

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(S).4479 OF 2006

COMMISSIONER OF CUSTOMS (I)

APPELLANT(S)

VERSUS

M/S. AASU EXIM PVT. LTD.

RESPONDENT(S)

O R D E R

1. The appeal under Section 130E(b) of the Customs Act, 1962 seeks to assail an order dated 10.01.2006 passed by the learned Customs, Excise and Service Tax Appellate Tribunal (hereinafter referred to as 'the learned Tribunal') by which the orders of the primary and the First Appellate Authority holding the respondent-assessee liable for differential duty to the extent of Rs.4,79,11,879/- has been reversed.

2. Considering the extremely limited scope of an appeal to be heard and considered by this Court under the provisions of 130E(b)

of the Customs Act, it will be hardly necessary to embark upon a detailed enumeration of the voluminous facts, figures and materials that have been considered by the authorities at different levels at different points of time. Suffice, it will be to say that orders of the primary and the First Appellate Authority holding the issue against the assessee is primarily founded on the ground that there was a mis-declaration by the assessee with regard to the grade of item(s) imported by the assessee. According to the Revenue, the goods were to be graded only as Grade "A" and "AA" whereas the assessee had graded the goods under the grades A, B and C. As the grading itself found to be inaccurate the transaction value on the basis of such grading was held to be unacceptable. Hence reliance was placed on a standing order dated 04.02.2000 wherein the acceptable value of the like goods are mentioned. The prices mentioned therein were further found to be substantiated by the

contemporaneous documents produced by the Revenue in the course of the adjudication.

3. In appeal, the learned Tribunal found that the following documents produced by the assessee were not disputed by the Revenue.

- i. Contract between the manufacturer and the supplier.
- ii. Contract between the supplier and the appellants.
- iii Invoice raised by the manufacturer on the supplier
- iv. Letter dated 22.12.2000 of the Board of Foreign Trade, Ministry of Economic Affairs, Taiwan, confirming that grades B, C and D also exist.
- v. Detailed note/letter of the manufacturer setting out the parameters of grading adopted by the manufacturers of the yarn in question.

4. Insofar as grading is concerned, apart from the letter dated 22.12.2000 of the Board of Foreign Trade, Ministry of Economic Affairs, Taiwan confirming that grades B, C and D also exist, what was available on record is an

intra-departmental communication dated  
12.04.1999 which is to the following effect :

xxxx                      xxxx                      xxxx

"The criteria for grading of yarns for quality in terms of first grade, 'B' or 'C' grade and Dyeing quality are also decided by visual inspection of the entire lot for freedom from various defects and other parameters and therefore cannot be decided only on the basis of a test report."

5.            The above materials, according to the learned Tribunal, were sufficient to reverse the finding of the primary and the First Appellate Authority on the point of grading.

6.            Coming to the second issue, namely, transaction value, the learned Tribunal took into account that a total of 16 bills of entry were relied upon by the Revenue claiming the same to be evidence of contemporaneous value of the imported yarns i.e. Partially Oriented Yarn of Polyester (POY), Polyester Textured Yarn (PTY) and Polyester Filament (PFY). None of the aforesaid bills of entry were relatable to

PTY, whereas eight bills of entry were relatable to POY and PFY each.

7. The finding of the learned Tribunal is that almost half of number of the said bills of entry relating to each item of Yarn i.e. POY and PFY did not pertain to the yarns imported by the assessee and, in case of the rest, there was a variance in the price mentioned in the aforesaid bills of entry and those in the standing order; yet the prices mentioned in the said standing order were adopted to determine the transaction value.

8. It is on the basis of the aforesaid consideration that the learned Tribunal thought it proper to take the view that the claim of the Revenue on the basis of contemporaneous records is not established and what was done was a determination/assessment based on the standing order which is prohibited by Rule 8(2) (v) of the Customs Valuation Rules, 1988.

9. In "*Steel Authority of India Ltd. vs. Designated Authority, Directorate General of*

*Anti Dumping & Allied Duties & Ors.*<sup>1</sup> decided by this Court on 17.04.2017, the scope of an appeal under Section 130E(b) of the Customs Act has been dealt with in detail. It has been held that the following conditions must be satisfied for exercise of jurisdiction under Section 130E(b) of the Customs Act.

(i) The question raised or arising must have a direct and/or proximate nexus to the question of determination of the applicable rate of duty or to the determination of the value of the goods for the purposes of assessment of duty. This is a sine qua non for the admission of the appeal before this Court under Section 130E(b) of the Act.

(ii) The question raised must involve a substantial question of law which has not been answered or, on which, there is a conflict of decisions necessitating a resolution.

(iii) If the tribunal, on consideration of the material and relevant facts, had arrived at a conclusion which is a

possible conclusion, the same must be allowed to rest even if this Court is inclined to take another view of the matter.

(iv) The tribunal had acted in gross violation of the procedure or principles of natural justice occasioning a failure of justice.

10. If the basis on which the learned Tribunal had arrived at its conclusion and thought it proper to reverse conclusions of the primary and First Appellate Authority is to be considered in the light what has been stated above we will have no hesitation in coming to the conclusion that in the present case the learned Tribunal has arrived at a conclusion which is possible and permissible upon due consideration of the relevant materials.

11. The issues raised and the arguments advanced on behalf of the appellant-Revenue at best would go to show that questions with regard to the correctness of the findings recorded by the learned Tribunal has been raised in the present appeal which are

essentially findings of fact. No question of law much less a substantial question of law of general importance arises for consideration in the present appeal. We, therefore, on the aforesaid reasons and on the ratio in *Steel Authority of India Ltd.* (supra), decline to interfere with the order passed by the learned Tribunal.

12. Accordingly, we dismiss the appeal and affirm the order dated 10.01.2006 passed by the learned Tribunal.

....., J.  
(RANJAN GOGOI)

....., J.  
(R. BANUMATHI)

NEW DELHI  
NOVEMBER 21, 2017

ITEM NO.101

COURT NO.3

SECTION IX

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

Civil Appeal No(s). 4479/2006

COMMNR. OF CUSTOMS (I)

Appellant(s)

VERSUS

M/S. AASU EXIM PVT. LTD.

Respondent(s)

Date : 21-11-2017 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE RANJAN GOGOI  
HON'BLE MRS. JUSTICE R. BANUMATHI

For Appellant(s)      Mr. K. Radhakrishnan, Sr. Adv.  
                                 Mr. Ashok K.Srivastava, Adv.  
                                 Mr. Shekhar Vyas, Adv.  
                                 Mr. Arun Pathak, Adv.  
                                 Mr. B. Krishna Prasad, AOR

For Respondent(s)    Mr. S. Vasudevan, Adv.  
                                 Mr. R. Ramachandran, Adv.  
                                 Mr. Dhruv Matta, Adv.  
                                 Ms. Nupur Maheshwari, Adv.  
                                 Mr. M. P. Devanath, AOR  
                                 Mr. Aditya Bhattacharya, Adv.  
                                 Mr. Victor Das, Adv.  
                                 Ms. Apeksha Mehta, Adv.

UPON hearing the counsel the Court made the following  
O R D E R

The appeal is dismissed in terms of the  
signed order.

Pending application(s), if any, shall stand  
disposed of.

(NEETU KHAJURIA)  
COURT MASTER

(ASHA SONI)  
BRANCH OFFICER

(Signed order is placed on the file.)