CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

WEST ZONAL BENCH

CUSTOMS APPEAL NO: 516 OF 2007

[Arising out of Order-in-Original No: 24/2007/CAC/CC(I)/AKP/Gr.VB dated 28th February 2007 passed by the Commissioner of Customs (Import), Mumbai.]

Commissioner of Customs (Import)
New Custom House, Ballard Estate, Mumbai - 400001 … ***Appellant***

versus

Ankit Enterprises
6 Rajender Park, New Delhi 110060 ***…Respondent***

APPEARANCE:

Shri R K Dwivedy, Additional Commissioner (AR) for the appellant

Shri Jatin Singhal, Advocate for the respondent

WITH

CUSTOMS APPEAL NO: 579 OF 2007

[Arising out of Order-in-Original No: 24/2007/CAC/CC(I)/AKP/Gr.VB dated 28th February 2007 passed by the Commissioner of Customs (Import), Mumbai.]

Davendra Ahuja
M/s Ankit Enterprises, 6 Rajender Park,
New Delhi 110060 … ***Appellant***

versus

Commissioner of Customs (Import)
New Custom House, Ballard Estate, Mumbai - 400001 ***…Respondent***

AND

CUSTOMS APPEAL NO: 583 OF 2007

[Arising out of Order-in-Original No: 24/2007/CAC/CC(I)/AKP/Gr.VB dated 28th February 2007 passed by the Commissioner of Customs (Import), Mumbai.]

Arigato & Obligado Merchandise Pvt Ltd
D-98, Sector 2, Noida (U.P.) … ***Appellant***

versus

Commissioner of Customs (Import)
New Custom House, Ballard Estate, Mumbai - 400001 ***…Respondent***

AND

CUSTOMS APPEAL NO: 584 OF 2007

[Arising out of Order-in-Original No: 24/2007/CAC/CC(I)/AKP/Gr.VB dated 28th February 2007 passed by the Commissioner of Customs (Import), Mumbai.]

Ramesh Mehta
M/s Arigato & Obligado merchandise Pvt Ltd
D-98, Sector 2, Noida (U.P.) … ***Appellant***

versus

Commissioner of Customs (Import)
New Custom House, Ballard Estate, Mumbai - 400001 ***…Respondent***

APPEARANCE:

Shri Jatin Singhal, Advocate for the appellants
Shri R K Dwivedy, Additional Commissioner (AR) for the respondent

CORAM:

HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)
HON'BLE MR AJAY SHARMA, MEMBER (JUDICIAL)

FINAL ORDER NO: A / 85525-85528 /2022

DATE OF HEARING: 20/12/2021
DATE OF DECISION: 09/06/2022

PER: C J MATHEW

Impugning order-in-original no. 24/2007/CAC/CC(I)/AKP/ Gr.VB dated 28th February 2007 of Commissioner of Customs

(Import), Mumbai, in which M/s Arigato and Obligado Merchandise Pvt Ltd, M/s Ankit Enterprises and M/s Harshul Enterprises have been fastened jointly with recovery of duty under section 18 of Customs Act, 1962, is the appeal of Commissioner of Customs (Import), Mumbai seeking the confirmation of recovery instead under section 28 of Customs Act, 1962 along with interest as applicable under setion 28AB of Customs Act, 1962.

2. Impugning the same adjudication order are the appeals of M/s Arigato and Obligado Merchandise Pvt Ltd and of Mr Devendra Ahuja for M/s Ankit Enterprises who, together with M/s Harshul Enterprises, had been charged with import of television sets, video compact disc (VCD) players and music system in disassembled form, as well as that of Mr Ramesh Mehta, the Director in the company. Under challenge are the confirmation of differential duty of ₹ 22,76,475, fine of ₹ 12,50,000 imposed under section 125 of Customs Act, 1962 in lieu of goods held as liable for confiscation under section 111(m) of Customs Act, 1962 and penalty of ₹ 2,00,000 each on the sole proprietor and the company and ₹ 1,00,000 on the Director of the company

3. The allegation in show cause notice dated 30th September 2005 flow from bills of entry no. 352399/28.04.03 and no. 352403/28.04.03, declaring ‘electronic components/parts’ valued at ₹

2,49,946.96 and ₹ 3,95,195.39 filed by M/s Arigato & Obligado Merchandise Pvt Ltd and M/s Ankit Enterprises respectively, which were found to contain 838 pieces and 250 pieces respectively of branded and unbranded parts of television sets, video compact disc (VCD) players and music systems that complemented one another for assembly of fixed number of such sets, players and systems. Investigations found that the two consignments had arrived by the same vessel and in the same container against two bills of lading issued on 12th April 2003 and from two suppliers at Singapore against two invoices issued on 10th April 2003. From inquiries with M/s Sony Marketing Asia Pacific Pte Ltd, it was deduced that they were not in the business of supplying parts and that the said suppliers of the appellants herein were not in any way connected to them. The scope of investigation was widened, as the parts in the two consignments under seizure did not appear to comprise the entirety of requirements for assembly into final products, and which elicited information about imports effected against bill of entry no. 351269/24.04.03 of M/s Ankit Enterprises for 294 pieces of 'parts' valued at ₹ 1,86,109 and bills of entry no. 351272/24.04.03 and no. 351475/24.04.03 of M/s Harshul Enterprises for 141 pieces of 'parts' valued at ₹ 58,301 and 1015 pieces of 'parts' valued at ₹ 1,69,125 that, according to investigators, rounded off the necessary requirements. Based on the painstakingly ascertained congruity of dates in the documentation, the statements of several persons involved

in the transactions and evidence of relationship with another,

> *'36. …… it appeared that all the impugned imported goods then joined and fitted together would form the essential character of the complete…'*

four models of 'Sony' television sets totaling 47 nos., six models of 'Sony' music system totaling 149 nos. and 250 nos. of 'Samsung' video compact disc (VCD) players

> *'….. even though presented unassembled and their combined value declared per unit is 500% to 600% less than the price of the same models in Singapore.'*
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> *xxxx*
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> *48. Prima-facie it appeared that complete sets of TVs/Music Systems/VCD Players had been imported in disassembled (CKD/SKD) conditions under the 5 bills of Entry. To verify this aspect, the local office of the manufacturers M/s. Sony India Pvt. Ltd was contacted and their Engineers were called M/s. Sony India Pvt. Ltd vide letter dated 24.07.04 informed that they had fixed up the schedule of their Engineer in the first week of August, 2004. On 10.08.04 S/Shri Suryakant Walawalkar, Assistant Manager (Logistic) and Prashant Tolamatti, Regional Service Engineer of M/s. Sony India Pvt. Ltd, visited the 'A' warehouse of the Customs In the presence of ….the samples of the goods imported by M/s Ankit Enterprises and M/s Arigato and Obligado Merchandise Pvt. Ltd were examined by the Sony's Engineer. After examination he opined that in case of TV and VCD players except for the cabinets all other components were available that would make the complete units. In the case of Music System except for the speakers and cabinets all other components were available that would*

make the complete units of the Music System.

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51. Statements of employees of M/s Sai Dutt Clearing Agency show that Shri A. K. Dham gave the false statement on 6.08.04 that is employees had stamped and signed as authorized signatory for M/s Ankit Enterprises and M/s Arigato and Obligado Merchandise Pvt Ltd. As same person had signed for authorized signatory of both the firms it reveals that these firms were signing the Bills of Lading of each other which indicates that the firms are either related to each other or controlled by one person. Scrutiny of the Xerox copy of employee's muster roll for the month of April 2003 showing the signatures of employees of M/s Sai Dutt Clearing Agency also revealed that signatures of the employees of M/s Sai Dutt Clearing Agency on the muster roll do not tally with the signatures of the authorized signatory of M/s Ankit Enterprises and M/s Arigato and Obligado Merchandise Pvt Ltd.

52. From the above, it appeared that S/Shri Ramesh Mehta, Devendra Ahuja and Ravi Solanki together formed a cartel and purchased the complete units of T.V, Music System and V.C.D player in Singapore and then arrange to get these units dismantled in Singapore. The impugned goods were then split up under five consignments and imported as electronic components. The impugned goods were misdeclared in respect of description as well as in respect of the value, with intention to evade duty. It appears that the invoices submitted by them were managed invoices where parties to import and the suppliers of the goods, had agreed to describe the goods as been described in the invoice giving agreed price. These invoices to not describe the correct description nor the correct value/price. Thus there appear to

be deliberate misdeclaration of description and value of the goods to evade duty by resorting to willful misdeclaration and suppression of facts.

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54. In view of the above, it prima facie appeared that the said importers have resorted to mis-declarations, in respect of description as well as the value of electronic goods namely TV, VCD Player, and Music System by declaring them as Electronic Parts/Components. The impugned goods imported under 5 bills of entry in SKD condition have essential character of the complete unit of TV, VCD Player/Music system. Rule 2 (a) of General Rules for Interpretation of Customs Schedule states that "Any reference in the heading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, as presented; the incomplete or unfinished article has the essential character of the complete or finished article. It shall also be taken to include a reference to that article complete or finished (or failing to be classified as complete or finished by virtue of this rule), presented unassembled or dis-assembled ". Thus, for purpose of clearance the impugned goods have to be classified as complete unit of TV, VCD Player and Music system and therefore classification is required to be determined accordingly under tariff headings CTH 85281213, 85281214, 85281215 and 85219090 and 852790 of the Customs Tariff Act, 1975. As the goods have been grossly misdeclared, the declared value also becomes suspect

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56.… Therefore, impugned goods can only be assessed by resorting to 'best judgement' method under rule 8 of the Customs Valuation Rules, 1988.

> *57. To arrive at assessable value, the price of M/s Sony Pvt. Ltd in Singapore were therefore studied and compared with the MRP of the identical goods in India. On comparing the prices of the four items… where both Singapore price and MRP are available, it is found that MRP is on average 73.12% more than Singapore price. Since Singapore price of Sony TV KV-XJ 29 M 50, KV-XG 25 P 50, and Samsung VCD Player Z-850 could not be ascertained the same ratio was applied to determine the value of these three models in Singapore.'*

to which were added dealer's profit, dismantling charges, freight and insurance, and landing charges to arrive at the assessable value in the proposal for recovery of differential duty and imposition of penalties in the show cause notice. Furthermore, additional duties of customs were also proposed to be recovered.

4. The impugned order has redetermined the assessable value of all five consignments, taken together, to be ₹ 51,67,563 instead of ₹ 10,58,677.35, the sum of the amounts declared in each bill of entry, and confirmed recovery of differential duty of

> *'103.…… ₹ 22,76,475 under Section 18 (2) of Customs Act, 1962, and the assessments to be finalized as above. This amount is to be paid jointly and severally by all the three importers and is appropriated from the Bank Guarantees furnished by them.'*

5. The computation of differential duty appears to have been impacted substantially by recourse to rule 8 of Customs Valuation

(Determination of Price of Imported Goods) Rules, 1988 for enhancement of the assessable value solely on the ground that the imported goods aggregate as the finished goods and by adjusting the list price of the manufacturers of these goods at Singapore. Confiscation of the goods and penalties have followed from the finding of dissembling about the dis-assembling with intent to evade duties of customs. The factual matrix portrayed for initiation of proceedings is the concatenation of circumstances that purportedly establish procurement of finished products at Singapore, the disassembly thereof, splitting of the parts and components among the participating entities, for evasion of duty on the final product that could be re-built by the purchaser of the consignments through re-assembly.

6. There is nothing on record to demonstrate that each, or all, of these actions prior to arrival in India, or presumed as intended to be undertaken after clearance, is in breach of any provision of Customs Act, 1962. Taxation statutes are, and not surprisingly so, devoid of any stigma attaching to goods either by way of sinister provenance or by way of moral benchmarks in the manner of profit-taking; acquisition by criminal breach of laws relating to property or of sacerdotal interdict on windfall is no concern of customs authorities whose jurisdictional competence is ensconced within section 17, or its variants for assessment, of Customs Act, 1962, and within section 47

of Customs Act, 1962 enjoining the assurance of correct duty having been collected and the satisfaction that the goods are not prohibited for import. Hence, the facts described in the impugned order, even if established, will have to have a bearing on the law relating to assessment and clearance for detrimental consequences to follow.

7. We have heard Learned Counsel for the appellants and Learned Authorized Representative, both of whom have, at length, attempted valiantly to convince us of their perspective of the impugned dispute; not unnaturally, these have been built, both for and against, upon the perspective offered by the original authority in the impugned order. We have no doubt that a plodding start from the 'zero point', or from first principles, may appear less glamorous than jumping of the deep end at some point along the axes, or even within the quadrant, but there is, at least, the assurance that the path taken is straight and true. Therefore, we will revert to the arguments placed before us, including the citations, only if warranted as we proceed to resolve this issue by reference to the law which, in our opinion, has been discarded, from the very commencement of investigations, in favour of emotive justification.

8. That the goods imported, even as 'parts', could be assembled into television sets, video compact disc (VCD) players and music systems is not particularly controverted by any of the three importers -

of whom one was not concerned with the assessment that featured in the leap of the investigators - placed on notice in the proceedings leading to the impugned order. However, that, in the world of commerce, an entity would find it of sufficient worth to engage in dis-assembly of goods – commanding no mean recognition among consumers with corresponding value - for translocation from the country of procurement for reassembly at destination and, presumably, marketed outside accepted channels that offer warranty and guarantee is questionable unless the design of tax policy in the country of import is so conducive. Should a commercial entity, of its own accord and for reasons best known to itself, embark upon such venture, that, still, does not invite interference by tax authorities except when in breach of taxing statutes. That is the fundamental objective, nay even the mandate, of the statute. It would, therefore, appear that the aptness of resort to rule 8 of Customs Valuation (Determination of Price of Imported Goods) Rules, 1988 must first be subject to scrutiny.

9. The impugned order has discarded the declared value for being associated with description of goods that did not find merit with the adjudicating authority; there is no allegation that the ‘parts’, of themselves, were undervalued. It is the finding that ‘parts’ declared in the relevant bills of entry, taken together, are, in reality, branded assemblies classifiable against a tariff item in the First Schedule to

Customs Tariff Act, 1975 other than that sought for in the relevant bills of entry that has prompted the finding of irreconcilability with invoice and, therefore, have the value therein rejected for assessment. There is, however, no finding that, physically and as presented, the goods are not ‘parts’ even if they add up to finished goods upon assembly.

10. Assessment under section 17, or even finalization under section 18, of Customs Act, 1962 rests upon the twin pillars of ‘rate of duty’ - under the authority of section 12 of Customs Act, 1962 - and ‘valuation’ - under the authority of section 14 of Customs Act, 1962 – and with the latter, held judicially, to be not controlled by the former. The former necessitates placement, and so determine rate of duty legislated for the tariff item corresponding to the description conforming, most accurately, with the description of imported goods, in the First Schedule to Customs Tariff Act, 1975; intended for universal application, the classificatory regime is governed by rules of engagement enshrined in the provisions of Customs Tariff Act, 1975 and its several guidelines, *inter alia*, General Rules for the Interpretation of the Import Tariff. Valuation, on the other hand, is governed by the Rules notified under the authority of section 14 of Customs Act, 1962 for application to situations in which the conceptual framework or the ‘gold standard’, as the case may be, is not discernible in the declared price. Even if the classificatory

engagement requires ‘parts’- taken together - to be deemed to be ‘finished products’ for deployment of appropriate rate of duty in assessment, such consummation does not, save under the grace of section 14 of Customs Act, 1962 or the Rules framed thereunder, have any bearing on valuation for assessment. Indeed, even such an unlikely proposition is not canvassed by Revenue, either in the impugned order or in the submissions of Learned Authorized Representative. And, therein lies the allure of the deep end. The interpretative instruments, invoked for section 12 of Customs Act, 1962 and betokening yet to be achieved form of imported goods, has been unleashed for obscuring its actual state with the deemed state, undoubtedly not in conformity with the declared description, deployed to invoke rule 10 of Customs Valuation (Determination of Price of Imported Goods} Rules, 1988 without acknowledging the existence of the parent provision in section 14 of Customs Act, 1962.

11. It appears to have been conveniently overlooked that it is only when the description declared and the description ascertained upon inspection differs that the attendant documents, including invoice, are placed in jeopardy. There is no ground in the impugned order, other than that of the mandate of the classificatory regime, for re-determination of the appropriate tariff item and, consequently, of the appropriate rate of duty. There is also no record of any relationship between the supplier and the noticees as to warrant re-determination

of the value. Furthermore, there is no evidence of any covert payments made to the supplier to warrant substitution of the declared value. In these circumstances, the recourse to rule 10 of Customs Valuation (Determination of Price of Imported Goods) Rules, 1988 is a dive from the deep end into unknown waters and without backing of law.

12. The determination of the price itself is fraught with contradictions and presumptions. The adjudicating authority has relied upon appraisal of an interested party, *viz*., the domestic entities dealing with the brands that, allegedly, had been procured by the importers at Singapore. Furthermore, it is acknowledged that their imports, in the form as presented, was not available for comparison. Above all, determination of price by recourse to any of the options offered by Customs Valuation (Determination of Price of Imported Goods) Rules, 1988 must be consistent with rule 3 therein for acceptance. The computation, under the authority of 'best judgement' in the impugned order, does not bear any resemblance to the framework within which such valuation should be re-determined. Consequently, the revised valuation is set aside.

13. Turning now to the issue of classification of the impugned goods, covered by five bills of entry, as the finished products that would emerge upon assembly, we find that the adjudicating authority

has, while rejecting the several case laws cited by the noticees in the proceedings before him, placed reliance upon the decision of the Tribunal in *Monica Enterprises v. Collector of Customs, Madras [2002 (149) ELT 1264 (Tri-Del)]* and in *Commissioner of Customs, Indore v. Hindustan Motors Ltd [2003 (156) ELT 155 (Tri-Del)]* besides an order of the Settlement Commission.

14. Learned Authorized Representative has, while placing these decisions on record, also drawn attention to the affirmation of these by the Hon'ble Supreme Court, and further cited the decisions of the Hon'ble Supreme Court in *Commissioner of Customs (Import), Mumbai v. Pundrick Ravindra Trivedi [2015 (322) ELT 812 (SC)]* which had set aside the finding of the Tribunal in the matter relating to 'clubbing' of clearances by distinguishing the applicability of the decision of the Hon'ble Supreme Court in *Commissioner of Customs, New Delhi v. Sony India Limited [(2008) 13 SCC 145]* that had upheld the decision of the Tribunal in *Sony India Ltd v. Commissioner of Customs, ICD, New Delhi [2002 (143) ELT 411 (Tri-LB)]* on which reliance had been placed for setting aside the clubbing ordered by the original authority in *Savaram D Patel v. Commissioner of Customs, Ahmedabad [2014 (312) ELT 193 (Tri-Ahmd)]*. Likewise, reliance was also placed on the decision of the Hon'ble Supreme Court in *Commissioner of Customs, New Delhi v. Phoenix International Ltd [2007 (216) ELT 503 (SC)]* to support the correctness of the position

adopted by the adjudicating authority in the impugned order. The objective of his submissions appeared to be that jurisdictional competence to visit penal, and duty, consequences of misdeclaration by the deeming of 'final products' has been settled by the Hon'ble Supreme Court.

15. These decisions, now cited, were not available to the adjudicating authority and, therefore, need ascertainment as binding precedent; doubtlessly, all of these emanated in the context of proposals by customs administrations to discard the claim of separate assessment of the respective articles of import and, therefore, of critical relevance in the disposition of the present appeals.

16. In *re Pundrick Ravindra Trivedi*, it was held that

> *'11. The neat submission made by Mr Adharyu, learned counsel for the Revenue, was that the Tribunal blindly applied the decision in the case of Sony India Ltd (supra) with no regard to the facts of this case which clinching issue that the two firms which had purportedly imported the goods, namely, SM and ME, where bogus and sham and the real person who had affected the imports was Mr Pundrick Ravindra Trivedi, who was the actual owner of these two firms and was, in fact, paying salaries to Mr. Patel and Mr. Soni, and they were set up as the sole proprietors of the aforesaid two firms on paper only. He further pointed out that there was no sufficient evidence/material produced on record, which not only form part of the show cause notice but discussed in detail by the Commissioner in his order, which*

proved that what was, in fact, imported was complete sets of audio systems in this is conditions with a view to evade customs duties. He submitted that all these aspects were not even considered and looked into by the Tribunal which renders the judgement of the Tribunal totally erroneous in law.

12. After considering the matter, we find full justification in the said submission is paid by Mr. Adharyu.…… What was found was that all the parts down to the last screw, were imported to make complete sense. There was no rebuttal by the respondents to the aforesaid clinching evidence. On the contrary, there are clear admissions by Mr. Patel and Mr. Soni, the alleged proprietors of these two firms, as well as Mr. Trivedi in their statements recorded under Section 108 Customs Act.…

13. What is most important, which nails Mr. Trivedi… Is his own statement. He has accepted the aforesaid arrangement as disclosed by Mr. Patel and Mr. Soni and admitted that it is he who was calling the shots and, in fact, was actual importer of the material in question… He also stated that these goods were offered to him in SKD condition and he imported the same vide different Bills of Entries for tax management purpose.

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18. In the light of these facts backed by solid evidence, the Tribunal committed grave error in ignoring these facts and allow the appeal by simply relying upon the case of Sony India Ltd. (supra).

19. We may point out that the aforesaid decision of the Tribunal in Sony India Ltd. (supra) has been affirmed by this Court… However, the distinguishing feature can be discerned

from Paris 13 and 14, which we reproduce below :

20. It is clear from the above that in Sony India Limited (supra) what was found that there was no allegation of fraud and there was also absence of any subterfuge. On this basis, earlier judgement of the Supreme Court itself in Phoenix International Ltd. (supra) was distinguished. We find that the present case is more akin to the facts of Phoenix International Ltd. (supra).'

17. From the findings *supra*, it emerges that the critical aspect for 'clubbing' rests entirely upon the establishment of fraud and deliberate subterfuge for, admittedly, nefarious purpose; the inculpatory statements of the parties to those transaction was found to suffice for holding that the decision of the Tribunal setting aside the 'clubbing' had erred in placing reliance on an earlier decision of the Tribunal which, while finding affirmation by the Hon'ble Supreme Court by distinguishment from the judgement in *re Phoenix International Ltd*, did not apply to the facts of the dispute. Such evidence is sorely lacking in the records before us and the finding of the adjudicatory authority is a summation of several disjointed facts culminating in conjecture. None of the cited decisions permit detriment on the basis of such foray.

19. In *re Phoenix International Ltd*, the subterfuge adopted to bypass the prohibition, *vide* paragraph 156 (A) of the EXIM Policy 1992-97 placing consumer goods in the negative list, was brought on

record for setting aside the order of the Tribunal disapproving the clubbing of imported ‘synthetic shoe uppers’ and ‘soles and insoles’ from the same supplier at Bangkok. It is those very facts that distinguished the judgement therein from the facts in appeal before the Hon’ble Supreme Court in *re Sony India Limited*.

20. In *re Hindustan Motors Ltd*, the Tribunal had set aside the order of the first appellate authority, dropping the proceedings for classification of the imported components comprising automobile engines in unassembled condition, again, on facts of single source, grouping in invoices and imported solely for assembly by themselves to approve resort to rule 2 (a) General Rules for Interpretation of the Import Tariff. The facts in the imports impugned here are entirely different: different sources, different importers and intention of trading. In *re Monica Enterprises*, the intent of the appellant therein, in a strict and rigorous regime of the Import and Export Policy, 1985-88, had been taken note of by the Tribunal while concurring with the confiscation of goods and imposition of penalty as decided by the original authority; however, valuation became a point of dispute therein only owing to the discovery of undeclared parts and not as a consequence of interpretative deeming. The inapplicability of this decision to the facts of the present case did not seem to have occurred to the adjudicating authority.

21. The impugned order has rendered a finding that the goods, even if imported by different entities, were sought to be cleared, in concert with one another, after disassembling in Singapore. There are obvious gaps in this tale that the principle of 'preponderance of probability' may not bridge. The conclusion that

> *'84. In the instant case all the consignments have come virtually at the same time, i.e. within gap of 3 days. Had they been presented together before the customs officer the subterfuge could have been easily detected. The 3 importers deliberately chose to file Bills of Entry on different dates to mislead and confuse the customs officers. Had they presented these items together they would have been assessed as complete consumer electronic items and the CVD would have to be discharged on specific rates or on MRP basis.… The whole exercise was therefore a colourable device to evade taxes. They try to do something indirectly which they were not permitted to do directly.…*
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> *xxxx*
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> *86. SONY has confirmed that they do not sell components parts of their electronic consumer items anywhere in the world and that the supplier in Singapore was not their distributor/dealer. Hence the importers' claim that their ordered and imported components of various Sony items does not stand.*
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> *xxxx*
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> *89. The co-incidences which are listed below, are too many, and lead to the inescapable conclusion that the whole transaction was masterminded by the same person or group of persons to circumvent the customs law and evade*

substantial customs duty…'

in the impugned order makes no bones about the coincidences that inevitably led to the conclusion of 'deliberate subterfuge' prompting corrective remedies by the customs authorities. Unlike in the several decisions cited, both in the adjudication order and by Learned Authorized Represented, no motivation other than evasion of the duties of customs - arising from classification and from valuation – finds place therein. We have already pointed out the flaw in application of section 14 of Customs Act, 1962, as a consequence of application of section 12 of Customs Act, 1962 arising from the Customs Tariff Act, 1975, and the impugned order is delightfully unclear about the rate of duty that would have been fastened had the goods been deemed to be the final product. The duty that accrues on account of the finding of the adjudicating authority is, consequently, not of such magnitude as to impute motives to the importers to form a cartel for procurement of the finished product, and disassembling them at Singapore, before presentation to customs officers in India unless prompted by the apprehension that these officers would, in excess of their conferred authority, also fasten the value of the finished product.

22. The impugned order also appears to demonstrate marked disinclination to take note of taxes/duties that devolve on further transaction in the impugned goods; admittedly, except for a deeming

provision, these are in the form of parts and components requiring assembly which, being excisable, would yield duties of central excise that would, otherwise, not be leviable. It certainly cannot be the case of the adjudicating authority that the import of such goods, if levied to duties of customs by recourse to a deeming provision, would again be charged to duties of central excise thereafter.

23. Customs Act, 1962 is not a law of morality; nor is it a law of property. It is intended to provide a framework and procedure for asserting the constitutional jurisdiction assigned for levy of duty on imported goods. The consistent thread in the several decisions cited by both sides is the applicability of the framework for assessment and permitting reconstructed depiction solely on evidence of attempted subterfuge. A motive must clearly be proved. The motive should also display disproportionate windfall from such subterfuge. Neither is on record here. The goods have been imported, and presented, separately and independently; no evidence, other than conjecture about the conspiracy to disassemble branded products, is on record. None of the judicial decisions approve the contrived combining of separate imports in circumstances of lack of evidence of admitted conspiracy and, to accord judicial approval here, would be to open Pandora's box of lack of certainty, lack of consistency and lack of consummation insofar as clearance of imported goods are concerned.

24. The impugned order fails on the test of law and, therefore, the appeals of M/s Arigato and Obligado Merchandise Pvt Ltd, Mr Devendra Ahuja, and Mr Ramesh Mehta are, thus, allowed. In view of these facts and circumstances, the appeal of Revenue stands dismissed.

(Order pronounced in the open court on 0906/2022)

(AJAY SHARMA)
Member (Judicial)

(C J MATHEW)
Member (Technical)

**/as*