PETITIONER:
COLLECTOR OF CUSTOMS, BOMBAY

Vs.

RESPONDENT:
SHIBANI ENGINEERING SYSTEMS,

DATE OF JUDGMENT: 06/08/1996

BENCH:
BHARUCHA S.P. (J)
BENCH:
BHARUCHA S.P. (J)
THOMAS K.T. (J)

CITATION:
JT 1996 (7) 222 1996 SCALE (5)593

ACT:

HEADNOTE:

JUDGMENT:
THE 6TH DAY OF AUGUST, 1996
Present:
Hon'ble Mr.Justice S.P.Bharucha
Hon'ble Mr.justice K.T.Thomas
D.Tandon and P.Parmeswaran, Advs. for the appellant
L.R.Singh, Adv. for the Respondent
J U D G M E N T
The following Judgment of the Court was delivered:
Collector of Customs, Bombay
V.
Shibani Engineering Systems. Bombay
J U D G M E N T
BHARUCHA. J.

The respondents imported two consignments of cups which are parts of taper roller bearings. They filled bills of entry for clearance classifying the goods under entry 8482.99 of the Customs Tariff Act, 1975, and claimed the benefit of the concessional rate of duty provided by an Exemption Notification (No.70/89).

The relevant part of the Exemption Notification reads thus:

"6. Parts of goods covered by Sl.No. 5 above namely

(a) Cups and Cones of roller bearings covered by items (a) and (b) of Sl.No. 5 above	The rate of duty applicable to the bearings are parts.	
(b) Inner and outer rings of roller bearings covered by items (a) and (b) of Sl. No. 5 above	- do -	
(c) Others		15% ad valorem"

Serial No.5 therein referred to relates to "roller bearings of all types".

The respondents filed a writ petition in the Bombay High Court. The goods were allowed to be cleared by the High Court on the basis of a provisional assessment extending the

benefit to the respondents of Sl.No. 6(c). The appellants preferred a Special Leave Petition to this Court; therein the appellants were directed to issue a show cause notice to the respondents and finalise the assessment of the goods by 6th September, 1991.

A notice in this behalf was issued. The respondents were heard and the Collector of Customs (Judicial) made an order on 30th August, 1991. He held that the goods were covered by Sl.No. 6(c) and not Sl. No. 6(a). For the purpose of valuation, he rejected the transaction value of the goods inasmuch as the goods had been imported from a trader in Hongkong and the price list of the manufacturer of the goods had not been produced. The transaction value of the goods was ridiculously law when compared to the c.i.f. value of different brands of similar goods. In the Collector's view, the transaction value, was in the circumstances, unacceptable. The Collector noted the price lists of imported bearings of Chinese, Russian, Czechoslovakian and German origin and, by arduous reasoning, concluded that one set of the goods should be valued at Rs.5.64 per cup and the other set at Rs.21.38 per cup.

The respondents appealed to the Customs Excise & Gold (Control) Appellate Tribunal against the Collector's findings on classification and valuation. The appellants preferred an appeal in regard to penalty and fine (with which we are not here concerned).

The Tribunal found, thus:

> "Cups and cones of roller bearings are two separate entities by themselves as known in the concerned trade and industry. Each is a readily identifiable component and both these parts put together would almost constitute a bearing without certain small parts of bearings and this appears to be the reason behind assessing cups and cones when imported together at the same rate as applicable to the bearings, as cups and cones imported together acquire the essential character of a bearing."

The meaning of the words "and " and "or" as set out in law lexicons and judgments was then adverted to . As far as the Exemption Notification was concerned, it was clear to the Tribunal that the imported cups did not fall within the term "Others" against Sl.No. 6(c). It was not, the Tribunal observed, a question of the respondents (importers) "seeking to read the word "and" that is, in conjunctive manner". Regarding valuation, the Tribunal found that the Collector had compared unbranded bearings with bearings bearing reputed brand names. He had compared the assessable value of the cups, which he had held to be of Chinese origin, with the price of bearings imported from Czechoslovakia as the value of similar articles was not available in the price list of bearings from Russia. He had, subsequently, determined the value of Chinese bearings on best judgment assessment based on branded bearings of Russian origin. This determination was patently erroneous as unbraced goods could not be compared in price to branded goods and goods of one country of origin could not be said to be comparable to goods manufactured in another country. There was, further, no basis upon which the Collector could determine the valued of cups and cones in the ratio of 30 : 70. Therefore, the assessable value determined in the order under challenge

before the Tribunal could not be held to be correct and had to be discarded and the invoice value of the goods.

In sofar as classification is concerned, learned counsel for the appellants submitted that the Tribunal ought to have read the entry in the Exemption Notification as any ordinary man would have read it and not have got misled by legal interpretations of the words "and" and "or". Learned counsel for the respondents submitted that caps and cones and inner and outer rings of roller bearings comprised the entirety of roller bearings and, therefore, there was no scope for the classification of "Others" in Sl. No.6 unless the words " cups and cones" were read as one whole; in other words, it was only if the classification "others" was applied to caps imported separately, cones imported separately, inner rings imported separately and outer rings imported separately that the classification "Other" made sense. For this purpose learned counsel relied upon the extract of the Tribunal's order which we have quoted above.

All that the extracted order says is that cups and cones are the major component parts of roller bearings. The Tribunal does not hold that cups, cones and inner and outer rings comprise the entirety of roller bearings.

In our view, the Tribunal mis-directed itself. There is not question of reading the word "and" disjunctively here. The Exemption Notification must be read plainly, as an ordinary man would read it, and, so read, Sl.No. 6(a) says that cups of roller bearings are liable to the duty applicable to the bearings of which they are part and cones of roller bearings are liable to the rate of duty applicable to the bearings of which they are part. There is no justification for reading the entry connectively in the sense that the rate of duty applicable to the bearings of which they are part will apply only when the cups and cones of roller bearings are imported together but not if they are imported separately.

Insofar as valuation is concerned, the Collector was right in rejecting the transaction value of the goods because, plainly, it was a totally unrealistic value. For the purpose of placing a value on the goods, however, the Collector resorted to very tenuous reasoning which we cannot uphold. At the same time, we must say that we do not approve of the findings of the Tribunal in this behalf, which we have referred to above. It may in given case be necessary to value unbranded goods on the basis of the known price of branded goods and also the goods of the one country of origin, but the linkage must be appreciable and approximate.

We are of the view that the matter of valuation of the goods must go back to the Collector and the respondents and appellants should have that opportunity to place before him material as may enable him to arrive at their assessable value.

The appeal is allowed, The judgment and order the Tribunal under appeal is set aside. The matter is remanded to the Collector of Customs (Judicial), Bombay, or an equivalent officer. He shall proceed upon the basis that the goods fall under Sl. No. 6(a) of the Exemption Notification. He shall assess the value of the goods afresh, taking into account the material placed before him, and determine the Customs duty payable thereon.

There shall be no order as to costs.