CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Zonal Bench At Ahmedabad

REGIONAL BENCH- COURT NO.3

CUSTOMS Appeal No.10267 of 2021
(Arising out ofOIA-AHD-CUSTM-000-APP-492-20-21dated 28.12.2020passed by Commissioner of Customs -Ahmedabad)

C.C. AHMEDABAD **...Appellant**
CUSTOM HOUSE,
NEAR ALL INDIA RADIO NAVRANGPURA,
AHMEDABAD, GUJARAT

VERSUS

RELIANCE INDUSTRIES LIMITED **...Respondent**
BUILDING NO.5-C,CA-22,1ST FLOOR,
RELIANCE CORPORATE PARK, GHANSOLI, NAVI MUMBAI,
MAHARASHTRA

AND

CUSTOMS Appeal No. 10597 of 2021
(Arising out of OIA-JMN-CUSTM-000-APP-29-21-22dated 30.04.2021passed by Commissioner of Customs –Jamnagar (Prev))

C.C. JAMNAGAR (PREV) **...Appellant**
SHARDA HOUSE...BEDI BANDAR ROAD,
OPP. PANCHAVATI,
JAMNAGAR-GUJARAT

VERSUS

RELIANCE INDUSTRIES LIMITED **...Respondent**
PO RELIANCE GREENS SUB PO MOTIKHAVADI
JAMNAGAR-GUJARAT

APPEARANCE:
Shri Sanjay Kumar, Superintendent (Authorized Representative) appeared for the Appellant
Shri J. C. Patel & Rahul Gajera, Advocate for the Respondent

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

Final Order No. 12341-12342 /2023

DATE OF HEARING: 05.10.2023
DATE OF DECISION: 20.10.2023

RAMESH NAIR

The issue involved in the present case is whether ship demurrage charges paid by the respondent to the owner of the vessel/ ship in which the goods are imported on account of vessel/ ship having to wait at the Port are liable to be included in the Transaction value of the imported goods.

2. Shri Sanjay Kumar Learned (superintendent) Authorized Representative appearing on behalf of the Revenue appellant submits that the learned Commissioner (Appeals) has set aside the order in original and allowed the appeal of the respondent relying upon the Orissa High Court judgment in the case of Tata Steel Limited. He submits that the said decision has been appealed against by filing SLP before the Hon'ble Supreme Court by the Revenue. He further submits that the issue is otherwise covered in favour of the Revenue in case of Grasim Industries Limited case by Larger Bench which is reported at 2013 (296) ELT 39 (Tri. L.B.). He further submits that since the issue involved was custom valuation of the goods, the Hon'ble Orissa High Court had no jurisdiction to entertain the appeal of the assessee. In this regard, he placed reliance on the decision of Tata Power Company Ltd. 2017 (345) ELT 94 (Kar.)

3. On the other hand, Shri J C Patel, learned counsel with Shri Rahul Gajera, Advocate appearing for the respondent submits that as of now the issue is squarely covered by Hon'ble Orissa High Court judgment in the case of Tata Steel Limited (supra). Merely by filing SLP before the Hon'ble Supreme Court, the judgment of Orissa High Court does not lose its binding precedent on the lower authority. He submits that it is not only the Orissa High Court judgment but this Tribunal following the decision of Hon'ble Orissa High Court decided the matter in favour of the assessee in the case of Jubilant Life Science Limited 2019 (10) TMI 336 – CESTAT- New Delhi. He request that this matter may be disposed of by following the Orissa High Court judgment in the case of Tata Steel Limited (supra).

4. We have carefully considered the submissions made by both the sides and perusedthe records. We find that in the present case, the revenue seeks to include the demurrage charges in the value of the imported goods for the purpose of assessment of custom duty. We find that very same issue has been considered by the Hon'ble Orissa High Court in the case of Tata Steel Limited (supra) wherein the Hon'ble Court has passed the following order:

> **"13.** We have heard Learned Counsel for the parties. It is well-settled principle of the statute that while interpreting a statute, one has to go by the scope and object of the principal Act. Under the principal Act, while amending it on 10th October, 2007, proviso has included the costs and services, including commissions and brokerage, engineering, design work, royalties and license fees, costs of transportation to the place of importation, insurance, loading, unloading and handling charges to the extent and in the manner specified in the Rules. The demurrage has not been included as a part of cost envisaged by the legislation. Further, it is a kind of penalty. Therefore, it could not have been envisaged by the legislation to be included in the definition of Section 14 of the Act. However, in view of the clarifications by way of judgments of the Hon'ble Supreme Court, more particularly in the cases of *Wipro Ltd.* (supra), *Essar Steel Ltd.* (supra) and *Mangalore Refinery & Petrochemicals Ltd.* (supra), it is made clear that demurrage cannot be included for the purpose of valuation under the Customs Act, 1962. In that view of the matter, we are of the considered opinion that the contentions raised by the petitioner that the relevant provisions in the Principal Act is silent about the 'demurrage'; thus, it was beyond the legislative power to include it in the Rules is accepted and thus the explanation to sub-rule-(2) of Rule 10 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 is held to be bad and hence declared *ultra vires* the Constitution/provision of Section 14 of the Customs Act, 1962, and hence the same is struck down."

From the above order, it is settled that the demurrage charges cannot be included in the transaction value of imported goods. We further find that as per the order in original, the entire case of the Revenue is that as per the explanation added to Rule 10 of Custom Valuation Rules, 2002, the cost of transportation of imported goods should be included in the transaction value. We find that this Provision was not provided in the Customs Act, 1962 with regard to the Valuation of goods. However the same was brought under the rule by way of explanation. The Hon'ble Orissa High Court has held that the said provision in the Rule is ultra virus to the Customs Act, 1962. Therefore, in our view when the explanation to Rule 10 to Customs Valuation Rules was held ultra virus, the entire basis of the Revenue case falls. We, further, find that this very Tribunal subsequent to passing of the Orissa High Court judgment, in the case of Jubilant Life Science Limited, followed the Orissa High Court judgment, therefore, applying the principles of judicial discipline, we do not have any option except to follow the Hon'ble Orissa High Court judgment in the case of Tata Steel Limited as also this Tribunal's decision in the case of Jubilant Life Science Limited. Accordingly, the impugned order passed by the learned Commissioner is just and proper and the same does not suffer from any infirmity. Accordingly, the same is upheld and Revenue's appeal is dismissed.

(Pronounced in the open court on 20.10.2023)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

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