CASE NO.:
Appeal (civil) 6408-6410 of 1999

PETITIONER:
THE COMMISSIONER OF CUSTOMS CHENNAI

Vs.

RESPONDENT:
M/S. YESES INTERNATIONAL

DATE OF JUDGMENT: 08/10/2001

BENCH:
N. Santosh Hegde & P. Venkatarama Reddi

JUDGMENT:

P.VENKATARAMA REDDI, J.

The respondent herein imported certain consignment of superior kerosene oil which was sold to it by Indian Oil Corporation on high sea sale basis. The controversy in this appeal is about the assessable value of the imported goods under Section 14 of the Customs Act 1962. The Assistant Commissioner of Customs assessed the value on the basis of final invoices raised by Indian Oil Corporation, Madras, which included CIF value, service charges plus other charges. Amongst other charges were demurrage, wharfage and stock loss. The respondent- assessee filed an appeal and contended inter alia that these charges were not includible in the assessable value for the reason that they were post-importation charges and an addition of CIF value at the rate of one percent having already been made in terms of the Customs Valuation Rules, 1988 to cover the landing charges, no further addition could be made under the above heads. The Appellate Commissioner accepted the contention of the appellant and allowed the appeal in respect of the above mentioned three items. However, the appeal was dismissed as regards bank charges and ocean losses with which we are not concerned. The appeal filed by the Revenue in CEGAT, Chennai Bench, was dismissed on 12.1.1999 following its earlier decision in final order Nos. 84 and 85 of 1998 dated 16.1.1998. The learned counsel appearing for the parties are not in a position to tell us whether that order of the Tribunal has become final. Be that as it may, the legality of the Tribunals order dated 12.1.1999 dismissing the Revenues appeal has been assailed in this appeal by the Revenue.

According to Section 14(1) of the Customs Act, the value for the purpose of charging customs duty on imported goods shall be deemed to be the price at which they are ordinarily sold or offered for sale for delivery at the time and place of importation, in the course of international trade provided that the seller and buyer have no mutual business interests and price is the sole consideration for the transaction. However, sub-section (1A) which was added to Section 14 in the year 1988 provides as follows :-

(1A) Subject to the provisions of sub-section (1), the price referred to in that sub-section in respect of imported goods shall be determined in accordance with the rules made in this behalf.

Pursuant to sub-section (1A) of Section 14 and in exercise of rule making power under Section 156, the Central Government framed the Customs

Valuation (Department of Price of Imported Goods) Rules, 1988. The relevant portion of Rule 9(2) is extracted hereunder:-

For the purposes of sub-section (1) and sub-section (1A) of Section 14 of the Customs Act, 1962 (52 of 1962 and these rules, the value of the imported goods shall be the value of such goods, for delivery at the time and place of importation and shall include

(a) the cost of transport of the imported goods to the place of importation;

(b) loading, unloading and handling charges associated with the delivery of the imported goods at the place of importation; and

(c) the cost of insurance :

Provided that

(i) where the cost of transport referred to in clause (a) is not ascertainable, such cost shall be twenty per cent of the free on board value of the goods;

(ii) the charges referred to in clause (b) shall be one per cent of the free on board value of the goods plus the cost of transport referred to in clause (a) plus the cost of insurance referred to in clause (c);

(iii) where the cost referred to in clause Â© is not ascertainable, such cost shall be 1.125% of free on board value of the goods;

xxx xxx xxx xxx

It is not in dispute that those provisions are applicable to the present case as the importation had taken place in 1995.

We shall now notice the findings of the Customs Authorities and the Tribunal. The Assistant Commissioner was of the view that whatever was charged in the final invoice including the service charges and other charges were includible in assessable value. The Appellate Commissioner, having noted the proposition that for ascertaining the price of the goods under Section 14 for the purpose of determination of assessable value one cannot go beyond the time of delivery at the place of import held that wharfage charges and charges on account of stock loss were incurred after landing and delivery of goods and, therefore, they were not includible in the assessable value. The Appellate Commissioner held that those cost factors had no relevance to the time of delivery of the goods at the place of importation. The Tribunal (CEGAT), as already noticed, followed its earlier order and quoted the extracts therefrom which read as under:-

We do not agree with the further submission in the grounds that whatever has been collected by the High seas seller from the customer would form part of the value in terms of Section 14 of the Customs Act read with the Customs Valuation Rules, 1988. Wharfage charges, stock loss expenses are essentially part of the landing charges, which as the Commissioner (Appeals) has rightly pointed out, have already been added in the valuation of the goods by way of 1% of the CIF value, in terms of the said Valuation Rules,

1988

Thus, it is seen that the Appellate Commissioner and the Tribunal had divergent approaches vis-Ã -vis the wharfage charges and the stock losses. As regards demurrage charges, the learned counsel for the Revenue has fairly stated that they cannot in any case be included in the assessable value. Therefore, we have not referred to the findings of the Appellate Authorities in this regard.

Learned senior counsel for the appellants placed reliance on the decision of this Court in Garden Silk Mills Ltd. Vs. Union of India [1999 (8) SCC 744] to support his argument that wharfage charges and charges on account of stock-losses are includible in the assessable value as per the methodology of valuation set out in Section 14(1). In that case, the question arose whether the landing charges could be taken into account in determining the assessable value of the imported goods. On a lucid analysis of Section 14(1) (a), the Court answered that question in favour of Revenue and observed that the value has to be determined in relation to the time when physical delivery to the importer can take place and physical delivery can take place only after the bill of entry, inter alia, for home consumption is filed and it is the value at that point of time which would be relevant. It was held that the landing charges which are imposed at or after the time of the discharge of the goods and prior to the clearance being granted under Section 47 of the Act, necessarily have to be taken into account in determining the value thereof for the purpose of assessing the customs duty. At paragraph 24, this Court approved the view taken by various High Courts that the concept of value as understood in Section 14 of the Act necessarily requires the landing charges to be included therein. Landing charges are the expenditure incurred by an importer for bringing goods on board ship to land (vide Coromandal Fertilisers Ltd. Vs. Collector of Customs [2000 (115) ELT 7]. Loading, unloading and handling charges referred to in clause (b) of Rule 9(2) are components of such landing charges. At present, in lieu of ascertainment of such actual landing charges, under clause (ii) to the proviso to Rule 9(2), specified percentage is added to the value.

The question whether wharfage charges and stock loss would form part of assessable value of imported goods did not fall for consideration in that case. Moreover at paragraph 6, it was explicitely stated that the Court was not concerned in that case with the Customs Valuation Rules of 1988. It was observed :

Post 1988, therefore, the value of the imported goods has to be determined in accordance with the rules which, according to the respondents, are based on the GATT Valuation Code. With these Rules, however, we are not concerned in the present case because all the goods were imported prior to the incorporation of Section 1A of Section 14 of the Act.

From the order of the Appellate Commissioner as well as Tribunal it is clear that landing charges at fixed percentage was added to the CIF value as provided for in Rule 9(2). Whether clause (b) of Rule 9(2) takes within its fold the charges incurred on account of wharfage is one aspect. Irrespective of that, if as held by the Appellate Commissioner, the wharfage expenses and stock losses were incurred after the delivery of the goods and on the conclusion of the event of importation, the question of including such charges in the assessable value does not arise, even according to the ratio of decision in Garden Silk Mills Ltd. (supra). The finding of the Appellate Commissioner has not been assailed in the memorandum of appeal or even in the course of arguments. Alternatively, even the finding of the Tribunal that the disputed items are components of landing charges for which extra one per cent was added, has not been assailed. The Revenue

virtually invites the Court to decide a legal question in vacuum without reference to the true factual position. The true nature of these charges and the point of time at which they were incurred cannot be appreciated without any details and relevant material before us. Even the pleadings do not bring out the material particulars. In these circumstances, we have no option but to dismiss the appeals. It is made clear that the appeals are being dismissed for want of sufficient particulars and relevant material necessary to appreciate the controversy in proper perspective. The findings arrived at by the Appellate Authorities do not therefore warrant interference though, as already indicated supra, there is divergence in the approach of the Tribunal and that of the Commissioner (Appeals) in regard to the nature of the disputed items.

Accordingly, the appeals are dismissed. There shall be no order as to costs.

J.
(N. SANTOSH HEGDE)

J.
(P.VENKATARAMA REDDI)

October 08, 2001