

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

REGIONAL BENCH – COURT NO. 03

CUSTOMS Appeal No. 10879 of 2015-DB

[Arising out of Order-in-Original/Appeal No JMN-CUSTM-000-APP-327-14-15 dated 05.03.2015 passed by Commissioner of CUSTOMS-JAMNAGAR(PREV)]

Venketsh Karriers Ltd

...Appellant

Corporate House, 2nd Floor,
Pandit Nehru Road, Opp St Anns High Schhol,
JAMNAGAR,
GUJARAT-361008

VERSUS

C.C.-Jamnagar(prev)

...Respondent

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

APPEARANCE:

Shri P D Rachchh, Advocate for the Appellant
Shri. Anand Kumar, Superintendent (Authorized Representative) for the Respondent

**CORAM: HON'BLE MEMBER (TECHNICAL), MR. RAJU
HON'BLE MEMBER (JUDICIAL), MR. SOMESH ARORA**

FINAL ORDER NO. A / 12074 / 2023

DATE OF HEARING: 03.07.2023

DATE OF DECISION: 19.09.2023

RAJU

This appeal has been filed by M/s. Venketsh Karriers Ltd., against demand of customs duty.

2. The appellant had imported a vessel by conversion from foreign run vessel to coastal run vessel. The issue involved is the interpretation of Sr. No. 462 of the Notification No 12/2012-Cus dated 17.03.2012, which grants partial exemption to imports made by conversion of foreign run vessels to domestic run vessels.

2.1 The dispute relates to final assessment orders in respect of bill of entry filed for import M V Dubai Faith, M V Athena & M V Star Masaya consequent upon conversion of the same from foreign going vessel to coastal vessel. Learned Counsel pointed out that by deeming fiction the coastal conversion was considered as import of vessels. He submitted that the following details in respect of the 3 imports:

"4.2.1 Bills of Entry No. F-18/12-13 dated 05.06.2012 – M V Dubai Faith

The appellant had filed Bills of Entry declaring value of Vessel Rs. 2,34,48,645/- (Based on 30,000 MT cargo + - 10% = 33,000 MT X 12.70 US \$ PMT freight = 4,19,100 US \$ X Rs. 55.95 Exchange Rate) and duty Rs. 12,076/- (i.e. Rs.14,49,126/120 - @ 6% CVD + 2% Education Cess and 1% Secondary & Higher Education Cess) as per Sr. No. 306 of Notification No. 12/2012-CE dated 17.03.2012 as amended.

4.2.2 Bills of Entry No. F-32/08.08.2012 – MV Athena

The appellant had filed Bills of Entry declaring value of Vessel Rs. 80,42,40,000/- (Based on value of vessel declared for Insurance - 1,44,00,000 US \$ X Rs. 55.85 Exchange Rate) and duty Rs.4,14,184 (i.e.Rs.4,97,02,032/120 - @ 6% CVD + 2% Education Cess and 1% Secondary & Higher Education Cess) as per Sr. No. 306 of Notification No. 12/2012-CE dated 17.03.2012 as amended.

4.2.3 Bills of Entry No. F-40/31.08.2012 - MV Star Masaya

The appellant had filed Bills of Entry declaring value of Vessel Rs.111,90,00,000/- (Based on value of vessel declared for Insurance – 2,00,00,000 US \$ X Rs. 55.95 Exchange Rate) and duty Rs.5,76,285/- (i.e.Rs.6,91,54,200/120 - @ 6% CVD + 2% Education Cess and 1% Secondary & Higher Education Cess) as per Sr. No. 462 of Notification No. 12/2012-Customs dated 17.03.2012 as amended."

2.2 Initially the assessment was done provisionally while taking the contract value for the purpose of assessment under Notification No.12/2012-Cus dated 17.03.2012. Learned Counsel submitted following as the calculation of the duty:

"5.1 Bills of Entry No. F-18/12-13 dated 05.06.2012 – M V Dubai Faith (Page 76 of the appeal memorandum) was assessed by taking value of Vessel Rs. 2,34,48,645 (Based on 30,000 MT cargo + - 10% = 33,000 MT X US \$ 12.70 PMT freight = 4,19,100 US \$ X 55.95 Exchange Rate) and duty Rs.14,49,126/- (@ 6% CVD + 2% Education Cess and 1% Secondary & Higher Education Cess) as per Sr. No. 306 of Notification No. 12/2012- dated 17.03.2012 as amended.

5.2 Bills of Entry No. F-32/08.08.2012 – MV Athena (Page 122 of appeal memorandum) was assessed by taking value of Vessel Rs.1,86,58,368/- (Based on 18,560 MT cargo X US \$ 18 PMT freight = 3,34,080 US \$ X Rs. 55.85 Exchange Rate) and duty Rs.11,53,087/- (@ 6% CVD + 2% Education Cess and 1% Secondary & Higher Education Cess) as per Sr. No. 306 of Notification No. 12/2012 dated 17.03.2012 as amended.

5.3 Bills of Entry No. F-40/31.08.2012 - MV Star Masaya (Page 158 of appeal memorandum) was assessed by taking value of Vessel Rs. 2,55,71,948/-(Based on 30,000 MT cargo + - 10%= 33,000 MT X US \$ 13.85 PMT freight = 4,57,050 US \$ X 55.95 Exchange Rate) and duty Rs.15,80,346/- (@ 6% CVD + 2% Education Cess and 1% Secondary & Higher Education Cess) as per Sr. No. 462 of Notification No. 12/2012 dated 17.03.2012 as amended."

3. Learned Counsel pointed out that at the time of final assesement, Learned Deputy Commissioner instead of taking the contract value took the insurance value of the vessels as the assessable value for the purpose of the assessment under Notification 12/2012-Cus dated 17.03.2012.

3.1 Learned Counsel pointed out that prior to the issue of Notification 12/2012-cus vessel were exempted from duty of customs. However, vide Notification 12/2012-Cus dated 17.03.2012 only partial exemption was granted subjected Condition No. 82 prescribed in the Notification 12/2012-Cus dated 17.03.2012. He pointed out that the Condition No. 82 prescribed the following Condition:

If,-

the importer files a bill of entry under section 46 of the Customs Act, 1962, [No. 52 of 1962] at the time of conversion of vessel for coastal run subsequent to import and pays the applicable duty of customs on:-

(a) full lease or contract value, if the import is under a lease agreement or contract;

(b) 1/120th of the applicable duty, for each month or part thereof, of stay in India as coastal vessel.

Explanation.- For the purposes of this entry, (1) "Foreign going vessel" shall have the same meaning as assigned to it under clause (21) of Section 2 of the Customs 1962, (No. 52 of 1962);

(2) "Conversion to coastal Vessel" shall include the vessel granted a license for coastal trade under section 407 of the Merchant Shipping Act, 1958 (44 of 1958) by the Director General Shipping and the vessel granted permission for carrying coastal goods, under the provisions specified in Chapter XII, of the Customs Act, 1962 (No. 52 of 1962) by the proper officer of the Customs;

(3) "applicable duty" means the Additional duty of Customs under sub-section (1) of section 3 of the Customs Tariff Act, 1975 (51 of 1975)."

3.2 Learned Counsel pointed out that in conversion to coastal runs vessels are always imported under lease agreement or contract similar to the one involved in the current imports. Learned Counsel argued that the applicable duty mentioned in clause (b) of the condition is to be calculated on the contract value and not on the full value of the ship. He pointed out that the Clause (a) & (b) separated by a semicolon, and therefore Clause (a) & (b) of the condition needs to be read together. Thus, he argued, first duty is to be calculated in terms of Clause 'a' of the Condition 82 on the basis of contract value and thereafter benefit of Clause 'b' is to be extended depending on the period of import.

3.3 He argued that, if the interpretation made by the Learned Counsel is not accepted that assessment cannot be done in a situation, where import is done by owner of the vessel as in those cases there is no sale of goods (vessel) is involved and no transaction value is available. He pointed out that in the instant case the conversion was made from foreign run vessel to coastal vessel by the owner of the vessels only and thus duty is to be calculated in

terms of Clause (a) applies read with Clause (b) of the condition. Learned Counsel argued that applicable duty in Clause (b) of the Condition 82 refers to the duty calculated as per clause (a) of the said condition.

3.4 He further argued that proviso to Section 14 (1) of the Customs Act, prescribes the manner of determination of value in respect of goods, when there is no sale. He argued that the customs valuation (determination of value of imported goods), Rule 2007, nowhere provide how the assessable value of goods can be determined when there is no sale. He argued that since there is no provision for ascertaining value of the vessel when there is no sale the contract value needs to be adopted for the purpose of under Clause (b) of the Condition 82 of the Notification. He argued that adoption of the insurance value in the final assessment of three bills of entry, over the contract value is in violation of the provisions of the Customs Valuation Rules, 2007.

3.5 Learned Counsel relied on the letter of Joint Secretary TRU DOF No. 334/3/2012-TRU dated 16.03.2012, wherein following has been prescribed:

"10. Ships, vessels and dredgers:

10.1 Full exemption from Central Excise duty (and hence CVD) available to ships, vessels and dredgers (goods of Chapter 89) was withdrawn in the last Budget and a concessional duty of 1% was imposed on the condition that no Cenvat Credit is taken by the manufacturer. Correspondingly, CVD of 5% became leviable on the import of these goods. By virtue of notification no.38/2011-CE dated 29th July, 2011 full exemption was granted to all goods of heading 8901 in respect of which a general licence under section 406 of the Merchant Shipping Act, 1958 has been granted by the Director General Shipping. The following changes have been made in the duty structure applicable to ships, vessels and dredgers:

(a) full exemption from excise duty available to ships and vessels shall now be available subject to fulfilment of the following conditions:

- i. If the ship or vessel is procured by a company or person holding a general licence- Indian/ foreign*

issued by the Director General, Shipping under section 406 of the Merchant Shipping Act, 1958 for the ship or vessel:

ii. the ship or vessel is used only for this purpose;

iii. such company or person undertakes to pay,-

a. full duty on the vessel if it converts to coastal status against a general licence;

b. 1/120th part of the aggregate duty payable on the vessel for each month (or part thereof) of operation as a coastal vessel if such conversion is for a specified period.

Notification No. 12/2012-Central Excise dated 17th March. 2012 has been issued for this purpose.

(b) For the removal of doubts, a retrospective exemption from additional duty of customs (CVD) has been provided to "foreign-going vessels" imported into India for the period from 1st March, 2011 to 16th March, 2012 [Clause 125 of the Finance Bill, 2012 refers]. This shall come into effect on the date of enactment of the Bill.

(c) For the period starting 17th March, 2012, also full exemption from additional duty has been provided to "foreign – going vessels" imported into India but on the fulfilment of certain conditions viz that a Bill of entry shall be filed for the vessel when it converts into a "coastal" vessel and additional duty would be payable on the following basis:

i. if the licence obtained for coastal trade at the time of conversion is a general one i.e. without specified period of validity, duty would be payable as if there were no exemption;

ii. if the licence for coastal trade is for a specified period, and

a. import is by the owner of the vessel or his agent, then 1/120th part of the aggregate duty would be payable on the vessel for each month (or part thereof) of stay in India as a coastal vessel; or

b. if the import is against a lease agreement/ contract, then duty shall be payable on the lease value of the contract.

*Illustration 1: If a vessel imported by a Shipping Line ABC Company as a foreign-going vessel converts into a coastal vessel for 6 months and the value of the vessel declared by the importer is *2 crore, the duty payable would be calculated in the following manner:*

*(2*0.0618) 6/120 61.800, where the rate of duty is 6.18%*

Illustration II: If a vessel is imported by an Indian corporate on lease basis for use after import on payment of a total rental of 50 lakh for a period of 3 months, the duty payable would be calculated in the following manner:

50 0.6183.09 lakh, where the rate of duty is 6. 18%*

Notification No. 12/2012-Customs dated 17th March, 2012 has been issued for this purpose.

(d) Unlike other vessels, dredgers do not qualify for treatment as "foreign-going vessels" as they are not engaged in the carriage of goods or passengers. In the case of import of dredgers too, additional duty would be payable on the basis of length of stay in India or lease value (as discussed for foreign-going vessels at sub-para (b) above). However, this duty would be payable at the time of import of the dredger.

Notification No. 19 and 20/2012-Customs both dated 17th March, 2012 have been issued for this purpose."

3.6 He argued that in terms of the said clarification also, duty is to be paid under Clause (b) of the Condition 82 of the notification by adopting by charter party contract value and not the full value of the ship.

3.7 Learned Counsel further pointed out that in respect of bill of entry No. F 32 dated 08/08/2012 in respect of vessel MV Athena, the duty has been calculated for 2 months in place of 1 month. He pointed out that vessel was converted into coastal run and back to foreign run vessel in the same month i.e. on 04.08.2012 and 13.08.2012 respectively. Learned Counsel argued that this fact was brought to the notice of Commissioner (Appeals), but no findings have been given in respect of this. He further pointed out that, while there was other evidence available regarding value of the ships, the value of insurance has been wrongly taken without giving an opportunity to the appellants to present their case regarding the value of the ships.

4. Learned AR relied on the impugned order.

5. We have considered rival submissions. We find that Sr. No 462 of the Notification 12/2012 dated 17.03.2012 reads as follows: the Condition 82 reads as follows:

Sr. No.	Chapter Heading or Sub-heading or Tariff item	Description of Goods	Standard Rate	Additional Duty Rate	Condition No.
462	8901	Foreign going vessel	Nil	Nil	82

If,-

the importer files a bill of entry under section 46 of the Customs Act, 1962, [No. 52 of 1962] at the time of conversion of vessel for coastal run subsequent to import and pays the applicable duty of customs on:-

(a) full lease or contract value, if the import is under a lease agreement or contract;

(b) 1/120th of the applicable duty, for each month or part thereof, of stay in India as coastal vessel.

Explanation.- For the purposes of this entry, (1) "Foreign going vessel" shall have the same meaning as assigned to it under clause (21) of Section 2 of the Customs 1962, (No. 52 of 1962);

(2) "Conversion to coastal Vessel" shall include the vessel granted a license for coastal trade under section 407 of the Merchant Shipping Act, 1958 (44 of 1958) by the Director General Shipping and the vessel granted permission for carrying coastal goods, under the provisions specified in Chapter XII, of the Customs Act, 1962 (No. 52 of 1962) by the proper officer of the Customs;

(3) "applicable duty" means the Additional duty of Customs under sub-section (1) of section 3 of the Customs Tariff Act, 1975 (51 of 1975)."

5.1 A perusal of the conditions prescribed in the notification clearly shows that the notification gives two options to the importers. The first option is to pay the customs duty on the full lease or contract value in case of charter party contracts. The second option is to pay one by one hundred and twentieth

of the applicable duty for each month or part thereof stay in India of coastal run.

5.2 The termed applicable duty has been defined under clause 3 of the Notification and it reads as follows:

"(3) "applicable duty" means the Additional duty of Customs under sub-section (1) of section 3 of the Customs Tariff Act, 1975 (51 of 1975)."

The term applicable duty has clearly been denied as the additional duty of customs under Section 3(1) of Custom Tariff Act, 1975 (Act No. 51 of 1975).

The Section 3(1) of the Custom Tariff Act reads as follows:

"3(1) Any article which is imported into India shall, in addition, be liable to a duty (hereafter in this section referred to as the additional duty) equal to the excise duty for the time being leviable on a like article if produced or manufactured in India and if such excise duty on a like article is leviable at any percentage of its value, the additional duty to which the imported article shall be so liable shall be calculated at that percentage, of the value of the imported article:

Provided that in case of any alcoholic liquor for human consumption imported into India, the Central Government may, by notification in the Official Gazete, specify the rate of additional duty having regard to the excise duty for the time being leviable on a like alcoholic liquor produced or manufactured in different states or, if a like alcoholic liquor is not produced or manufactured in any state, then, having regard to the excise duty which would be leviable for the time being in different states on the class or description of alcoholic liquor to which such imported alcoholic liquor belongs.

Explanation.- In this section, the expression "the excise duty for the time being leviable on a like article if produced or manufactured in India" means the excise duty for the time being in force which would be leviable on a like article if produced or manufactured in India or, if a like article is not so produced or manufactured, which would be leviable on the class or description of articles to which the imported

article belongs, and where such duty is leviable at different rates, the highest duty."

From the above, it is clear that the applicable duty is to be calculated at any percentage of the value of goods then such duty will be calculated at that percentage of the value of the imported articles.

5.3 The appellants have relied on the letters of Joint Secretary issued in respect of this notification. The Letter of Joint Secretary also contained the illustration 1 and 2 which are reproduced below:

*"Illustration 1: If a vessel imported by a Shipping Line ABC Company as a foreign-going vessel converts into a coastal vessel for 6 months and the value of the vessel declared by the importer is *2 crore, the duty payable would be calculated in the following manner:*

*(2*0.0618) 6/120 61.800, where the rate of duty is 6.18%*

Illustration II: If a vessel is imported by an Indian corporate on lease basis for use after import on payment of a total rental of 50 lakh for a period of 3 months, the duty payable would be calculated in the following manner:

50 0.6183.09 lakh, where the rate of duty is 6. 18%"*

The calculation of Illustration 1 and 2 above clearly shows that Clause (a) & (b) of the condition are to be read separately and are two independent options provided to the importer. In illustration 1, the duty has been calculated on full value of the ship and this is the manner prescribed in Clause (b) of the Condition 82 of the valuation Illustration 2, the duty has been calculated on the charter party agreement value, which is manner prescribed in Clause (a) of the Condition 82 of the Notification 12/2012-Cus dated 17.03.2012.

5.4 In the aforesaid background, we find that, it is the option of the importer to pay duty either in terms of clause (a) of the condition 82 of the notification

or in terms of clause (b) Condition 82 of the notification. Ideally the original Adjudicating Authority, should have sought option from the importer and acted accordingly to assess either under Clause (a) of the Condition 82 or Clause (b) of the condition 82 of the Notification 12/2012- Cus dated 17.03.2012. Secondly, it is noticed from the impugned order that the value of the vessel declared in the insurance certificate has been taken and no opportunity has been granted to the appellants to refute or challenge the said value. In case the appellants wish to assess the goods under Clause (b) of the Condition 82 of the notification then they may be given opportunity to participate in determination of correct value of the vessels for the purpose of assessment.

5.5 Appellants have also claimed that in respect of bill of entry No. F 32 dt.08.08.2012 in respect of MV Athena, the coastal conversion was for a period of less than 1 month, whereas while calculating the duty, the said fact has been ignored and duty has been calculated taking the sought period to be equal to 2 months. The said fact may also be verified.

6. In the facts and circumstances of the case, we hold that it is open to the appellants to seek assessment either under Clause (a) or Clause (b) of the Condition 82 of the Notification 12/2012-Cus dated 1703.2012. In case they opt for assessment under Clause (b) then duty will be calculated on the total assessment value of the ships determined in terms of Section 14 read with Custom Valuation Rules. We reject the contention of the appellant that there is no mechanism under the customs valuation rules to determine the value in such circumstances as the said rules take care of all eventualities to reach the valuation in such circumstances. However if the appellants seek assessment under Clause (a) of the notification the same can also be done.

The option of simultaneous benefit of Clause (a) and (b) can not be availed for any single import.

7. The impugned order is therefore set aside and matter remanded to the original Adjudicating Authority for fresh assessment in light of above findings. The appellants are at liberty to present evidence in support of their contentions regarding value of ships.

(Pronounced in the open Court on 19.09.2023)

(RAJU)
MEMBER (TECHNICAL)

SOMESH ARORA
MEMBER (JUDICIAL)

PALAK