

DP

C.A.No. 5950 OF 1999

L.....T.....T.....T.....T.....T.....T.....T.....T.....T.....T.....J.R

Item No.	Court No.	Section
104	03	III

S U P R E M E C O U R T O F I N D I A
Record of Proceedings

Civil Appeal No. 5950 of 1999

Commissioner of Customs, Madras	Appellant (s)
vs.	

M/s. A-One Electronics	Respondent(s)
(with appln.(s) for stay and office report)	

Date:13/09/2001 This/These matter(s) was/were called on for hearing today.

CORAM:

HON'BLE MR. JUSTICE B.N. KIRPAL
HON'BLE MR. JUSTICE N. SANTOSH HEGDE
HON'BLE MR. JUSTICE P. VENKATARAMA REDDI

For the Appellant (s): Mr. T L V Iyer, Sr. Adv.
Mr. Hemant Sharma, Adv.
Mr. B K Prasad, Adv.

For the Respondent(s): Mr. Rajesh Kumar, Adv.
Mr. M C Sharma, Adv.

UPON hearing the counsel the Court made the following
ORDER

.....L.....I.....T.....T.....T.....T.....T.....T.....T.....J.R

For the reasons stated in the signed order, this appeal is allowed, the impugned decision of the Tribunal is set aside and the decision of the Commissioner of Customs dated 23rd October, 1997 affirmed.

There will be no order as to costs.

(D.P. Walia)
Court Master

(S.L. Goyal)
Court Master

(Signed Order is placed on the file)
(Signed Order is placed on the file)

.PA
.....L.....I.....T.....T.....T.....T.....T.....T.....T.....J.R
.PL60

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 5950 OF 1999@@
CCCCCCCCCCCCCCCCCCCCCCCCCCCCCCCC

Commissioner of Customs, Madras ..Appellant(s)

vs.

M/s. A-One Electronics ..Respondent(s)

O R D E R@@
CCCCCCCC

.SP2

The respondent imported 1000 pieces of down converters from Singapore. According to the bill of entry which was filed, it was stated that the country of origin of the goods was Singapore and the price at which the goods were to be cleared for consumption was declared at US \$ 4.25 per piece.

The Collector of Customs vide his order dated 28th October, 1993 did not accept the valuation as declared by the respondent. He took into consideration one quotation dated 16th April, 1993 from a Singapore company which was of about US \$ 75 per piece and one other valuation at US \$ 38 per piece. The Collector also ascertained from M/s. Solidair India Ltd., another company which had imported the same item but of Taiwan-make and found out that the price there was Rs.1220-1250 per piece. The Collector then came to the conclusion that the correct value which should be determined, considering the quantity imported, would be US \$ 33.60 per piece FOB and to this was added insurance and freight. An order of confiscation was passed but the respondent was permitted to pay redemption fine of Rs. 1,50,000/- and redeem ...2/-

:2:

the goods. In addition thereto, penalty of Rs. 50,000/- was also imposed.

The Customs, Excise and Gold (Control) Appellate Tribunal (for short "the Tribunal") in an appeal filed against the said decision considered the evidence relied upon by the Collector and also adverted to evidence produced by the respondent herein in the form of bills of entry dated 12th August, 1993 for US \$ 22 per piece and 27th August, 1993 for US \$ 16 per piece. The latter bills of entry had not been accepted by the Collector on the ground that they were of a period six months subsequent to the bill of entry filed by the respondent.

The Tribunal came to the conclusion that the Collector should have collected contemporaneous evidence and if that was not available then the question of taking these documents into consideration would arise. The Tribunal set aside the order of the Collector and directed reconsideration thereof.

The Commissioner of Customs, which was the successor to the Collector, after remand examined the goods once again and took into consideration import which had been made by one company in Hyderabad of 50 satellite receivers. The price charged in respect thereof was US \$ 42 per piece and the goods had arrived on 7th March, 1993. This import was most proximate in time to the import of the respondent which was covered by the bill of entry dated 20th February, 1993. Taking into account the fact that the quantity imported by the

respondent was more than what was imported by the Hyderabad
....3/-

:3:

company, he gave a discount of 20 per cent on the price list and arrived at a figure of US \$ 33.6 per piece FOB. The Commissioner of Customs in a sense upheld and followed the earlier order of the Collector except that the amount of redemption fine and penalty was reduced to Rs. 50,000/ and Rs. 10,000/- respectively.

In appeal, the Tribunal in the impugned order has observed that the order of the Commissioner is incorrect, inasmuch as on remand it was required to verify and accept the bills of entry dated 12th August, 1993 and 27th August, 1993 which had been relied upon by the respondent. The Tribunal further came to the conclusion that the Commissioner has not made any attempt to place evidence of contemporaneous import of similar goods and in flagrant violation of the directions given by it the Commissioner has merely relied on the same evidence. The Tribunal then referred to the two bills of entry dated 12th August, 1993 and 27th August, 1993 where the price quoted was US \$ 22 per piece and US \$ 16 per piece respectively and held that while accepting this evidence the appeal filed by the respondent deserved to be allowed and the order of confiscation and enhancement of the value set aside. Hence, this appeal.

In our opinion, the order of the Tribunal is wrong and erroneous, to say the least, for more than one reasons.
..4/-

:4:

Firstly, the effect of the order of the Tribunal is that the original value of US \$ 4.25 disclosed by the respondent stands accepted. This is contrary to the Tribunal's own finding where it had accepted the valuation as per the bills of entry dated 12th August, 1993 and 27th August, 1993 which was US \$ 22 per piece and US \$ 16 per piece. Secondly, in the order of remand by the Tribunal dated 3rd April, 1996, there was no direction that the two bills of entry dated 12th August, 1993 and 27th August, 1993 were to be verified and accepted. As has already been noticed hereinabove, the direction of the Tribunal in the order was that the Commissioner should get contemporaneous evidence of the value of the goods imported and it is only in absence thereof that the correctness and genuineness of the documents in question had to be gone into. Lastly, the Tribunal erred in coming to the conclusion that the order of the Commissioner was based on the evidence which had already been rejected earlier. The Tribunal in the impugned order overlooked the fact that the decision of the Commissioner on remand was based on the import made by the Hyderabad company at US \$ 42 per piece and after giving a discount for the large number of pieces imported, the FOB value arrived at was US \$ 33.6 per piece. The order of the Tribunal, therefore, is obviously contrary to the facts on the record and cannot be sustained.

For the aforesaid reasons, this appeal is allowed, the impugned decision of the Tribunal is set aside and the
...5/-

:5:

decision of the Commissioner of Customs dated 23rd October, 1997 affirmed.

There will be no order as to costs.

.....J.
(B.N. KIRPAL)

.....J.
(N. SANTOSH HEGDE)

.....J.
(P. VENKATARAMA REDDI)

New Delhi;
September 13, 2001.