

**Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench at Ahmedabad**

REGIONAL BENCH-COURT NO. 3

CUSTOMS Appeal No. 10127 of 2016 - DB

(Arising out of OIA-KDL-CUSTOM-000-APP-065-15-16 dated 03/11/2015 passed by Commissioner of CUSTOMS-KANDLA)

Sanghi Industries Ltd

Sanghipuram,
Taluka- Abdasa
Kutch, Gujarat

.....Appellant

VERSUS

C.C.-Kandla

Custom House,
Near Balaji Temple,
Kandla, Gujarat

.....Respondent

APPEARANCE:

Shri Manish Jain, Advocate for the Appellant

Shri Sanjay Kumar, Superintendent (AR) for the Respondent

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

Final Order No. 12554/2023

DATE OF HEARING: 19.10.2023
DATE OF DECISION: 06.11.2023

RAMESH NAIR

The issue involved is whether the Demurrage charges paid by the appellant should be included in the assessable value of imported "Steam Coal".

2. Sri Manish Jain, Learned Counsel appearing on behalf of the appellant at the outset submits that this issue has been decided by the Hon'ble Orissa High Court in the case of TATA Steel Ltd. Vs. Union of India- 2019 (370) ELT 100 (Ori.). Moreover, relying the above Hon'ble Orissa High Court judgment CESTAT New Delhi in the case Vinyl Chemicals (India) Ltd. V. Commissioner of Customs, New Delhi -2019 (7) TMI- 1782 CESTAT New Delhi held that the demurrage charge is not includible in the assessable value of the immovable goods. He submits that in view of the aforesaid settled legal position the issue is no longer res-Integra. Hence, the impugned order is not sustainable.

3. Shri Sanjay Kumar, Learned Superintendent (AR) appearing on behalf of the Revenue reiterates the finding of the impugned order. He further submits that revenue has filed appeal against the Orissa High Court judgment before the Hon'ble Supreme court which is pending.

4. On careful consideration of the submission made by both the sides and perusal of record, we find that the issue that whether the demurrage charges paid by the assessee in respect of imported goods whether includible in the assessable value or otherwise. The issue has been decided by the Hon'ble Orissa High Court in the case of TATA Steel Ltd. (supra) wherein the Hon'ble court passed the following order:

".. 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."

4.1 The Delhi bench of this Tribunal also following the aforesaid Orissa High Court Judgment of TATA Steels Ltd. passed the decision in the case of Vinyl Chemicals (India) LTD. (Supra) wherein the following order was passed:

"9. It is further urged that the Explanation of Rule 10(2)(a) of the Customs Valuation Rules, 2007 is now held to be ultra vires Section 14 of the Customs Act, by the Hon'ble Orissa High Court in Tata Steel Ltd. vs. Union of India and Others reported in 2019-TIOL-595-HC-Orissa-Cus. The impugned order made on the basis of such ultra-vires provision in ex-facie illegal."

In view of the above settled position as of now we are of the view that the demurrage charges is not includable in the custom valuation of imported goods for the purpose of charging custom duty.

4.2 As regard the submission of the learned AR regarding the pendency of the revenue's appeal against Hon'ble Orissa High Court judgment in the case of TATA Steels Ltd. (supra), we find that there is no stay granted by the Hon'ble Supreme Court. Therefore, the finding of Hon'ble High Court judgment is in force. Accordingly, the Orissa High Court judgment prevails which is in favour the case of the appellant.

5. Accordingly, the impugned order is set aside, appeal is allowed.

(Pronounced in the open court on 06.11.2023)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

Raksha