-14' above, having declared and proposed CIF value as detailed in Column (4) and Column (5) of the said Table, should not be held liable to confiscation under Section 111(m) of the Customs Act, 1962;

(d) Penalty under Section 112(a) read with Section 112(iii) of the Customs Act, 1962 should not be imposed on them in relation to the above goods; and

(e) Penalty under Section 114 AA of the Customs Act, 1962 should not be imposed on them in relation to the above goods”

6. It is evident from the above show-cause notice that before the Revenue could come to the conclusion that there has been a mis-declaration of value in terms of Section 111(m) of the Act, the valuation

of the imported goods as declared in the bill of entry has to be re-determined in terms of Customs Valuation Rules, 2007. It is only on this re-determination of the valuation of imported goods which involves assessment of goods for the purposes of duty (which would include nil rate of duty) that the occasion to proceed further to allege that the valuation declared in the bill of entry did not correspond with the valuation of the imported goods. Thus, before Section 111(m) could be invoked, the exercise to be carried out by the Revenue would be to re-determine the value of the goods declared by the respondents in the bill of entry. Thus, Section 130 of the Act ousts the jurisdiction of this Court with regard to any order relating to amongst other things to determination of any question having relation to the rate of duty of the custom or to the valuation of goods for the purpose of assessment. Thus, even if one of the question involved in the appeal has a relation to valuation of goods for the purpose of assessment, then, the jurisdiction of this Court is ousted. Accordingly to Mr. Venegaokar, this is a case of confiscation of imported goods under Section 111(m) as the value of the imported goods was not properly declared, will not detract from the fact that one of the question which arise in the appeal is with regard to the valuation of goods for the purpose of assessment. Moreover, in any event, before the Revenue confirms and uphold the confiscation of

imported goods under Section 111(m) of the Act, re-determination of the value of the goods would be the fundamental issue to be decided, as is evident from the show-cause notice. The provisions of Section 14 of the Act, which was relied upon by the appellant does not negate the prohibition of this Court exercising jurisdiction under Section 130 of the Act. The basis of the entire proceedings is re-determination of the valuation of the imported goods from that declared by the respondents and accepted by the Revenue. Thus, the correct valuation of the imported goods as declared in the bill of entry for the purpose of assessment is an issue that directly arising in this case.

7. Reliance placed by the Revenue upon the decision of the Gujarat High Court in Ruchi Soya Industries Ltd. (supra) does not assist the appellant in the present facts. In the aforesaid case, there was no issue of valuation of goods for the purpose of assessment. The only issue which arose before the Court was whether the description of the imported cargo as given in the Import General Manifest (IGM) would make goods liable for confiscation under Section 111(m) and 111(f) of the Act. The entire proceedings before the Gujarat High Court was with regard to incorrect description of the goods imported by the respondents. The controversy did not touch on any issue as regards

valuation of goods for the purpose of assessment, as in this case. Thus, it has no application to the present facts. In the above view, we hold that this appeal would not be maintainable before this Court.

8. Accordingly, the appeal is disposed of as not maintainable.

(M.S. SONAK, J.)

(M.S. SANKLECHA, J.)