CASE NO.:
Appeal (civil) 2901 of 2000

PETITIONER:
COMMISSIONER OF CENTRAL EXCISE, MUMBAI

Vs.

RESPONDENT:
M/S. FISHER ROSEMOUNT (INDIA) LTD.

DATE OF JUDGMENT: 06/11/2001

BENCH:
N. Santosh Hegde & Ashok Bhan

JUDGMENT:

SANTOSH HEGDE, J.

In a dispute pertaining to determination of the valuation of goods imported by the respondent herein from M/s. Rosemount Inc. USA, the Assistant Collector of Customs, Special Valuation Bench, Bombay, held that the respondent herein is a related person to M/s. Rosemount Inc. of USA, hence, it assumed that both the said companies are interested in the business of each other and that the prices are not the sole consideration. Therefore, it held that the valuation of the goods imported by the respondent herein from M/s. Rosemount Inc. USA will have to be done under Section 14(1)(b) of the Customs Act, 1962 read with the Customs Valuation Rules, 1963. The said authority refused to accept the CIF value of the goods imported by the respondent, consequently, it made an addition of 2.4 per cent over and above the CIF value shown by the respondent of the goods imported by it. As stated above, this was done on the basis that the two companies, named hereinabove, had the status of related persons.

An appeal filed against the said determination by the respondent herein before the Collector of Customs (Appeals), Bombay, came to be dismissed, upholding the findings of the original authority.

The aggrieved respondent preferred an appeal before the Customs, Excise & Gold (Control) Appellate Tribunal, Regional Bench at Mumbai (for short the tribunal) which having reversed the said order of the original and appellate authority, the Commissioner of Central Excise, Mumbai, is before us in this appeal. The tribunal in this case, relying upon its own judgment in the case of Collector of Customs, Bombay v. Maruti Udyog Ltd., Gurgaon [1987 (28) ELT 390] came to the conclusion that mere holding of a certain percentage of stock by the foreign collaborator in the Indian company like the respondent herein, was not sufficient to constitute the relationship so as to make the two persons as related persons. It further held that for two parties to be related, it also required the

existence of interest by both in the business of each other. On the said basis, it came to the conclusion that mere fact that M/s. Rosemount Inc. USA, had the 40 per cent equity share in the respondent company and had provided technical data base for the manufacture of electronic pressure transmitters ipso facto did not make the two companies related persons. In the absence of any other material, the tribunal held that there was no reason to reject the price declared by the respondent for the purpose of valuation. On the said basis, the tribunal reversed the findings of the authorities below and allowed the appeal of the respondent.

It is contended on behalf of the appellant before us that M/s. Rosemount Inc. USA and M/s. Fisher Rosemount (India) Ltd., (the respondent herein) are related persons and have interest in the business of each other. Therefore, the valuating authority was justified in loading the declared value with extra 20%, more so because there was difference in the value of the goods exported by the American Company to Singapore and Australia on one hand and to the respondent on the other. It was also contended that the judgment of the tribunal in the case of Maruti Udyog Ltd. (supra) was wrongly relied upon by the tribunal, hence, the order under appeal is liable to be set aside.

The applicability of Section 14(1)(b) of the Act, to the facts of the case by the original and the appellate authority was solely based on the factum of related persons without there being any other acceptable evidence. This finding of related person was again based on the fact of the equity participation of the US Company in the Indian Company and the technical data base supplied by the US Company to the Indian Company.

In the case of Maruti Udyog Ltd. (supra), the tribunal had held :

> It is, no doubt, correct that Suzuki held 26% shares in Maruti and, for that reason, had a proportional representation on the Board of Directors of Maruti also. But Maruti had no share holding in Suzuki nor any representation on the Board of Directors of Suzuki. To rule out valuation under Section 14(1)(a), the seller and the buyer should have interest in the business of each other. One-sided interest is therefore, not enough; there has to be a mutuality of interest and Maruti is right in pleading that such mutuality of interest did not exist [1984 (17) ELT 323 (SC) Union of India & Ors. v. Atic Industries Ltd.]. Confronted with this situation, the learned representative of the department argued that Maruti had an indirect interest in the business of Suzuki since Maruti was interested in technical knowhow from Suzuki not only for the current models and their components but also for future models and their components. We do not agree with the departments plea. The transfer of technical knowhow from Suzuki to Maruti is a separate commercial transaction governed by the Licence Agreement and Suzuki charges a price for it. That does not create an interest of Maruti in the business of Suzuki, Japan.

Based on the above finding, the tribunal in that case had held that in the absence of any other material, it is not correct to load the import price. It also held in that case that no evidence had been led before it to show that even the payment of royalty induced any extra commercial reduction in the import price. This judgment of the tribunal has since been accepted by this Court in the case of Collector of Customs, Bombay v. Maruti Udyog Ltd., Gurgaon [1989 (22) ECR 482 (SC)]. Though by a brief judgment, this Court held that after examining the provisions of the Act and the facts found by the tribunal, the tribunal was right in its conclusion. On the said basis, the appeal of the Collector of Customs came to be dismissed, affirming the judgment of the tribunal. Therefore, the tribunal in the present case rightly relied on the said judgment in Maruti Udyog (supra), the facts of which case are almost similar to the facts of this case.

As noticed hereinabove, the original authority as well as the appellate authority proceeded on the basis that merely because the US Company owned 40 per cent of equity shares in the Indian Company and that provided the technical data base to the Indian Company as also the Indian Company got the licence to manufacture the electrical pressure transmitters in accordance with the said technical data, the same was sufficient to hold that the two companies were related persons. On this basis they drew an inference that the CIF value was not the sole consideration for sale of the goods imported by the respondent. Once, we find that the very basis relied upon by the original and the appellate authority suffers from the lack of acceptable material, then ipso facto the inference drawn from such conclusion also is liable to be set aside. If that be so, then there is hardly any other material to come to the conclusion that the CIF value declared by the respondent did not truly represent the correct value of the goods imported.

Shri Jaideep Gupta, learned counsel appearing for the appellant, pointed out that it is quite evident from the material on record that the CIF value of the goods imported by the respondent did not include the freight as could be seen from the documents available on record like the CIF value of the goods supplied by the said American Company to the other buyers at Australia and Singapore, hence, the authorities were justified in loading the cost declared by the respondent with 20% addition. Per contra, it is pointed out to us by Shri Joseph Vellapally, learned senior counsel for the respondent, that assuming it is so even then the value of the goods imported by the respondent was much higher than the value of the goods supplied by the American Company to the purchasers at Australia and Singapore. Therefore, no adverse inference could have been drawn on this count. Be that as it may, it is sufficient for us to hold that once the case of the Revenue that the American and the Indian Company (respondent) are related persons, fails, we think the tribunal was justified in setting aside the orders of the original as well as the appellate authority and we find no reason to interfere with the same.

For the reasons stated above, this appeal fails and the same is hereby dismissed. No costs.

J.
(N.Santosh Hegde)

..J

November 6, 2001. (Ashok Bhan)

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