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

REGIONAL BENCH-COURT NO. 3

CUSTOMS Appeal No. 10249 of 2017- DB

[C/ORS/10287/2023]

(Arising out of OIA-JMN-CUSTM-000-APP-001-16-17 dated 06/04/2016 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-AHMEDABAD)

Priya Blue Industries Pvt Ltd ....**Appellant**
Plot No. V-1, Ship Breaking Yard,
Sosiy/alang,
Bhavnagar, Gujarat

VERSUS

C.C.-Jamnagar(prev) ......**Respondent**
Sharda House...Bedi Bandar Road,
Opp. Panchavati,
Jamnagar, Gujarat

APPEARANCE:
Shri Rahul Gajera Advocate for the Appellant
Shri A R Kanani, Superintendent (AR) for the Respondent

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

Final Order No. 10398/2024

DATE OF HEARING: 13.10.2023
DATE OF DECISION: 13.02.2024

RAMESH NAIR

The issue involved in the present case is that value of so called Sludge/Sediments found in the vessel imported for breaking should be USD 120 per MT or USD 420 per MT. The adjudicating authority and the appellate authority had come to the conclusion for fixing the price value of USD 420 MT, which is in respect of the Lubricating Oil that the sludge/sediments found in the vessel is not in the nature of sludge/sediments but it is lubricating oil.

2. Shri Rahul Gajera, Learned Counsel appearing on behalf of the appellant submits that the department could not establish that the sludge/sediments found in the vessel imported for breaking is a lubricating

oil. Therefore, enhancing the value and applying the value of lubricating oil in respect of the sludge/sediments is on assumption or presumption. Therefore, the same is not sustainable.

3. Shri A R Kanani, Learned Superintendent (AR) appearing on behalf of the revenue reiterates the finding of the impugned order.

4. On careful consideration of the submission made by both the sides and perusal of record, we find that as regard the dispute on valuation the revenue has adopted the price value of USD 420/MT, in respect of sludge/sediments considering the same as Lubricating Oil. The relevant finding of the adjudicating authority is given as under:

> *"18. Since the only issue to be decided in the present de-nova proceedings is valuation of the item declared as sludge/sediment, which according to the test report of Government Laboratory, Kandla contains only 45% of water and sediment. I find that if the item under dispute was actually sludge/sediment which deposited during regular import by that vessel, such fewer amounts of impurities would not have resulted and percentage of impurities would have been higher. Further, it is observed from bills of entry filed by other importers/ship-breakers that the quantity of sludge/sediment in a ship imported for breaking is always found to be 10-20 MT only, whereas in the present case, the quantity found is to the tune of 175 MT, which is actually very high for considering the same as sludge/sediment and which can be termed as commercial quantity. It is already held by Hon. Tribunal that so called sludge/sediment is marketable item and there are so many recycler units located in the country. Such oil is used for industrial purposes after recycling the same In view of the fact that the oil (so called sludge/sediment) imported alongwith the said vessel was having very less impurities and that it was in commercial quantity, the value pertaining to sludge/sediment cannot be applied to the imported item. Further, I find that department had asked the oil companies who are regularly importing oils for giving an opinion, after perusing the test report given by CRCL, Kandla and M/s 10CI. vide letter dated 26.03 2008 had opined that- "From the test results of the samples of sludge/waste oil obtained from the storage tank of the ship brought for breaking it appears that the residual sludge/waste oil is of a different type of mineral hydro carbon/marine oil used by vessels and not the tank bottom crude oil sludge which sometimes remains as residue on tank bottom out of duty paid crude oil. We do not test flash point and smoke point of tank bottom crude oil*

sludge. However, as per our knowledge, flash point of Tank Bottom Crude Oil sludge is normally around 200 degree Celsius. As per parameters of waste oil given by Customs House OIO No 23/ADC/2015-AS dated 13.07.2015 in the case of M/s Priya Blue Industries d. Alang.

Kandla, this is not similar to our tank bottom crude oil sludge and appears to be a different type of oil".

Thus, for valuation of the item in dispute referred as sludge/sediment, one cannot compare the value of sludge/sediment being declared by other importers at the material time. I find that during first round of litigation, department had produced two bills of entry - No. SBY-III/24/98-99 dated 29.05.1998 filed by M/s. G. N. Ship Breakers, Bhavnagar and No SBY-III/22/98-99 dated 28.05.1998 filed by M/s Kothi Ship Breaking Industries, Bhavnagar, wherein the respective importers had shown Sludge Oil and valued the same @ USD 120 PMT. However, as discussed above, this price cannot be taken to be value of the goods in question. I find that the two importers viz. M/s. G. N. Ship Breakers as well as M/s. Kothi Ship Breaking Industries have declared the value of Lubricating Oil at USD 420 PMT in their respective bills of entry and therefore, the SCN has taken that value for calculating the demand amount on the oil (so called sediment/sludge). However, the noticee has contended that since it contains impurities, the same cannot be valued at the price of Lubricating Oil.

4.1 The Commissioner (Appeals) concurring with the above finding of the original order, upheld the valuation of goods at USD 420 per MT. We find that from the above finding, no material evidence was adduced by the department to come to conclusion beyond doubt that the goods found in the vessel was lubricating oil and not the sludge/sediments. Therefore, without any evidence, applying the value of USD 420 MT which is of lubricating oil is on assumption and presumption basis. In the finding itself, it was admitted that the value of the sludge oil is USD 120 per MT.

4.2 It is also fact that the department could not establish conclusively that the goods claimed by the appellant as sludge/sediments is lubricating oil. Therefore, applying the price of the lubricating oil i.e. USD 420 per MT, is without any basis. Hence, the same cannot be sustained. Accordingly, we are of the view that the adjudicating authority must reconsider the entire case and bring any evidence, if available, to establish that the goods found in the vessel is Lubricating Oil and not sludge/sediment and thereafter matter may be decided a fresh.

5. Therefore, the impugned order is set aside. The appeal is allowed by way of remand to the adjudicating authority.

(Pronounced in the open court on 13.02.2024)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

Raksha