

7- Case laws on Customs

Taxable event in case of imports

It was held that import is completed only when goods cross the customs barrier. The taxable event is the day of crossing of customs barrier and not on the date when goods landed in India or had entered territorial waters. It was held that import of goods in India commences when they enter into territorial waters but continues and is completed when the goods become part of the mass of goods within the country. The taxable event is reached at the time when the goods reach customs barrier and bill of entry for home consumption is filed. *Kiran Spinning Mills v. CC* 1999 (SC), / *Garden Silk Mills Ltd. v. UOI* 1999 (SC)

Taxable event in case of Warehoused goods

In case of warehoused goods, the goods continue to be in customs bond. Hence, 'import' takes place only when goods are cleared from the warehouse. Where it was held that taxable event occurs when goods cross customs barrier and not when goods land in India or enter territorial waters. *UOI v. Apar P Ltd.* 1999 (SC). - *Kiran Spinning Mills v. CC* 1999(SC),

It was held that the 'bulk liquid cargo' would be considered to have crossed customs barrier only when they are pumped into shore tanks. That being the taxable event, duty is leviable only on that quantity. *CC v. HPCL* 2000(CEGAT)- -

Taxable event in case of exports

In case of exports, export commences when goods cross customs barrier, but export is completed when it crosses territorial waters. Thus, 'taxable event' occurs only when goods cross territorial waters. It was held that export is complete once the goods leave Indian waters and property passes to purchasers. Even if goods return due to Engine trouble, duty drawback is payable. It was held that export is complete when ship leaves territorial waters of India. *CC v. Sun Exports - 1988 (SC)*/ *B K Wadeyar v. Daulatram Rameshwarlal (SC)*

If some goods are exempt from customs duty, can it be inferred that they are exempt from additional duty as well?

The High Court observed that exemption from customs duty would not mean exemption from additional duty. The High Court held that when goods are exempted from basic customs duty in terms of section 12 of the Customs Act, 1962, it would not mean that they are exempted from additional duty also, as basic customs duty is leviable by virtue of section 12 of the Customs Act, 1962, while additional customs duty is leviable under section 3 of the Customs Tariff Act, 1975 *Kaur Sain Traders v. Union of India* 2006 (199) ELT 224 (Pat.)

Subsequent amendment of IGM relates back to the date of filing of IGM and is not a separate event. By the time supplementary IGM is filed, if entry inward has already been granted, the rate of duty applicable will be as on the date of presentation of bill of entry.

Case Laws On Customs

[Associated Forest Products (P) Ltd. V. Assistant Commissioner of Customs, 1992 (59) ELT 264, 277-78 (Cal), affirmed by the Supreme Court in 2000 (115) ELT 37 (SC).]

Customs Valuation

Valuation has to be on the basis of condition at the time of import - (a) CVD should be levied on goods in the stage in which they are imported - stage subsequent to processing of goods is not relevant - *Vareli Weaves P Ltd. v. UOI* - 1996(SC). It is also well settled that the imported goods have to be assessed to duty in the condition in which they are imported. - *D N Sethna v. CC* - (1996) (CEGAT) * *CC v. Supreme Woollen Mills* 1999(CEGAT).

Price in case of high sea sale - In case of high sea sale, price charged by importer to assessee would form the assessable value and not the invoice issued to the importer by foreign supplier. - *National Wire v. CC* 2000(122) ELT 810 (CEGAT) * *Godavari Fertilizers v. CC* (1996) 81 ELT 535 (CEGAT). If the purchase is on high seas, the selling price will be naturally higher than the price at which the importer imported the goods. It will include his service charges, but also demurrage, bank charges etc. Thus, indirectly, duty will be payable on demurrage, which is really not part of 'normal' price.

Valuation is required to be done by proceeding sequentially from rules 5 to 8 if value cannot be determined under rule 4. Failure to observe this sequential mandate of the rules would render such value the determination to be incorrect. - *Tavadec Industries v. CC* 2002(145) ELT 548 (CEGAT). The only exception is that the 'computed value' method may be used before 'deductive value' method, if the importer requests and Assessing Officer permits..

Classification -

Software loaded on hard disk classification as software *M/s Sprint RPG India Ltd. Vs. CCE* [(2000) 88 ECR 737 (SC)]

The assessee imported hard disk loaded with computer software. The price paid for 6 such disks was approx. Rs. 68 lacs while the value of the hard disk simpliciter would be roughly are around Rs. 60,000.00.

Rival contentions: Hard disk drive is chargeable to duty under heading 84.71 at a rate of 25% and computer software is chargeable to duty @ 10% [Chapter heading 85.24 read with Notification No. 59/95 dated 16-03-95]. The department's view was that the goods is classifiable as computer hard drive loaded with software. The assessee's contention was that what was imported was software loaded on a hard drive disk and hence the rate of duty should be 10%.

Decision : The SC observed that computer software can be brought either on a floppy or magnetic tape or on a hard disk or in a printed form and hence what is imported is software on a container, which is a hard disk. On the facts of the case the court held that the computer software imported by the appellant on a hard disk is assessable at a rate of 10% as per heading 85.24 because what was imported by the appellant was software on a hard disk and it was not hard disk in the grab of software.

Duty liability is on goods and not product arising out of goods

Case Laws On Customs

The assessee had imported a ship for the purpose of breaking and to use ferrous scrap arising out of ship breaking *Engae Industrial Services Pvt. Ltd. Vs. UOI [2000 (115) ELT 58, 63 (Kar)]*

Rival contentions : In respect of additional duty of customs, the assessee's contention was that the ship is imported for the purpose of breaking and therefore the same is covered under notification no. 167/86-CE dated 01-03-86, which provides for exemption of ferrous scrap arising out of ship breaking. The department's contention was that the imported article was a ship and therefore, the same has to be classified as a ship and not as scrap arising out of ship breaking.

Decision: The court observed that the duty liability arises on the goods imported and not on the products arising from the breaking up of the imported item. Therefore, it was held that the ship should be classified as such and not as scrap arising from the breaking of a ship.

Valuation:

The price u/s 14 for the value is deemed price

The value on which duty payable is deemed value it could be more or less than the agree price between parties or price at invoice. The price relevant for valuation is price on the date when goods reaches at customs barrier *Union of India Vs. Glaxo Laboratories, (1984 (17) ELT. 284) the Bombay High Court/ Garden Silk Mills Ltd vs UOI, 1999 (113) ELT 358, SC*

Price list, negotiated prices, invoice price are some of the factors to determine customs value *UOI vs Mahindra & Mahindra Ltd 1995 (76) ELT 481(SC)*

At which such or like goods are ordinarily sold

When the invoice price is low the price of comparable goods can be adopted for the value *Chander Prakash & Co., Vs. Collector of Customs 1990 (50) ELT 309 the CEGAT*

Assessee imported 100 packages dry fig on particular day an invoice price of 1 US \$ per kg. However on the previous day a consignment of dry figs was cleared at the rate of US \$ 1.50 per kg. The representative samples on comparison were found to be identical, the customs adopted the rate of US \$ 1.50 per kg. as the basis of assessable value is justified *Rajkumar Knitting Mills P.Ltd vs CC 1998 (77) ECR 236 (SC)* It was also held that what is relevant is the date of importation and not the contract date.

Ordinarily sold or offered for sale

If only one buyer and all the goods sold to one buyer, it cannot be said that goods are ordinarily sold In the case of Maruti, who had a collaboration with Suzuki Motor Co. Ltd. it was contended by the Department that since Maruti was the only buyer of Suzuki SKD/CKD packs and complete vehicles, the price charged could not be said to be the one at the which the goods were ordinarily sold or offered for sale". Relying upon the decision of the Supreme Court in *Atic*

Case Laws On Customs

Industries case [1984(17) ELT 323] However even if only one buyer and the price is competitive, commercial price and arms length price goods can be treated as ordinarily sold [Collector of Customs. *Bombay Vs. Maruti Udyog Ltd.* 1987 (28) ELT 390]

In the course of international Trade:

In a case of procurement of cocoa beans for an Indian company, the UK based principal company entered into a contract with another company also based in UK for delivery of goods on behalf of the Indian company. It was urged by the Revenue that the transaction was not in the course of international trade which was rejected by the Bombay High Court on the grounds that the transaction was done on behalf of the Indian company and therefore it was not in the course of international trade. *Cadbury Fry India Pvt.Ltd vs UOI* 1990 (46) ELT 7.

In the case of sale on high sea basis, it was held by the Supreme Court in *Hyderabad Industries Ltd vs UOI* 2000 (115) ELT 593 that the service charges payable to canalizing agency is includible in the assessable value of the imported goods.

At the time and place of importation:

Assessee imported goods with the invoice date was 23.03.1990; the actual date of import is 29.10.1990. There was a gap about 7 months six days Price on invoice as on 23.03.1990 not relevant and price on 29.10.1990 is only the value. *Punjab Niryat Ayat Private Ltd., Vs. Collector of Customs, Bombay [1991] (26) ECR S32 CEGAT*

Price is the sole consideration of the sale:

That the imported transaction was not influenced by any other factor which makes the price charged as unacceptable for the purpose of valuation. It must be noted that under section 14 or under the Valuation Rules, the transaction value cannot be rejected unless it is proved that price of identical or similar goods at the same commercial levels were imported at a different value. *Narayan International vs CC* 1992 (58) ELT 126 (T).

Customs Import valuation Rules

The following are some of old decision which are well applicable for new import goods valuation rules 2007

Section 14(1A) and Valuation Rules relating to valuation of imported goods are subject to the provisions of Section 14. ie, the value will be transaction value u/s 14 with inclusion of cost and services under rule 9 & 10 *Plast Fab vs CC* 1993 (66) ELT 441 (T).

Before resorting to valuation under residuary Rule, applicability of other rules will have to be exhausted *Polyvinyl Industrial Corporation vs CC* 1994 (74) ELT 426.

Rule 4 of the Valuation Rules talk of "the transaction value" (Now Rule 3) and therefore unless that is unacceptable for the reasons set out in Section 14, it has to be accepted. *Eicher Tractors Ltd vs CC* 2000 (122) ELT 21 (SC).

Case Laws On Customs

Holding subsidiary relationship may not be relevant if transaction value for contemporaneous import of identical goods is the same. (ie price to relative is arms length commercial price) *Siemens Ltd vs CC 2000 (126) ELT 1134 (T)*.

Transaction value of identical goods

Comparison of goods must be of identical goods at same commercial levels. *Sandip Agarwal vs CC 1992 (62) ELT 528 (Cal)*.

Branded and unbranded goods could be compared. Comparison of goods from different countries of origin possible only if there is proximate linkage. *CC vs Shibani Engineering Systems 1996 (86) ELT 453 (SC)*

Where the importer has adduced evidence, department should produce contemporaneous import values at higher prices to discard transaction value. *CC vs Nippon Bearings Ltd. 1996 (82) ELT 3 (SC)*.

Price list is not conclusive as evidence of contemporaneous imports. Discounts beyond the price list can be given, if it is a normal trade practice *Eicher Tractors Ltd vs CC 2000 (122) ELT 321 (SC)*.

For ascertaining contemporaneous imports, date of import is relevant and not the date of contract *Rajkumar Knitting Mills P.Ltd. vs CC 1998 (98) ELT 292 (SC)*

Lowest value to be taken - If more than one value of identical goods is available, lowest of such value should be taken. - *Resina Combination v. CC 1999(114) ELT 860 (CEGAT)*

Transaction value of similar goods

The word "similar" is more expansive than the word "same". Plywood or veneer panels are similar to laminated wood. *CCE vs Wood Craft Products Ltd 1995 (77) ELT 23 (SC)*.

Enhancing the value of goods imported from Japan on the basis of supplies from France not acceptable. Comparing a quantity of 4986 kgs imported with another import of 360 kgs is not correct *Nitisoya Diamond Tools vs CC 1994 (74) ELT 49 (T)*.

Residual Method Rule 8

The sixth and the last method are called "residual method". It is also often termed as 'fallback method'. This is similar to 'best judgment method' of the Central Excise. This method is used in cases where 'Assessable Value' cannot be determined by any of the preceding methods *CC v. Sanjay Chandiram - (1995) (SC)*. While deciding Assessable Value under this method, reasonable means consistent with general provisions of these rules should be the basis and valuation should be on basis of data available in India. [Rule 8 (1) of Customs Valuation Rules]. -

Valuation of old Machinery and old Motor cars - it was held that concept of transaction value under Rule 4 is applicable to second hand machinery also, particularly because no exactly comparable imports can be found or exist. *Essar Graphics v. CC 1999 (CEGAT)/International*

Case Laws On Customs

Conveyors v. CC 2000(CEGAT), It was held that invoice value of second hand machine supported by Chartered Engineer's certificate is acceptable when transaction is in normal course of international trade and there are no contemporaneous imports of like goods at higher value.
Medak Rubber v. CC 2000(CEGAT)

Depreciation will be allowed on value of old machinery on following scale: (i) for every quarter in 1st year: 4% (ii) for every quarter in 2nd year: 3% (iii) for every quarter in 3rd year 2.5% (iv) for every quarter in 4th and subsequent year : 2% Maximum : 70% [*Vadodara Commissionerate No. Cus/t/93 dated 15-6-1993*]. Same depreciation rate applied for old cars also.

Valuation inclusions/ exclusion

Inclusion of Royalty in valuation

The assessee entered into an agreement with its Japanese Company to import TV components manufactured by Japanese Company. The assessee will use imported components for manufacture of TV. It also entered into an agreement for obtaining technical assistance and know-how. The know how is for technical advice, quality control, inspection of components before they are used. In turn, the Assessee is paying royalty @ 3% on ex-factory price of colour TV. It was held that payment under the said agreement related not only to the production of the goods in India but also to imports. Further, when payment to Japanese Company was at the rate of 3% of the sales turn over of the final product, including cost of imported component, it became a condition of sale of the finished goods. Royalty payment is connected with sales and it is includible in valuation.
MATSUSHITA TELEVISION & AUDIO LTD - 2007 -SC 211ELT288

Rejection of Transaction Value based on Exporter declaration is not tenable

Assessee imported goods from Hong Kong @ 6.00 \$ per 1000 piece... The declared Transaction value of said goods was rejected by Customs Officer as per Customs imported valuation rules the value was rejected not on the basis of any comparable imports -but on the basis of export declaration filed by the supplier in his country (Hong Kong). Assessee(importer) challenged the authenticity of export declaration and he contends that the supplier has over-stated the price in his declaration so as to obtain higher export incentives in his country—importer produced evidence as to contemporaneous imports from same supplier at same price which was not challenged by Department. Held that rejection of transaction value based on exporter declaration is not correct **SOUTH INDIA TELEVISION (P) LTD 2007 -SC 214ELT3**

Post importation cost, technical fees installation not includable in valuation

The assessee imported Machinery from USA for installation in their premises in Mumbai. The transaction value for the said goods as declared in value declaration is US \$ 15,000 CIF. In addition, assessee has paid technical and installation fee of Rs 59 lacs also. The Department has added that technical and installation fee to the declared transaction value to arrive at the proper assessable value. Held that, Under the Customs Valuation Rules, 2007, post-importation expenditure) are excluded. There is no evidence of any flow-back or extra-consideration deflating the price, and therefore, there was no reason to include Rs 59 lacs in the assessable value of the equipment. **GALAXY ENTERTAINMENT (I) PVT LTD- 2007- SC 214 ELT14**

Case Laws On Customs

Valuation in case of second hand car imported- consideration of depreciation

Assessee imported a second hand car (Rolls Royce- 1993 Model) into India in the year 1996. The Bill of entry for clearance thereof was filed by him in Year 1996 (on 31-8-1996) itself. However, Customs Authority gave clearance of car in 2005 only (delay of 9 year). The valuation of machinery was done under Rule 8 taking "depreciated value" as assessable value. Though the mode of valuation was not challenged by the assessee, he claimed allowance of depreciation till year 2005 (the year of clearance).. Held that depreciation was allowed only up to the year of import and not up to the date of clearance **M S SHOES EAST LTD- 2007- SC 210 ELT 641**

Customs department can add landing charges at actual or as percentage. But once percentage is used, no further sum can be added in that component. **Coromandal Fertilisers Ltd vs CC 2000 (115) ELT 7 (SC).**

Addition of royalty on final products (vehicles) mentioned in the collaboration agreement in the value of imported engines not tenable since the two were not subject to each other. **UOI vs Mahindra & Mahindra Ltd.1995 (76) ELT 481 (SC).**

Separate agreements does not make for separate transactions Charges paid for design of equipment through separate agreement to be added to value of equipment. **Andhra Petrochemicals vs CC 1997 (90) ELT 275 (SC).**

Cost of dismantling, process licences, consultancy and technical services rendered abroad to make it ready for import into India includible **CC vs Essar Gujarat Ltd 1996(88) ELT 609 (SC). Bombay Dyeing Co.Ltd vs CC 1997 (90) ELT 276.**

Cost of product when shown as licence fee - value not deductible. In this case, SBI imported a software worth USD 4084475 and contended that the actual value was USD 401,047 while the balance USD 3683438 represented licence for using the software at multiple locations. The Tribunal held that since SBI paid nothing to the supplier as licence fee for reproduction of software, the entire value was the product value. This decision was affirmed by the Supreme Court. **SBI vs CC 2000 (115) ELT 597 (SC).**

Charges of purchasing agent abroad not includible - Charges to purchasing agent abroad are not includible - *Apollo Tyres Ltd. v. CC* - (1996) (SC) - confirmed and followed in *Bombay Dyeing & Mfg v. CC* - 1997(2) (SC).

Cost of durable and re-usable containers When the containers are used to pack goods in containers for convenience of transport. These containers are durable and re-usable. Hence, cost of such containers is not added for Customs Valuation, if importer agrees to execute a bond to re-export the containers within six months.

Cost of erection, test and commissioning is not includible. - **Andhra Pradesh Gas Corpn v. CC 2001 (CEGAT).**

Demurrage charges payable to port trust - Demurrage charges payable to port trust authorities for delay in clearing goods are not to be added. This are incurred in extraordinary

Case Laws On Customs

situation - *Deepak Fertilisers v. CC 1989(41) ELT 550 (CEGAT) * Hindustan Lever v. UOI 2002(142) ELT 33 (Cal HC). Indian Oil Corporation Ltd. v. CC 2000 (CEGAT).*

Bank charges - Bank charges paid to banker for services rendered by them is not consideration of goods given to seller. It is not includible. - *EXIM India Oil Co. v. CC 2001(131) ELT 207 (CEGAT).*

Charges for reproduction of software in India - At present, many popular types of software. If such softwares are Licensed to be reproduced in India by the foreign owner of these softwares, charges for reproducing these softwares will not be added. As per press note dated 17-12-1992 of DOE of GOI, the purpose is to bring down cost of software in India and to save foreign exchange outflow on several copies of software.

Computer Software - Computer software is a distinct item and is classifiable separately. Hence, even if software is supplied with the machine, its price is not includible in value of machinery. - *Technova Imaging Systems v. CC 2003(151) ELT 404 (CEGAT).*

Royalties and license fee of the following not includible

(a) Charges for the right to reproduce the goods in India shall not be added and (b) payments made by buyer (importer) for right to distribute or resale the imported goods shall not be added if such payment is not a condition for export to India. (c) Royalty payment to collaborators un-connected with imported goods

Royalty payment to collaborators un-connected with imported goods not to be included - Often, a lump-sum payment of royalty is made to foreign collaborators for technical know-how. In addition, components /parts/ CKD packs are procured from foreign collaborators. Customs department normally holds that the price of parts/CKD packs should be loaded, on assumption that the part of price of component parts/CKD packs has been paid as 'royalty payment'.

It has been held that cost of technical documents and drawings *cannot* be included in the customs value. However, if part of cost of equipment is transferred to value of engineering drawings, there will be under-valuation of equipment and this can be examined. Engineering drawings are exempt from customs duty. This was because there was a separate heading in Customs Tariff for 'drawings'. Otherwise, the cost would have been includible. *Tata Iron & Steel Co. Ltd. v. CCE 2000(1) SC*

The company had foreign collaboration with M/s Peugeot, a French company, for engines for 10 years. A lump sum payment was made for technical know-how for manufacture of diesel engines in India. In addition, the company imported engine CKD packs from the French company in subsequent period. Department contended that lump-sum payment of royalty has bearing on the price charged for CKD packs. The Invoice price is not the real price. Supreme Court did not accept the view. It was held that there is no nexus between know-how transfer fee and import of CKD packs. These are independent transactions. Department has not able to produced any material to show that price shown in invoice is not the real price, or the lump-sum royalty paid affected that price of goods obtained later. *UOI v. Mahindra and Mahindra Ltd. - 1995 (SC)*

