Present:
Mr. Justice Mohammad Bazlur Rahman
and
Mr. Justice Md. Ruhul Quddus

Customs Appeal Nos. 5-7 of 2006

M/S Globe Enterprise
é Appellant in Customs Appeal 5 of 2006

M/S Jahan Store
é Appellant in Customs Appeals 6-7 of 2006
.

-Versus-

Customs Excise and Vat Appellate Tribunal and others
... Respondents in all the customs appeals

Mr. S. M. Arif, Advocate
... for appellant in all the customs appeals

Mr. Pratikar Chakma, A.A.G
... for respondent 1 in all the customs appeals

Judgment on 22.05.2013

Md. Ruhul Quddus, J:

These three customs appeals involving common questions of law and facts have been heard together and are being disposed of by one judgment.

Customs Appeal No.5 of 2006 was preferred against judgment and order dated 10.05.2005 passed by the Customs Excise and VAT Appellate Tribunal, Dhaka in Appeal No. CEVT/Case(Cus) 443/2001 dismissing the same affirming order No. 60 dated 24.06.2001 (communicated on 27.09.2001) of the Commissioner of Customs (Refund), Customs House, Chittagong passed in Nothi No. S-7/377/R/94/242/Cus. The Commissioner

of Customs by the said order rejected an application filed by the appellant for refund of excess tax and duties.

Customs Appeal No.6 of 2006 was preferred against similar nature of judgment and order dated 03.10.2005 (communicated on 20.10.2005) of the Customs Excise and VAT Appellate Tribunal, Dhaka dismissing Appeal No. CEVT/Case (Cus) 441/2001 upholding order dated 24.06.2001 (communicated on 27.09.2001) of the Commissioner of Customs (Refund), Customs House, Chittagong passed in Nothi No. S-7/378/R/94/245/Cus.

Customs Appeal No.7 of 2006 was also preferred against similar nature of judgment and order dated 03.10.2005 (communicated on 20.10.2005) of the Customs Excise and VAT Appellate Tribunal dismissing Appeal No. CEVT/Case (Cus) 440/2001 upholding order dated 24.06.2001 (communicated on 27.09.2001) of the Commissioner of Customs (Refund), Customs House, Chittagong passed in Nothi No. S-7/463/R/94/246/Cus.

Facts giving rise to Customs Appeal No.5 of 2006, in brief, are that the appellant M/S Globe Enterprise being an importer opened a letter of credit on 30.11.1993 through Agrani Bank Ltd., Agrabad Branch, Chittagong and imported 500 Metric tons of Soda Ash light classified under H S Code No.2836.20 from Romania through his principal in Singapore. The goods reached Chittagong port on 05.03.1993 and the importer submitted bill of entry No.1339 for release of the same on 06.03.1993. In the bill of entry as well as in other import documents the value of the goods was declared U S Dollar 150/= per metric ton, but the Customs authority assessed its duties and taxes on the basis of tariff value ($ 275/=) in force on

the date of submitting the bill of entry. Subsequently the appellant filed an application for refund on 08.05.1995, but did not pursue the same for a long period. He pursued the matter by filling another application dated 21.08.2000 to the Commissioner of Customs (Refund), who rejected the same by his order dated 24.06.2001. Against the said order of rejection/refusal, the importer filed Appeal No. CEVT/ Case (Cus) 443/2001, which was dismissed by the impugned judgment and order.

Facts necessary for disposal of the two other customs appeals are similar and as such need not to be produced.

Mr. S. M. Arif, learned Advocate for appellants in all the appeals submits that the tariff value as taken for assessment of the imported goods was fixed without any guideline and in an arbitrary manner and as such the very fixation of tariff value of the imported soda ash at U S Dollar 275/= per metric ton was without lawful authority. Assessment of taxes and duties of the imported goods on the basis of such tariff value, which was unreasonably higher than the real transaction value, was also illegal and without lawful authority. Therefore, the importer was legally entitled to get refund of the excess amount. In support of his submission Mr. Arif refers to the case of Mostafa Kamal and another Vs. Commissioner of Customs and another, 52 DLR(AD) 1.

On the other hand Mr. Pratikar Chakma, learned Assistant Attorney General appearing for respondent 1 in all the appeals submits that subsequent to the said decision it was settled in the case of Bangladesh and others Vs. Mizanur Rahman, 52 DLR (AD) 149 that custom duty would be

payable by the importer on the basis of tariff value in force on the date of presentation of the bill of entry. He then submits that the Customs Act by confers authority on the Government to fix tariff value for the purpose of assessment of custom duty against any goods imported. There was nothing wrong in the original order of assessment and the importer was not entitled to any refund.

We have considered the submissions of the learned Advocates, and gone through the records as well as the decisions cited. We have also consulted the relevant provisions of the Customs Act. Section 25 (3) of the Customs Act confers authority on the Government to fix tariff value against any goods imported for the purpose of assessment of custom duty. The Government had the same authority under section 25 (7) of the Act before its amendment by section 4 (4) of the Finance Act, 1997 (No. XV of 1997). In the above cited case of Bangladesh and others Vs. Mizanur Rahman it has been settled that the custom duty would be charged for any imported goods on the basis of tariff value in force on the date of presentation of the bill of entry. In all the present cases on the date of presentation of the bills of entry, the tariff value of soda ash light was fixed at U S Dollar 275/= per metric ton, on which basis the Customs authority charged duties of the imported goods.

In the case of Mostafa Kamal as cited by the learned Advocate for the appellant, a direction for assessment of duty on the basis of tariff value vis-a-vis SRO No. 2/96-Cus dated 18.9.1996 fixing the tariff value for soda ash were challenged in a writ petition, but in the present case the notification fixing the tariff value of soda ash prevailing at the relevant time was not

challenged. In fact, question of challenging any S.R.O in an application for refund does not arise. The instant customs appeals are originated from different orders of rejection of applications for refund. Therefore, the case cited by the learned Advocate for the appellant has no manner of application in the present case.

In view of the above we do not find any illegality in any of the impugned orders. Accordingly, all the customs appeals are dismissed.

Communicate a copy of the judgment.

Mohammad Bazlur Rahman, J:

I agree.