

**EXPO LANKA COMMODITIES (PVT.) LTD.**

**vs.**

**DIRECTOR GENERAL OF CUSTOMS**

COURT OF APPEAL.  
SRISKANDARAJAH. J.  
CA 595/1999.  
MAY 3, 2006.

*Customs Ordinance sections 51, 52 - Determination of the floor price of the commodities imported - Assessment of the value of goods - Applicability of Schedule E of the Customs Ordinance to ascertain the price of goods.*

The petitioner imported certain consignments of onions, the unit price which the petitioner claimed as the normal price of Onions in the open market was US \$ 250 per mt. the respondents however assessed the duties payable to the said imports on a floor price of US \$ 418 per mt. fixed by the Pakistan Customs for the export of onions from Pakistan.

The petitioner contended that, the assessment of import duty based on a floor price of US \$ 418 p. m. t. is unlawful, arbitrary and unreasonable and sought a Writ of Certiorari to quash the said decision, and that the respondents should not have relief on a floor price fixed by Pakistan Customs. The respondents contended that the invoice price did not correspond to the normal price, and the petitioner had under invoiced the goods, and therefore the Respondent is entitled to ascertain the normal price in order to arrive at the value of the said goods.

**HELD:**

- (1) The respondent in arriving at the normal price has taken into consideration the price quoted in the invoice by imports of onions from Pakistan during the same period by the petitioner and other importers According to the invoices, the price for a metric ton of onions imported from Pakistan ranged between US \$ 417 - US \$ 430.
- (2) Merely because the customs valuation for the Onions falls within the floor price fixed by Pakistan Customs for the exportation of onions, the petitioner cannot be heard to say that Sri Lanka Customs valued the price of onions based on the floor price of the Pakistan Customs.
- (3) In terms of the Customs Ordinance, the price of goods would only be ascertained in terms of section 51 and section 52 read with Schedule E

of the Customs Ordinance. The assessment of valuation and the import duty is in accordance with provisions of law.

**APPLICATION for a Writ of Certiorari/ Mandamus.**

**Cases referred to :**

1. *Tyre House (Pvt.) Ltd vs. Director General of Customs CA 730/99 - CAM 5.6.1996 (distinguished)*
2. *Kuruvita Manchester Textile Mills Ltd. and Another vs. Director General of Customs 2003 3 SRI LR 158 at 160*

*Manohara R. de Silva* for petitioner,  
*Ms H. N. B. Fernando* DSG for respondent.

*Cur.adv.vult.*

19th June, 2006.

**SRISKANDARAJA J.**

The Petitioner has been engaged in the business of importation of food items for almost a decade. The duty leviable for these items throughout has been determined on the normal price of the food items, that is the price which it would fetch at the time of importation on a sale in the open market. In March 1999 the Petitioner imported the following consignments of onions from Pakistan.

On 05.03.1999 - 25 M/Tons -unit price US\$ 255p.m.t. the invoice is marked as (P1A),

On 05.03.1999 - 50 M/Tons -unit price US\$ 240p.m.t. the invoice is marked as (P1B),

On 12.03.1999 - 25 M/Tons -unit price US\$ 240p.m.t. the invoice is marked as (P1C),

On 16.03.1999 - 25 M/Tons- unit price US\$ 240p.m.t. the invoice is marked as (P1D),

On 17.03.1999 - 12.5 M/Tons- unit price US\$ 250p.m.t. the invoice is marked as (P1E),

On 22.03.1999 - 25 M/Tons- unit price US\$ 250p.m.t. the invoice is marked as (P1F),

The Petitioner submitted that the normal price of onions in the open market at that time was approximately US\$ 210 to US\$ 250 p.m.t. But

the Respondent assessed the duties payable for the said imports on a floor price of US\$ 418 p.m.t. fixed by the Pakistan Customs for the export of onions from Pakistan by assessment Notice P2A to P2F. The Petitioner contends that the assessment of import duty based on a floor price of US\$ 418 p.m.t. is unlawful, arbitrary and unreasonable. The Petitioner also submitted that the Petitioner appealed to the Respondent and the appeal was rejected. The rejection of the appeal is arbitrary, unlawful and unreasonable. For these reasons the petitioner is seeking a writ of certiorari to quash the assessments of import duties referred to in P2A to P2F and a mandamus to direct the Respondent to assess the import duty in accordance with schedule E of the Customs Ordinance.

The Respondent contends that the invoice price of the onions declared by the Petitioner in the said consignments did not correspond to the normal price. The value in relation to the imported goods should be determined according to Schedule E of the Customs Ordinance. This schedule provides that the value of goods is the normal price fetched at the time of importation on a sale in the open market between the buyer and a seller independent of each other.

The Respondent found that the Petitioner had under invoiced the said goods, Therefore the Respondent is entitled to ascertain the normal price in order to arrive at the value of the said goods and accordingly the six consignment of onions in question imported by the Petitioner, during March 1999 was adjusted by the Customs. The adjustment was to the effect that the quoted price declared by the Petitioner *i. e.* US\$ 240 US\$255 to be read as US\$ 418 and calculated the import duty based upon the said valuation and submitted to Petitioner as P2A to P2F.

The Petitioner contends that the Respondent relied on a floor price fixed by the Pakistan Customs which was US\$418 (P3) and the Respondent has erroneously considered this price as the normal price.

The Petitioner relied on the judgement of *Tyre House (Pvt.) Ltd. vs. Director General of Customs*<sup>(1)</sup> where Dr. Ranaraja, held:

"In 1994 December the respondent decided to determine the value of imported tyres for the purpose of levying duty by the addition of 10% of the invoice price to the value of imported tyres. By notice P5 dated 30. 03. 94 the respondent by decision published decided to impose a "Floor Price" in respect of specific tyres and sizes of tyres, Thereby arbitrarily increasing the price on such tyres for the purpose of obtaining the "*value*" in order to levy import duty.

It is clear from clause<sup>(1)</sup> that what is intended as the normal price is the value the imported goods would fetch in the open market at the time of importation, that is not before or after importation but at the time the goods arrive in the port, (*vide* clause 2.6). In the circumstances to publish a "Floor price" which would be applicable to goods that will be imported in the future cannot clearly come within the definition in clause 1.

In view of the finding that P5 has been published by the respondent *ultra vires* his powers".

The Respondent submitted that in arriving at the normal price the Respondent has taken into consideration the price quoted in the invoice by import of onions from Pakistan during the same period by the Petitioner and other importers. The Respondent filed the invoices of 21 importers R2(1) to R2(21), according to these invoices the price for a metric ton of onions imported from Pakistan in March, 1999 ranges from US\$ 417 to US\$ 430. The Petitioner himself imported from Pakistan two other consignments of onions in January 1999 ; the price of a metric ton was US\$ 418 and US\$ 432 the invoices are marked R3(1) and R3(2). The Pakistan supplier to the Petitioner of the 6 consignments in issue, supplied other importers in January 1999, the price of these consignments of onions ranged from US\$ 452 to US\$ 428, the invoices are marked as R4(1) to R4(3). From these findings the Respondent came to the conclusion that the normal price of onions imported from Pakistan during the period in issue for a metric ton ranged between US \$ 417 to US\$ 432. The Respondent for the purpose of valuation of the Petitioners consignment of onions considered as the normal price of a metric ton of onions as US\$ 418.

The price quoted by the Petitioner in the invoices of the 6 consignments of onions in question imported during March 1999 was US\$240 to US\$255.

As it was less than the normal price the customs adjusted the quoted price declared by the Petitioner to the normal price to read as US\$ 418 in accordance with the valuation arrived at by the Respondent as stated above.

The value determined as US\$ 418 for a metric ton of onions based on the normal price for the onions imported from Pakistan at the relevant time tallied with the floor price fixed by the Pakistan Customs for the export of onions from Pakistan. Merely because the customs valuation for the onions tallies with the floor price fixed by the Pakistan Customs for the exportation of onions, the Petitioner cannot be heard to say that the Sri Lankan Customs valued the price of onions based on the floor price of the Pakistan Customs. The basis on which the "value" was determined in *Tyre House (Pvt.) Ltd. Director General of Customs (supra)* is different from the determination of the value of onions in this case. The value of onions in this case was determined by ascertaining the market value of onions at the time the goods arrived in the port.

*Kuruwita Manchester Textile Mills Ltd. and Another v Director General of Customs*<sup>(2)</sup> at 160 Thilakawardenaj (P/CA) held with Wijeyaratne J agreeing:

"The only matter that is in issue in this case is whether the Director General of Customs had correctly assessed the value of these goods and whether the value placed by the petitioners was an under valuation of the goods. In terms of the Customs Ordinance the price of goods could only be ascertained in terms of section 51 and 52 read with Schedule E of the Customs Ordinance. These sections read as follows.

Section 51 :

"In all cases when the duties imposed upon the importation of articles are charged according to the value thereof, the respective value of each such article shall be stated in the entry together with the description and quantity of the same, and duly affirmed by declaration by the importer or his agent, and such value shall be determined in accordance with the provisions of Schedule E, and duties shall be paid on a value shall be determined in accordance with the provisions of Schedule E, and duties shall be paid on a value so determined."

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**Section 52:**

“Where it shall appear to the officers of the Customs that the value declared in respect of any goods is not in accordance with the provisions of Schedule E, the goods in respect of which such declaration has been made shall be forfeited together with the package in which they are contained. Where such goods are not recoverable, the person making such false declaration shall forfeit-either treble the value of such goods or be liable to a penalty of two thousand rupees, at the election of the Director - General”.

In terms of these provisions of the Customs Ordinance the value that had been placed on these un - exportable goods which were sought to be sold in the local market could not be valued merely on the market value of these goods but had to consider the input of the imported value that had been placed upon this. This position was based on section 51 where it categorically and specifically stipulated that “such value shall be determined in accordance with the provisions of schedule E and duties shall be paid on a value so determined” . So the position of the respondents was that value could not be determined except with reference to Schedule E. Mere non-compliance with such provisions of section 51 would attract the provisions of section 52 of the Customs Ordinance and date of the forfeiture of such goods which had not been valued in accordance with the provisions of Schedule E and the law referred to above. For a consideration of Schedule E, Clause 1 and Clause 2.7 are relevant.

Clause 1 states as follows :

“The value of any imported goods shall be the normal price, that is to say, the price which they would fetch at the time of importation on a sale in the open market between a buyer and a seller independent of each other as indicated in paragraphs 2.7”.

Clause 2.7 states as follows:

“That a sale in the open market between a buyer and a seller independent of each other presupposes”

In interpreting these provisions it is important to observe that the Customs duty is paid on value and not on costs although it could be observed that cost is one of the elements of value.

Therefore in terms of the aforesaid Customs Law whereas it is clear that the respondents are empowered by the aforesaid Customs Ordinance

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to determine the value of all items with reference to Schedule E, clearly had the powers, vested in under the Customs Ordinance to make a decision regarding the value of the goods that were under their purview.

In these circumstances such powers to determine the value, the petitioner could not invoke the writ jurisdiction of this Court upon grounds that the respondents were precluded from determining the value as it was *ultra vires* their powers".

The Respondent under the Customs Ordinances is entitled to assess the valuation of the onions imported and accordingly the Respondent had assessed the import duty as stated in documents marked P2A to P2F and as the assessment of valuation and the import duty is in accordance with the provisions of law this court is not inclined to issue a writ of certiorari to quash these assessments. Therefore this application is dismissed without costs.

*Application dismissed.*

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