2024 INSC 204

**Non-Reportable**

**IN THE SUPREME COURT OF INDIA**
**CIVIL APPELLATE JURISDICTION**

**CIVIL APPEAL NO. 9385 OF 2022**

**M/s Global Technologies and Research ... Appellant**

***versus***

**Principal Commissioner of Customs,**
**New Delhi (Import) ... Respondent**

**J U D G M E N T**

**ABHAY S. OKA, J.**

**FACTUAL ASPECTS**

**1.** The appellant assessee has taken an exception to the judgment and order dated 29th September 2022 passed by the Customs, Excise & Service Tax Appellate Tribunal (for short, 'the CESTAT') in an appeal preferred under Section 129 (A) of the Customs Act, 1962 (the Customs Act). We must refer to a few factual aspects. The appellant assessee has been a regular importer of camera stabilizer devices for the last several years. The appellant assessee imported a consignment of camera stabilizer devices under a Bill of Entry dated 16th February 2018. The consignment was covered under the Invoice dated 30th January 2018, having a total value of USD 20,353 (CF). The invoice was issued by

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Date: 2024.03.15 16:34:53 IST
Reason:

M/s.Guilin Zhishen Information Technology Co. Ltd. in China.

**2.** Out of the 4 different categories of goods, the dispute is about 3 categories, the description of which is as under:

| **Item Sr. No.** | **Description of Goods** | **Customs Tariff Head** | **Qty. in PCS** | **Unit price in USD** | **Assessable Value (in INR)** | **Customs Duty (in INR)** |
|---|---|---|---|---|---|---|
| **1.** | Camera Stand (3 Axis Stabilizer-CRA02, Unpopular Brand) | 9620 0000 | 180 | 55 | 777640.67 | 240913.10 |
| **2.** | Camera Stand (3 Axis Stabilizer-CRA01, Unpopular Brand) | 9620 0000 | 110 | 45 | 388820.34 | 120456.50 |
| **3.** | Dual Handle (Unpopular Brand, Parts of Camera Stand) | 8529 9090 | 50 | 10 | 39274.78 | 12167.30 |

**3.** On the basis of the Intelligence, the goods were examined 100% by SIIB officers. It was alleged that the goods were grossly undervalued. After taking representative samples, the goods were detained for further investigation. On 21st February 2018, the goods were seized on the ground that the same were found to be mis-declared and undervalued. Statements under Section 108 of the Customs Act of the respondent and the customs broker were recorded on 23rd February 2018. The appellant's past import details were retrieved from the system, and it was found that the importer had imported identical/similar items with the same

model numbers at higher and different unit prices. The appellant submitted a letter dated 7th March 2018 to the Commissioner of Customs (Import), New Delhi, stating that the goods were imported from the manufacturer supported by the manufacturer's invoice and that the value of the goods was listed on some of the well-known online trading and B2B websites. The appellant relied upon the letter dated 16th January 2018 from the manufacturer stating that the goods were of a lower version. The Department claims to have conducted a market survey on 26th March 2018.

**4.** The order-in-original dated 31st March 2018 was passed by the adjudicating authority rejecting the declared assessable value of Rs.12,87,742/- for the goods imported under Bill of Entry dated 16th February 2018 in terms of Rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 (for short, 'the Valuation Rules') read with Section 14 of the Customs Act. The adjudicating authority assessed the value of the imported goods at Rs.66,18,575/-. The adjudicating authority ordered recovery of differential customs duty of Rs.16,22,228/-. An order of confiscation under Section 111 of the Customs Act was passed, giving the appellant an option to redeem the goods on payment of a redemption fine of Rs.9,93,000/. The adjudicating authority imposed penalties of Rs.2,00,000/- and Rs.3,31,000/- on the importer under Sections 112(a) and 114AA respectively of the Customs Act. The appellant preferred an appeal before the Commissioner of Customs

(Appeals). The Commissioner allowed the said appeal by the judgment dated 17th December 2020. On 2nd November 2021, the Committee of Commissioners, in the exercise of powers under sub-section (2) of Section 129A of the Customs Act, directed the Department to file an appeal against the order dated 17th December 2020. Accordingly, an appeal was preferred before the CESTAT on 17th November 2021. By impugned judgment dated 29th September 2022, the appeal was allowed, and the CESTAT restored the order-in-original passed by the adjudicating authority.

**SUBMISSIONS**

**5.** The learned senior counsel appearing for the appellant has taken us through the impugned order. His first submission is that the review order passed by the Committee of Commissioners under sub-section (2) of Section 129A was hopelessly time-barred as the same was passed after a lapse of more than 10 months from the date of the order of the Commissioner (Appeals). His second submission is that CESTAT completely ignored the definitions of 'identical' and 'similar' goods under the Valuation Rules. He submitted that the finding that the goods imported by the appellant in the past were similar or identical is completely erroneous, as the earlier goods purchased were not comparable at all. Coming to the first Item of the Camera Stand (3-axis Stabilizer-CRA02, Unpopular Brand), he submitted that the said Item was completely different from the Item imported by the appellant with a Bill of Entry dated 13th November 2017,

which was described as "Camera Stand (Zhiyun Crane 2 Model CRA02)". He submitted that the hardware and software for both Items were different. The appellant submitted a detailed technical letter dated 12th December 2017 issued by the manufacturer, which indicates that the first item was of an unpopular brand with a lower version. Regarding Item No.2 of Camera Stand (3 Axis Stabilizer - CRA01, Unpopular Brand), he submitted that it could not be compared with earlier Items imported by the appellant with a Bill of Entry dated 13th November 2017. The Item was a "Camera Stand (Zhiyun Crane, Type Monopod)". He submitted that the features of both Items were completely different, as can be seen from the table reproduced by the adjudicating authority in order-in-original. As regards Item no.3 of [Dual handle (Unpopular Brand), parts of Camera Stand], he submitted that same was sought to be compared with a completely different Item imported by the appellant with a Bill of Entry dated 13th November 2017, which was described as "Dual Handle for Camera Stand (for Zhiyun Crane)". He would, therefore, urge that, as found by the Commissioner (Appeals), the earlier goods imported by the appellant were neither identical nor similar goods. He would, therefore, submit that CESTAT committed an error by interfering with the judgment and order of the Commissioner (Appeals).

**6.** The learned ASG appearing for the respondent - Revenue pointed out that under sub-section (2) of Section 129A for exercising power by the Committee of

Commissioners, no time limit was incorporated in the Customs Act. However, under Section 129D, which deals with orders passed by the original authority, for a similar exercise to be done by the Committee of Commissioners, a limitation of 30 days has been prescribed. He submitted that the judgment and order of the Commissioner (Appeals) was passed on 17th December 2020, and the order under sub-section (2) of Section 129A was made on 2nd November 2021. He submitted that those were the days of the COVID-19 pandemic, and the orders passed by this Court in the exercise of *suo motu* powers of extending limitations were in force at that time. Learned ASG invited our attention to the fact that under the Bill of Entry subject matter of the appeal, the goods were shown as "unpopular models". He submitted that there was no explanation as to why, within a few months, the goods had become unpopular. He pointed out that though later on, the importer claimed that the goods imported were of low versions compared to the earlier goods, the market survey showed that there were no such low versions in the market. He invited our attention to the comparison of features of the goods imported under the subject Bill of Entry and the earlier imports. He submitted that, as regards all three Items, the earlier imported Items were more or less the same. The manufacturer has described the goods subject matter of the impugned Bill of Entry as an unpopular brand. He submitted that in the order-in-original, the adjudicating authority had recorded a finding of fact that Item nos. 1 and 3 imported by the appellant were identical and Item no.2 was of similar

goods. The goods in Item no.3 were identical to the goods earlier imported. He submitted that the said finding of fact has been reaffirmed by the CESTAT, and therefore, no interference is called for.

**CONSIDERATION OF SUBMISSIONS**

**7.** We have considered the submissions made across the Bar. We also perused the submissions in "brief", running into 35 pages filed by the appellant before the CESTAT. The first issue is of the bar of limitation in the exercise of powers under sub-section (2) of Section 129A. Sub-section (2) incorporates the powers of the Committee of Commissioners of Customs. If the said Committee is of the opinion that an order passed by the Appellate Commissioner of Customs or Commissioner of Customs (Appeals) under Section 128 or 128A of the Customs Act is not legal and proper, it can direct the appropriate officer to file an appeal before the CESTAT. On plain reading of Section 129A, we find that no specific time period has been prescribed for the Committee of Commissioners to exercise the power under sub-section (2) of Section 129A. Section 129D of the Customs Act deals with similar powers of the Committee of Commissioners when orders are passed by the Principal Commissioners of Customs as adjudicating authority. There is a similar power to direct the proper officer to apply to the Appellate Tribunal. However, sub-section (3) of Section 129D imposes a specific limitation of three months from the date of communication of the order of the adjudicating authority. Thus, there is no prescribed period of

limitation for passing an order in exercise of the power under sub-section (2) of Section 129A. It is true that even if the law does not provide for a specific period for taking a particular action, the authority vested with the power to take action must take the action within a reasonable time. In the present case, the relevant period of 10 months is covered by the COVID-19 pandemic. During the said period, in *suo motu* RE: COGNIZANCE FOR EXTENSION OF LIMITATION, this Court, on 23rd September 2021, while disposing of Miscellaneous Application No.665 of 2021, extended the period of limitation provided under the statutes. In the facts of the case, considering the period of the COVID-19 pandemic, it cannot be said that the Committee of Commissioners has taken an unreasonably long time to decide. Considering the extraordinary circumstances prevailing in those days due to COVID-19, the decision was taken within a reasonable time. The Committee took the decision on 2nd November 2021, which was received by the Deputy Commissioner (Review) on 11th November 2021, and the appeal was preferred on 17th November 2021. It is true that under Sub-Section (3) of Section 129A, a period of limitation of 3 months has been provided for preferring an appeal which commences on the day on which the order sought to be appealed against is communicated to the concerned Authority. But, even the said period stood extended in view of the orders this Court passed from time to time in *suo motu* proceedings.

**8.** The issue of undervaluation has been discussed in detail in a decision of this Court in the case of ***Commissioner of Central Excise and Service Tax, Noida v. Sanjivani Non-ferrous Trading Pvt. Ltd***.[1]. Paragraph 10 of the said decision reads thus:-

> **"10.** The law, thus, is clear. As per Sections 14(1) and 14(1-A), the value of any goods chargeable to ad valorem duty is deemed to be the price as referred to in that provision. Section 14(1) is a deeming provision as it talks of "deemed value" of such goods. Therefore, normally, the assessing officer is supposed to act on the basis of price which is actually paid and treat the same as assessable value/transaction value of the goods. This, ordinarily, is the course of action which needs to be followed by the assessing officer. This principle of arriving at transaction value to be the assessable value applies. That is also the effect of Rule 3(1) and Rule 4(1) of the Customs Valuation Rules, namely, the adjudicating authority is bound to accept price actually paid or payable for goods as the transaction value. Exceptions are, however, carved out and enumerated in Rule 4(2). **As per that provision, the transaction value mentioned in the bills of entry can be discarded in case it is found that**

[1] (2019) 2 SCC 378

> **there are any imports of identical goods or similar goods at a higher price at around the same time or if the buyers and sellers are related to each other. In order to invoke such a provision it is incumbent upon the assessing officer to give reasons as to why the transaction value declared in the bills of entry was being rejected; to establish that the price is not the sole consideration; and to give the reasons supported by material on the basis of which the assessing officer arrives at his own assessable value."**
>
> (emphasis supplied)

In paragraph 19 of the impugned judgment, a comparative table of the goods subject matter of this appeal imported by the appellant and the goods imported by the appellant earlier has been incorporated. After due consideration, the adjudicating authority and CESTAT found the goods identical to/similar to the ones imported earlier. We have perused the said table. We find that except for the description as an "unpopular brand," the products appear to be identical/similar. In any case, the factual finding rendered by CESTAT is after a detailed consideration of the material on record.

**9.** At this stage, we may also make a note of the statement made by an officer of the appellant during the inquiry before the adjudicating authority. In paragraph 11, he stated that there is a little difference in the hardware and software

functions in the disputed goods as compared to the earlier versions. In the order-in-original and in the impugned judgment of CESTAT on facts, it was found that Item nos. 1 and 3 were identical goods, and Item no. 2 was of similar goods. Detailed reasons have been recorded in the order-in-original as to why the transaction value of the imported goods has been discarded. Cogent reasons have been assigned to arrive at the assessable value.

**10.** Hence, in view of the findings recorded by the CESTAT, we find no error in the view taken. No fault can be found with the imposition of penalties. Hence, there is no merit in the appeal and the same is dismissed with no order as to costs.

.....J.
(Abhay S. Oka)

.....J.
(Pankaj Mithal)

**New Delhi;**
**March 15, 2024.**