

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST ZONAL BENCH : AHMEDABAD**

REGIONAL BENCH - COURT NO. 3

CUSTOMS Appeal No. 10077 of 2014-DB

[Arising out of Order-in-Original/Appeal No 348-COMMR-A--JMR-2013 dated 03.10.2013 passed by Commissioner of CUSTOMS-JAMNAGAR(PREV)]

Hussain Sheth Ispat

325, Madhav Darshan, Waghawadi Road,
BHAVNAGAR, GUJARAT

.... Appellant

VERSUS

Commissioner of Customs, Jamnagar (Prev.)

Sharda House...Bedi Bandar Road,
Opp. Panchavati, Jamnagar, Gujarat

.... Respondent

APPEARANCE :

Shri Rahul Gajera, Advocate for the Appellant

Shri Sanjay Kumar, Superintendent (AR) for the Respondent

**CORAM: HON'BLE MR. RAMESH NAIR, MEMBER (JUDICIAL)
HON'BLE MR. C.L. MAHAR, MEMBER (TECHNICAL)**

DATE OF HEARING : 22.06.2023

DATE OF DECISION: 28.06.2023

FINAL ORDER NO. 11381/2023

RAMESH NAIR :

The present appeal of Hussain Sheth Ispat Ship Breaking, 325, Madhav Darshan Waghawadi Road, Bhavnagar (herein after referred to as "Appellant") arises out of Order-In-Appeal (OIA) No. 358/Commr(A)/JMN/2013 dated 3.10.2013 (herein after referred to as the "Impugned Order") vide which Learned Commissioner (Appeals) Customs, Jamnagar has upheld the OIO No. 12/SBY/2012-13 dated 10.01.2013 passed by the Assistant Commissioner of Customs, Bhavnagar.

1. Briefly, facts of the case relevant to the matter are as under:

1.1. Appellant is engaged in importation of old and used ships/vessels for breaking purpose, they contracted for purchase of ship MV Ocean Beauty for breaking with M/s. Navamosa Navigation

S.A., P.O. Box No. 556, Charlestown, Nevis (the seller) and entered into Memorandum of Agreement (MOA) dated 28.7.2011 to the tune of USD 5,815,747. The Light Displacement Tonnage (LDT) of the vessel stated in the said MOA was 12310 MT/12116.14 LT; trim and stability book and the surveyor report dated 14.9.2011 also stated the same LDT of the Vessel as was shown in the MOA dated 28.7.2011. Accordingly, appellant declared the same LDT of the vessel in the Bill of Entry dated 22.9.2011 which was assessed provisionally under section 18(1) of the Customs Act, 1962 for want of production of documents i.e. original commercial invoice, bill of sale and MOA. Import duties as assessed provisionally were paid by the appellant vide challan dated 23.09.2011.

1.2. It appears that during final assessment of bill of entry, appellant was called upon to submit the original documents, and vide letter dated 4.7.2011, appellant submitted notarized commercial invoice, bill of sale etc. The commercial invoice showed LDT 12310 plus an additional 401.323 MT steels plates on the tank top over area of 3432.7 m². Based on this, department vide a letter dated 13.8.2012 proceeded to recover the differential duty to the tune of Rs. 14,52,064. The reason for such an action stated in the said letter is reproduced herein below:

“when LDT of a vessel is found higher than the agreed in the MOA, the assessable value has to be increased in proportion to the price per LDT as per MOA. Therefore under reasonable belief as mentioned above, the transaction value declared by you is being rejected as per provision of Rule 12 of the Customs Valuation (Determination of value of imported goods) Rules, 2007. After taking into all valuation rules into considerations, this office is determining the value of the subject vessel under Rule 9 of the valuation rules, therefore this office is inclined to determine the value of the subject as USD 6005347.00. The assessable value has been increased by Rs. 8914139/- since the actual weight of the vessel is found higher than that mentioned in the MOA. Taking into consideration, the

findings and discussion above, this office is finally assessing the Bill of Entry No. SBY/175/2011-12 dated 22.09.2011 for the vessel M.V. Ocean Beauty by including the additional 401.323 MT Steel Plates on the tank top over and hence you are requested to pay the differential duty amount of Rs. 14,52,064/-“

1.3. The final assessment Order dated 10.1.2013 was passed essentially based on the above reasoning which was upheld by the impugned Order. Being aggrieved with the said impugned order the appellant filed this appeal.

2. Shri Rahul Gajera, learned Counsel appearing for the appellant vehemently argued that such an approach is contrary to mandate of section 14(1) of the Act and transaction value need not be disturbed in absence of any allegation or evidence of extra consideration having been paid to the seller over and above the declared value. It was further pointed out that LDT based assessment is incorrect when the contract price agreed between the parties is lump sum and in respect of the whole of the vessel and not in proportion to the LDT of the vessel. Reliance was placed on the decision of this Tribunal in the case of J.R.D. Industries vs. Commissioner of Customs, Jamnagar reported as 2011 (265) ELT 55 (Ahmd.)

3. On the other hand, Shri Sanjay Kumar, learned Superintendent (Authorised Representative) appearing for the revenue submitted that once higher LDT is found as per the import documents duty in proportion thereto is required to be paid by the importer. He further reiterated the findings of the impugned Order.

4. We have carefully considered the rival submissions and perused the records. It can be seen from clause 1 of the MOA dated 28.7.2011, that parties have agreed a lump sum purchase price of USD 5,815,747; there is no reference to LDT made for arriving at the purchase price by the parties to

the agreement, in other words purchase price agreed between the parties is not in proportion to the LDT. Further, it is not the case of revenue that any consideration over and above the agreed purchase price has been paid by the importer to the foreign seller. Revenue has sought to assess higher duty only on the basis of commercial invoice submitted vide letter dated 4.7.2011 wherein details of additional LDT of 401.323 MT is mentioned. There is otherwise no corroboration whether LDT mentioned in the MOA and survey report is inclusive of 401.323 MT or otherwise. Be that as it may, it is observed that parties have agreed upon a lump sum price of USD 5,815,747 for the ship as a whole and absent any allegation or evidence of extra consideration having been made by the importer over and above the said price, transaction value as declared by the importer has to be accepted. Lower authorities clearly erred in loading the assessable value entirely based on the LDT when the LDT is irrelevant for assessment of duty. The said issue is already decided by this Tribunal in the decision of J.R.D. Industries vs. Commissioner of Customs, Jamnagar reported as 2011 (265) ELT 55 (Tri. - Ahmd.). It has been held in para 4 & 5 of the said decision as under:

“4. We find that only dispute in the present appeal as to whether the transaction value as reflected in the Memo of Agreement between seller and buyer is to be accepted or the same is required to be enhanced based upon the LDT of the Ship. Apart from the fact that Commissioner (Appeals) has adopted the LDT from the original date of manufacture of the ship, we are of the view that any reference to LDT in the present case is irrelevant. Admittedly, the value of the ship between seller and buyer, has not been arrived at on the basis of LDT. It is a lump-sum quantum required to be paid by the buyer to the seller for the ship in question and the price not based on per unit of LDT, in which case, LDT would be given importance. Apart from the dispute on LDT, there is no other evidence on record to show any extra payment to the seller or flow back of money. The payment have been made by cheque through letter of credit. As such without going in the question as to whether LDT declared by the appellant was correct or not, we find that the LDT is not a relevant factor for arriving at the assessable value of the goods especially in respect of the vessel imported in the year 2003 when the tariff was changed and the duty was required to be paid only on the basis of ad valorem as also on the basis of LDT. It was in these circumstances that LDT gained importance for the period prior to 2003 and was required to be correctly arrived at, as duty was ad valorem + Rs 1400/- per Light Displacement Tonnage. In the present case the duty is not relatable to LDT. The memo of agreement arrived at between the two parties also does not refer to any fact

showing that the price of the ship is proportionate to LDT of the said ship. The lower authorities have also not referred to any evidence that memo of agreement does not reflect the correct position.

5 *In view of the above discussion, we find no merits in the contention of the lower authorities. As a result, all the appeals filed by the appellants are allowed. Cross-objections filed by the Revenue which is in the shape of only written submissions also get disposed off."*

5. In view of foregoing discussion and finding coupled with the direct judgment supra on the issue in hand, the impugned order cannot be sustained and appeal of the appellant is required to be allowed. Accordingly we set aside the impugned order and allow the appeal.

(Pronounced in the open court on 28.06.2023)

(Ramesh Nair)
Member (Judicial)

(C L Mahar)
Member (Technical)

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