



Supreme Court: On fixation of handling charges, when actual cost ascertainable, for the purposes of addition of costs to the assessable value of imported goods

Tax Alert
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Wipro Limited vs. Assistant Collector of Customs & Others¹

Vide the captioned ruling, the Hon'ble Supreme Court has declared the law that proviso (ii) to Rule 9(2) of the Customs Valuation (Determination of Price of Imported Goods) Rules, 1988 ("Valuation Rules 1988"), to the extent it seeks to introduce a fiction for arriving at the purported cost of loading, unloading and handling charges even when the actual charges paid are available and ascertainable, is arbitrary and should be read down to mean that it would be applicable only in a situation, where the actual cost of such services is not ascertainable. In doing so, the Hon'ble Supreme Court has also held that insofar as the Valuation Rules 1988 are concerned, the endeavour is to arrive at an assessable value "*having closest proximity with the actual price*" and that when a cost is to be added to the price, it mandatorily ought to be "*to the extent they are incurred by the buyer*", that is to say, the actual cost incurred.

FACTS

1. The appellant-importer, engaged in the manufacture and marketing of mini and micro computer systems and peripheral devices and import of various components including software, had presented for assessment in Madras, a Bill of Entry dated 15.04.1993 in respect of a consignment with chargeable weight of 315 kgs.
2. As per the tariff of the International Airport Authority of India, Madras, the actual loading, unloading and handling charges amounted to Rs.65.40. However, the tax authorities added a sum of Rs.15,214.69 to the value of the goods as handling charges, on the basis of proviso (ii) to Rule 9(2) of the Valuation Rules 1988, as amended vide Notification No.39/90 dated July 05 1990, which entitled them to add 1% of the free-on-board ("F.O.B.") value of goods as loading, unloading and handling charges. As a consequence of addition of the notional handling charges, the actual duty charged amounted to Rs.16,209.20 instead of Rs.69.98.
3. Aggrieved, the appellant-importer challenged the validity of the said proviso before the Madras High Court on the premise that the same was not only *ultra vires* Section 14(1) and Section 14(1-A) of the Customs Act, 1962 ("Act") but was also violative of Article 14 and Article 19(1)(g) of the Constitution of India.
4. The Madras High Court dismissed the appellant-importer's writ petitions *inter alia* holding that "*For the purpose of determination of the value, rules have been made and taking into consideration the difficulties experienced in the past in fixing the handling charges on the actuals, it is fixed at one percent of the CIF value of the goods. When the statute confers the power to make rules for determination of the value, such determination of the value by imposition of the same as a percentage cannot at any stretch of imagination be considered as repugnant to Section 14(1) or discriminatory.*"
5. This in turn caused the appellant-importer to file a Special Leave Petition before the Hon'ble Supreme Court, which was allowed and hence the captioned judgment.

JUDGMENT

The Hon'ble Supreme Court ruled in favour of the respondent-importer and held that proviso (ii) to Rule 9(2) of the Valuation Rules 1988, inasmuch as it seeks to introduce a fiction for addition of cost of loading, unloading and handling charges, even when the actual cost thereof is available for consideration, is contrary to and *ultra vires* the provisions of Section 14 of the Act. To that extent, the proviso is not in conformity with the objectives sought to be achieved vide the Valuation Rules 1988. The following are the important observations by the Hon'ble Supreme Court:

1. Wherever actual cost of the goods or the services is available, that would be the determinative factor and it is only in the absence of actual cost that the notional cost may be adopted. The legislative intent and objective is clearly to arrive at value of goods or services as well as costs and services which bear almost near resemblance to the actual price of the goods or actual price of costs and services. This is amply demonstrated by the fact that in the rules required to be applied for valuation i.e. Valuation Rules, the sequence goes from the price of identical goods to similar goods and then to deductive value and the best judgment assessment, as a last resort.
2. The rule making authority undoubtedly has the power to make rules, but such power has to be exercised by making the rules

¹ Civil Appeal Nos. 9766-9775 of 2003 with Civil Appeal Nos. 1950-1951 of 2004 (the judgment was pronounced on 16th April, 2015)

consistent with the scheme of the Act and not repugnant to the main provisions of the statute itself, as is the case with proviso (ii) to Rule 9(2) of the Valuation Rules 1988, as amended in 1990. Referring to its own decision in **Garden Silk Mills vs. Union of India**², relied upon by the Madras High Court in its Order, the Hon'ble Supreme Court observed that the said decision was delivered in the context of a factual situation when the actual cost was not ascertainable and that it was prior to the amendment in 1990. The Hon'ble Supreme Court further placed reliance on its own decision in **Kunj Behari Lal vs. State of Himachal Pradesh**³ to emphasize that a delegated power to legislate by making rules "for carrying out the purposes of the Act" is a general delegation without laying down any guidelines; it cannot be so exercised as to bring into existence substantive rights or obligations or disabilities not contemplated by the provisions of the Act itself.

3. Even though notional fixation of the cost of loading, unloading and handling charges at 1% of the F.O.B. value of goods would help customs authorities to apply the afore-stated rate uniformly, it would not ever qualify as a reasonable yardstick when such charges are known and ascertainable. The proviso in question as also the Valuation Rules 1988, being enacted on the lines of GATT guidelines, ought to adhere to the actual cost principle which is the essence thereof.

ELP COMMENTS

This judgment of the Hon'ble Supreme Court re-emphasizes the settled principle of law relating to customs valuation that the transaction value of goods i.e. the actual cost paid or payable is sacrosanct and that the said price can be disregarded only in the circumstances stipulated in law itself and none other. It also clearly spells out that the role of a deeming fiction in law should be restricted to the contour of the law in the context of which it was created and cannot over-ride or transcend it.

Here, it is also crucial to highlight that the text of proviso (ii) to Rule 9(2) of the Valuation Rules 1988, sought to be read down by the captioned judgment, is identical to that used in proviso (ii) to Rule 10(2) of the existing Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 (Valuation Rules 2007) and is in *pari materia* therewith. Accordingly, this judgment will have a bearing on pending issues before various judicial and quasi-judicial fora in the context of both the Valuation Rules of 1988 and 2007.

Also, while importers of high value goods of less or limited weight will be benefitted by this judgment, it may increase the assessable value in respect of goods which may not be of high value necessarily, but have a higher chargeable weight. Importers of such goods may do well to factor the increased customs duty while negotiating contracts with suppliers.

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² [(1998) 8 SCC 744]

³ [(2000) 3 SCC 40]