

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

REGIONAL BENCH - COURT NO. 3

CUSTOMS Appeal No. 00305 of 2012-DB

[Arising out of Order-in-Original/Appeal No 07-COMMISSIONER-2012 dated 26.09.2012 passed by Commissioner of CUSTOMS-JAMNAGAR (PREV.)]]

Shirdi Steel Traders

Plot No. 40, Sby, Alang,
BHAVNAGAR, GUJARAT

.... Appellant

VERSUS

Commissioner of Customs (Prev.), Jamnagar

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

.... Respondent

WITH

(i) CUSTOMS Appeal No. 00301 of 2012-DB (Snow Drop Company Limited)

(ii) CUSTOMS Appeal No. 00302 of 2012-DB (Vihar Shipping Agency Pvt. Limited)

(iii) CUSTOMS Appeal No. 00303 of 2012-DB (Prakash Ajmera)

(iv) CUSTOMS Appeal No. 00304 of 2012-DB (Rajesh Parekh)

(iv) CUSTOMS Appeal No. 00306 of 2012-DB (Manish L Vyas)

(iv) CUSTOMS Appeal No. 00307 of 2012-DB (Labdhi Shipping (Agency) Pvt. Limited)

APPEARANCE :

Shri Anil Gidwani, Advocate for the Appellant

Shri Himanshu P Shrimali, Superintendent (AR) for the Respondent

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

DATE OF HEARING : 14.09.2023

DATE OF DECISION: 11.10.2023

FINAL ORDER NO. 12237-12243/2023

C.L. MAHAR :

The facts in brief are that one of the appellants M/s. Snow Drop Company Limited, Belgium (cash buyer) is in the business of purchasing shipping vessels on cash basis and through agents based in India namely M/s. Labdhi Shipping Agency Pvt. Limited, Bhavnagar (cash buyer's agent).

They have been selling the used vessels for the purpose of breaking of various steel/ iron traders of Bhavnagar. M/s. Snow Drop Company Limited has purchased vessel named M.V. Basil from M/s. Diva Maritime Company, Marshall Islands and same which was further sold by M/s. M/s. Snow Drop Company Limited to M/s. Shirdi Steel Traders in India. M/s. Snow Drop Company Limited's agent namely M/s. Labdhi Shipping Agency Pvt. Limited filed prior IGM on 29.10.2010 and submitted copies of MOA (memorandum of agreement) dated 11.10.2010 entered between the owners and cash buyers reflecting the purchase price USD 61,31,400/-. The MOA entered between cash buyers namely M/s. Snow Drop Company Limited and M/s. Shirdi Steel Traders was also submitted to the Customs authorities.

2. The Revenue received some information from a firm namely M/s. Croft Sales and Distribution Limited, Wickhams Cay I, British Islands wherein a copy of bill of sale dated 22.10.2010 issued by the owners in favour of cash buyer namely M/s. Snow Drop Company Limited were submitted. As per the bill of sale dated 20.10.2010 submitted by informer, the value of the vessel namely MV Basil was indicated at the rate of USD 63,68,295/-. On receipt of the information the department re-examined the documents/ MOA filed by importer in respect of the said vessel along with prior IGM and the department found that the purchase price mentioned in the MOA dated 11.10.2010 was at the rate USD 61,31,400/- which was not in conformity with the price which was mentioned on the bill of sale dated 22.10.2010 which was received from M/s. Croft Sales and Distribution Limited. The Assistant Commissioner, Customs, Bhavnagar, after undertaking further investigations in the matter, seized the said MV Basil under Section 110 of the Customs Act, 1962 on 25.03.2011, on the charges that the value of the imported vessel has been misdeclared and therefore, the said vessel is liable

for confiscation as per the provisions of Section 111 of the Customs Act, 1962, the vessel was confiscated. On the request of the cash buyer, the seized vessel was released provisionally to the cash buyer on 10.05.2011.

3. After detailed investigation a show cause notice dated 16.09.2011 was issued in the matter by the Commissioner of Customs (Preventive) Jamnagar. The learned Commissioner vide impugned order-in-original No. 07-COMMISSIONER-2012 dated 26.09.2012 has held as under:-

“(i) The Vessel MV Basil in ordered to be confiscated under Section 111 (of of the Customs Act, 1962. Since the said Vessel has already been provisionally released, the redemption fine of Rs 30 Lakhs imposed on M/s. Bnow Drop Co. Ltd, Belgium under Section 125 of the Act.

(ii) The B.E. No. 356/2010-11 dated 25.03.2011 in ordered to be finalised by the proper officer considering the transaction value as per MOA dated 11.10.2010 reflecting the price of USD 6,368,295/- Since the importer has already paid duty on the said value under protest, it ordered to vacate the protest lodged by the importer in respect of the value at which Bill of Entry has been provisionally assessed.

(iii) Penalties imposed are as under:

Sr. No.	Name of Noticee	Penalty imposed under sec. 112(a) & (b) of Act (Rs.)	Penalty imposed under Section 114AA of the Act (Rs.)
1	M/s. Shirdi Steel Traders	10 Lakhs	15 Lakhs
2	M/s. Snow Drop Company Limited	05 Lakhs	08 Lakhs
3	Shri. Prakash Ajmera (Attorney-in fact of M/s. Snow Drop Co. Limited)	04 Lakhs	06 Lakhs
4	M/s. Labdhi Shipping (Agency) Pvt. Limited	03 Lakhs	05 Lakhs
5	Shri. Rajesh K. Parekh (Director of M/s. Labdhi Shipping (Agency) Pvt. Limited	02 Lakhs	04 Lakhs
6	M/s. Vihar Shipping Agency P. Ltd	02 Lakhs	03 Lakhs
7	Shri. Manish L. Vyas (Director of M/s. Vihar Shipping Agency P. Limited)	01 Lakh	1.50 Lakhs

4. The appellants are before us against the above mentioned order-in-original. Learned advocate appearing for the appellants argued that Adjudicating Authority was wrong in holding that actual value of MV Basil was misdeclared with an intention to evade customs duty to the tune of Rs. 13,15,956/- however, in fact the lowering of the value by the foreign

supplier namely M/s. Snow Drop Company Limited to the importer M/s. Shirdi Steel Traders, due to changes in the circumstances due to late signing of original contract between the owner of the vessel namely M/s. Diva Meritime and the exporter (supplier of the vessel M/s. Snow Drop Company Limited). The circumstances which lead to reduced value are such as delay in supply of the vessel, reduced availability of fuel on the vessel and non supply of tools kits along with the vessel. The learned advocate has vehemently opposed the charges of suppression of value. It has been contended that the appellant would certainly not make any misdeclaration only for saving a petty amount of Rs. 13,15,956/-.

5. Learned advocate has contended that for the purpose of Section 14 of the Customs Act, 1962 what is relevant for establishing the transaction value in terms of legal provisions is the price which is to be paid by the importer namely M/s. Shirdi Steel Traders to the supplier of the vessel M/s. Snow Drop Company Limited. The price for which the import invoice issued by the supplier and for which the legal Letter of Credit has been opened by the importer are only relevant documents. It is wrong on the part of the department to hold that there is mis-declaration of the value when a letter of credit is opened by the importer in favour of the exporter for the declared value of USD 61,93,271/-. Learned advocate has taken us through various contracts to point out that the agreement dated 11.10.2010 between the owner of the vessel M/s. Diva Meritime, Marshall Islands and M/s. Snow Drop Company Limited, Belgium mentions the price of the vessel at USD 63,68,295/-. The appeal papers at page No. 227 also have another MOA dated 11.10.2010 between M/s. Diva Meritime, Marshall Island and M/s. Snow Drop Company Limited wherein the price of the vessel mentioned is USD 61,31,400/- CIF. Both the above mentioned agreements are of the

same date and have been signed on the same date. On the basis of above agreements, learned advocate tried to establish that earlier the agreement of USD 63,68,295/- was only a Performa invoice and real transaction value of the vessel is USD 61,31,400/- which is the actual price and same has been paid by the importer and for which the legal Letter of Credit (LC) has been opened through nationalized bank for the payment of the vessel to the supplier.

6. Learned advocate has also pointed out that the terms of MOA are different for the agreement where the price of vessel has been quoted at 63,68,295/- than the agreement wherein the price has been quoted as 61,31,400/-. It has further been argued that the department was wrong on its part alleging the misdeclaration as entire payment has been made through Letter of Credit and department has failed to establish that there was any other payment made other than a banking channel and therefore, the invoice value indicated by the importer at the time of import in the bills of entry is the real transaction value and there has not been any misdeclaration on the part of the appellant of the impugned imported vessel namely MV Basil. The learned advocate also relied upon various judgments and have drawn our attention to the Hon'ble Apex Court judgment in the case of *M/s. Udayani Ship Breakers Limited – 2006 (195) ELT 3 (SC)*, while dealing with the more or less same facts, in Para 13, observed as under:-

"13. Any sale of goods after the act of "import" within the meaning of the Act is over, can only be described as a sale in the course of domestic trade and not a sale in the course of international trade. Inasmuch as MOA was enacted in respect of ship which has already arrived on 21-07.2001, such sale agreement has to be treated as sale in domestic market as observed by Hon'ble Supreme Court. Inasmuch as the price of ship in the international market stand duly reflected in the earlier MOA dt. 13-07-2001, adoption of the same for the purposes of duty cannot be faulted upon".

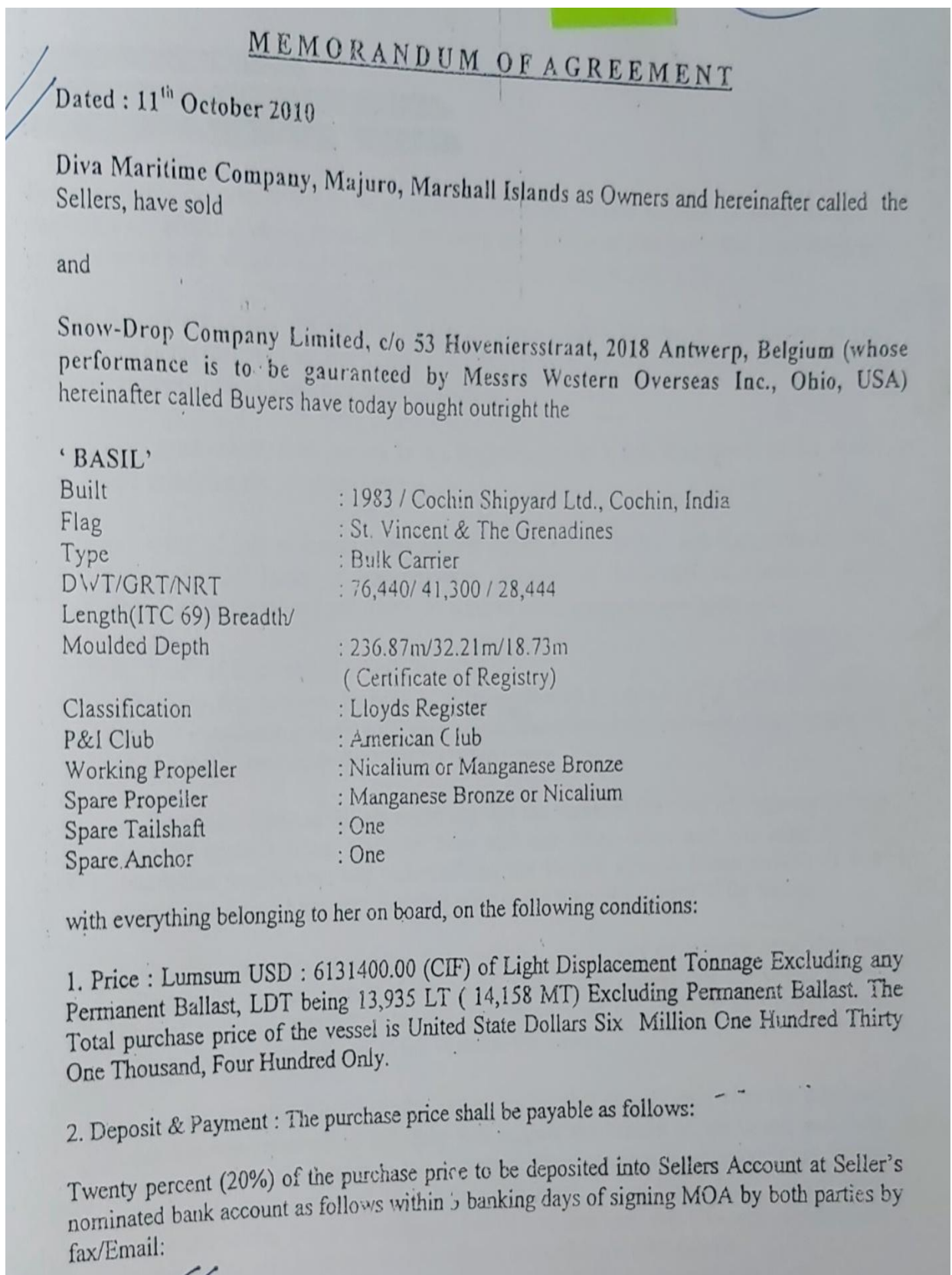
The Learned advocate has also relied upon the Hon'ble Supreme Court judgment in the case of *Chaudhary Ship Breakers vs. CC, Ahmedabad - 2010 (259) ELT 161 (SC)*.

7. The Learned advocate also mentioned that initially the agreement between the owner and the cash buyer namely M/s. Snow Drop Company Limited indicated the price of the vessel at USD 63,68,295/- was also changed on the same date to USD 61,31,400/- and therefore, the reliance of the department on the value mentioned in the earlier MOA is of no use as the same was changed on the same date and MOA is duly signed by both the parties. Learned advocate has emphasized that what is important is the agreement which has been signed by supplier and importer of the vessel and the price agreed between the supplier and the importer which is USD 61,31,400/- and same is the actual transaction price which has been paid by the importer through nationalized bank by opening a Letter of Credit. Hence there is no mis-declaration of the value of imported vessel namely MV Basil and the allegation made by learned Commissioner is not legally tenable.

8. We have also heard Shri Himanshu P Shrimali, learned Superintendent (AR) who reiterated the findings given in the impugned order-in-original. He relied upon the following decisions:-

- (a) International Steel Corporation vs. CC, Jamnagar - 2015 (325) ELT 881 (Tri. Ahmd)
- (b) CC, Bhavnagar vs. Lucky Steel Industries- 2007-TIOL-2182-CESTAT-AHM
- (c) CC, Bhavnagar vs. Mahavir Ship Breakers - 2009 (234) ELT 176 (Tri. Ahmd)
- (d) CC, Jamnagar vs. Shree Ram Steel & Rolling Industries - 2005 (188) ELT 80 (Tri. -Mum).
- (e) CC, Ahmedabad vs. Guru Ashish Ship Breakers -2003 (157) ELT 277 (Tri- Mum).

9. Heard both the sides and perused the record of the appeal. The only question which needs to be answered by us in this appeal is whether there is an element of mis-declaration on the part of the importer of the vessel with regard to transaction value of the vessel declared at the time of importation. The only evidence which has been the basis of confirmation of the charges in the order-in-original is the MOA dated 11.10.2010 wherein the price of the vessel has been indicated at the rate USD 63,68,295/-. This MOA is between M/s. Diva Meritime, Majuro, Marshall Island (owner of the vessel) and M/s. Snow Drop Company Limited, Belgium (cash buyer). The later party has further sold the vessel MV Basil to independent importer- appellant namely M/s. Shirdi Steel Traders. The transaction amount which has been declared in bills of entry by the importer is 61,31,400/- USD. The agreement which is dated 28.10.2010 between the seller of the vessel M/s. Snow Drop Company Limited and importer (independent buyer) M/s. Shirdi Steel Traders is for USD 61,73,271/-. The primary suspicion of under invoicing of the imported vessel by the department is only on the basis of difference between the two above mentioned agreements. We find from the record of appeal that another MOA which is between the same parties namely M/s. Diva Meritime (the owner of the vessel) and M/s. Snow Drop Company Limited (cash buyer) is also dated 10.10.2010 and wherein the price of the vessel indicated as USD 61,31,400/-. The relevant portion of the MOA is reproduced below:-



We also find that both the agreements are dated 11.10.2010 and same has been signed by the same persons. On perusal of above agreements, we are of the opinion that the MOA dated 10.10.2010 wherein the price indicated as USD 63,68,295/- some sort of a performa invoice rather than actual sale agreement. The basic evidence on which the department has relied upon is this agreement wherein the price has been indicated as 63,68,295/- whereas we find that on the same date and by the same party another agreement

has been signed wherein the price agreed between the owner and the cash buyer is USD 61,31,400 (CIF).

10. Before proceeding further, it will be relevant to have a reference to the legal provisions with regard to the imported goods. The Section 14 of the Customs Act, 1962 provides as follows:-

"14 Valuation of goods. — (1) For the purposes of the Customs Tariff Act, 1975 (51 of 1975), or any other law for the time being in force, the value of the imported goods and export goods shall be the transaction value of such goods, that is to say, the price actually paid or payable for the goods when sold for export to India for delivery at the time and place of importation, or as the case may be, for export from India for delivery at the time and place of exportation, where the buyer and seller of the goods are not related and price is the sole consideration for the sale subject to such other conditions as may be specified in the rules made in this behalf."

It can be seen from the above provisions that as per Section 14 of the Customs Act, 1962 that value of the imported goods for the purpose of levy of Customs duty shall be the transaction value of the imported goods which is paid at the time of importation. We find that transaction value is decided between the supplier of the goods and the buyer, which is importer in this case declared on the bills of entry for the purpose of assessment of the customs duty. The importer has opened a Letter of Credit in favour of the supplier of vessel which is for the amount indicated in MOA. The transaction value which have been declared on the bill of entry is the invoice value for which letter of credit through a recognized banking system has been opened. There is no evidence to suggest any extra payment to the supplier of the vessel except the invoice value. The price reflected in the MOA between the owner of vessel (who is not the supplier of vessel) and the foreign based cash buyer is of no consequence to allege misdeclaration of value. We also find that the evidence on which the Revenue has relied upon is the MOA dated 10.10.2010 wherein the price of subject vessel has been shown as USD 63,68,295/- however, on the same date these parties have signed another MOA wherein the price of vessel MV Basil has been shown as USD 61,31,400/- therefore, we are of the view that this piece of evidence is not good enough to suspect and reject the declared transaction value. We therefore hold that the invoice value is the true transaction value in this case and there is no element of misdeclaration of value.

11. In view of above, we find that charges of mis-declaration of value in this matter are not established. However, before parting with the matter we also relied upon the decision of the HSC in the case of *M/s. Chaudhary Ship Breakers vs. CC, Ahmedabad – 2010-TIOL-86-SC-CUS*. The relevant portion of the decision is reproduced below:-

“11. Mr. Pawan Shree Agrawal, learned counsel appearing for the appellant, while assailing the impugned order, strenuously urged that since under Section 14 of the Act the value of the goods is deemed to be the price at which such or like goods are ordinarily sold in the course of international trade, the price that was actually paid by the appellant in terms of addendum dated 8th December 1997, is to be adopted as the “transaction value” in terms of Rule 3 read with Rule 4(1) of the Customs Valuation (Determination of Price of Imported Goods) Rules, 1988 (for short “the 1988 Rules”) for the purpose of levy of customs duty under the Act. Learned counsel commended us to the GATT Customs Valuation Code, which, *inter alia*, contemplates that if the parties agree upon a price adjustment promptly, even if there is nothing in writing between them on the subject, the Customs should accept the adjusted price as the basis for transaction value.

12. Per contra, Mr. V. Shekhar, learned senior counsel appearing for the revenue, supported the order of the Tribunal. Learned counsel emphasised that in the absence of any stipulation in the MOA for reduction in the agreed price, the revised price mentioned in the addendum is of no consequence for the purpose of Section 14 of the Act.

13. At the outset, we may note that the decision of the Tribunal in *Atam Manohar* (supra) was questioned by the revenue before this Court in Civil Appeal No. 146 of 2004 [[2009 \(233\) E.L.T. 145](#) (S.C.)]. While allowing the appeal and setting aside the order of the Tribunal primarily on the ground that the addendum was a self-serving document, the Court observed thus :

“We may also point out that in this case we are basically concerned with the genuineness of the addendum to the MOA dated 13th April, 1999. If one looks at the said addendum, we find that the date on which the said addendum stood executed is not given. Further, when did the addendum stand incorporated in the MOA. We do not find the date on which the clause stood inserted in the MOA. Further, the said addendum does not give any reason for reduction in the price from US \$ 9,70,960.23 to US \$ 8,70,960.23. Further, the most clinching factor to be seen is that the said addendum appears to have been executed at the request of the buyer. In our view, this is a self-serving document. In this connection, it may also be noted that the MOA dated 13th April, 1999 states that the vessel is bought on “as is where is” basis. If that be the case, we do not know on what basis the value of the vessel stood reduced from US \$ 9,70,960.23 to US \$ 8,70,960.23. Lastly, it is stated on record that one of the items was not in a working condition and by way of damages, the price stood reduced. It is not so

stated in the addendum. If it is the case of damages, then, surely it would have been so stated in the addendum."

14. It is manifest that the Court expressed the view that where the price of the vessel had been reduced by way of an addendum to the original agreement, the acceptance of the revised price would depend on the genuineness of the said addendum. In other words, the Court laid greater emphasis on the genuineness or otherwise of the addendum and not on the factum of absence of a provision in the original agreement for reduction of price for the reasons stated in the addendum, as held in the case of *Guru Ashish Ship Breakers* (supra), relied upon by the Tribunal in the present case.

15. According to Section 14(1) of the Act, assessment of customs duty under the Customs Tariff Act, 1975 is to be made on the value of the goods imported. Unless the value of the goods is fixed under the sub-section (2) of Section 14, the value has to be determined under sub-section (1) of the said Section. The value, as per Section 14(1), as it stood prior to its amendment with effect from 10th October 2007, shall be deemed to be the price at which such or like goods are ordinarily sold, or offered for sale, for delivery at the time and place of importation - in the course of international trade. The word "ordinarily" is clarified in the Section itself, which describes an "ordinary" sale as one "where the seller and the buyer have no interest in the business of each other and the price is the sole consideration for the sale...". According to Section 14(1A) price of imported goods is to be determined in accordance with the Rules framed in this behalf. Under Rule 3(i) of the 1988 Rules, the value of the imported goods shall be the "transaction value". Transaction value has been defined in Rule 2(f) as meaning the value determined in accordance with Rule 4. Rule 4(1), in turn, states that "the transaction value of the imported goods shall be the price actually paid or payable for the goods when sold for export to India, adjusted in accordance with the provisions of Rule 9 of these Rules." It is clear from a conjoint reading of Rule 3(i) and Rule 4(1) that the adjudicating authority is bound to accept the price actually paid or payable for the goods as the transaction value, except where exceptions enumerated in Rule 4(2) are attracted, which is not the case here. It is, therefore, manifest that both Section 14(1) and Rule 4 provide that in the absence of any of the special circumstances indicated in Section 14(1) and particularised in Rule 4(2) of the 1988 Rules, the price paid by an importer to the seller in the ordinary course of commerce is to be taken as the transaction value for the purpose of valuation of goods.

16. Having regard to the afore-stated legal position, the controversy at hand narrows down to the question whether the transaction value of the vessel is to be price mentioned in the original MOA or the reduced price indicated in the addendum. We are of the opinion that in light of the statutory provisions, the factum of actual payment of the price in terms of the addendum cannot be ignored while determining the value of the vessel under Section 14 of the Act. We may, however, hasten to add that in such a situation the genuineness and the necessity of reduction in the price are required to be scrutinised very carefully."

14. In view of the above, we hold that there is no misdeclaration as regard the transaction value of imported vessel MV Basil and therefore, we set-aside the impugned order-in-original.

15 Since the other appellants are here before us against the penalties imposed upon them under Section 112 (a) & (b) as well as penalty imposed

under Section 114AA of the Customs Act, 1962. These penalties have primarily been imposed by the learned Adjudicating Authority holding that transaction value has been misdeclared. Since we have already held in the preceding paras that charges of misdeclaration are not established, therefore, the penalties imposed on the other appellants are not sustainable and the same are set-aside.

16. In view of above, we allow all the appeals.

(Pronounced in the open court on 11.10.2023)

(Somesh Arora)
Member (Judicial)

(C L Mahar)
Member (Technical)

KL