CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST ZONAL BENCH : AHMEDABAD
REGIONAL BENCH - COURT NO. 3

CUSTOMS Appeal No. 10099 of 2022-DB

[Arising out of Order-in-Appeal No. JMN-CUSTM-000-APP-040 to 044-21-22 dated 30.09.2021 passed by the Commissioner of Customs (Appeals), Ahmedabad]

Phoenix Marine Services **.... Appellant**
210-B 2nd Floor City Centre Kalanala
Bhavnagar, Bhavnagar, Gujarat

VERSUS

Commissioner of Central Excise & ST, Jamnagar .... Respondent
Sharda House, Bedi Bandar Road,
Opp. Panchavati, Jamnagar, Gujarat

WITH

(i) Customs Appeal No. 10100 of 2022 (Phoenix Marine Services)
(ii) Customs Appeal No. 10101 of 2022 (Phoenix Marine Services)
(iii) Customs Appeal No. 10102 of 2022 (Phoenix Marine Services)
(iv) Customs Appeal No. 10103 of 2022 (Phoenix Marine Services)

APPEARANCE :

Shri Vikas Mehta, Consultant for the Appellant
Shri Rajesh R. Kurup, Superintendent (AR)for the Respondent

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

DATE OF HEARING : 21.12.2023
DATE OF DECISION: 09.04.2024

FINAL ORDER NO. 10783-10787/2024

RAMESH NAIR :

These appeals are filed against common Order-in-Appeal No. JMN-CUSTM-000-APP-040 to 044-21-22 dated 30.09.2021 passed by the Commissioner of Customs (Appeals), Ahmedabad.

2. Brief facts of the case are that five tug vessels namely "William", "Carline", "Richard", "Bright" and "Alden" purchased by Bhavnagar/Alang based importer for breaking purpose were discharged at Bedi Port, Jamnagar by mother vessel MV Xiang Yun Kou. On the transshipment permissions under Section 54 of the Customs Act, 1962 granted by the Jamnagar Customs, the vessels on their own propulsion arrived at Alang on different dates. Upon the arrival of the vessels at Alang, the shipping agent

(Appellant) filed Bills of Entry which were assessed by the proper officer and duty payable on bunker consumption from Bedi port to Alang was figured out. The said calculation of bunker figures was figured out on the basis of log books available onboard duly signed by the Master of Vessel. The Appellant however did not accept the duty liability for the reason that the vessels were 'cargo' and not 'vessels'. It appeared that as per Section 55 of the Customs Act, 1962, the goods transshipped under Section 54 at any customs station would be liable to duty and shall be entered in like manner as goods are entered on the first importation thereof. Accordingly, a letter dated 05.07.2018 was issued to the appellant with a direction to pay the customs duty applicable. The appellant defended the matter and the adjudicating authority, after considering defence submission of the appellant, passed orders and confirmed the custom duty demand along with interest. Being aggrieved, the appellant preferred appeal before the Learned Commissioner (Appeals) who vide impugned order-in-appeal, rejected the appeal and upheld the orders of lower authority. Being aggrieved, the appellant is before this Tribunal.

3. Shri Vikash Mehta Ld. Consultant appearing on behalf of appellant submits that the impugned order has travelled beyond the scope of show cause notice in the form of letter dated 05.07.2018 inasmuch as it is alleged that the vessel cannot be treated as cargo whereas the impugned order is passed by holding that this is a case of transshipment of cargo. The applicability of Section 55 of Customs Act, 1962 related to transshipment was already ruled out in the demand letter dated 05.07.2018. Hence, Ld. Commissioner (Appeals) could not have demanded duty by citing the provisions of Section 55 of Customs Act, 1962.

4 He also submits that the lower authorities have failed to appreciate that this is a case where tug that was undisputedly meant for breaking at Alang had arrived at Alang on its own after being dropped at Bedi port by a mother vessel arriving from foreign port owing to logistical difficulties. There is no dispute over the fact that the said tug had not performed any coastal voyage or undertaking any coastal operations prior to entry into India at Bedi port or whilst on voyage from Bedi port to Alang and hence, the voyage from Bedi port to Alang must be seen in the context of the voyage undertaken by the mother vessels from foreign port laden with a tug meant

for delivery at Alang. The price negotiated between the overseas seller and Indian buyer is also inclusive of freight payable for the delivery of tug at Alang. Inasmuch as it is an admitted position that importer has paid duty on the freight element also, the proposition to demand duty on the bunker element consumed for completing to voyage up to Alang would amount to double taxation, which is without authority of law.

5. He further submits that the demand is directed against Bedi port to Alang leg of voyage that had originated from New Orleans and destined for Alang. The definition of 'foreign –going vessel" contained in section 2(21) of Customs Act , 1962 provide the expression *"whether touching any port or airport in India or not"* does not debar and as a matter of fact would apply to the vessel touching intermediate port (in this case, Bedi port) before completing the voyage at Alang and would therefore deserve the same treatment that is meted out to vessels directly arriving at Alang from the ports outside India for the same purpose, i.e breaking after being treated as foreign –going vessels and not coastal vessels. Therefore, on this ground, the impugned order is not tenable in the eyes of law and the same is liable to be quashed and set aside. He placed reliance on the following decisions.

(i) South India Corpn. (Agencies) Ltd. 1987(30) ELT 100(Cal.)

(ii) Turner Morrison & Co. Ltd., 1999(110) ELT 484 (Cal.)

6. Shri R.R. Kurup, Ld. Superintendent (AR) appearing on behalf of revenue reiterates the findings of impugned order.

7. Heard both the sides and perused the available records of the case. We find that the issue to be decided in this matter is whether the appellant is liable to pay customs duty on the bunkers lying inside the tanks of the vessel including the consumption between Bedi Port to Alang or not . We observed that the Section 55 of the Customs Act 1962 prescribes the provisions for liability of duty on goods transited under Section 53 or transshipped under Section 54 as follows :

> **Section 55.-*Liability of duty on goods transited under section 53 or transhipped under section 54. -*** *Where any goods are allowed to be transited under section 53 or transhipped under sub-section (3) of section 54 to any customs station, they shall, on their*

> *arrival at such station, be liable to duty and shall be entered in like manner as goods are entered on the first importation thereof and the provisions of this Act and any rules and regulations shall, so far as may be, apply in relation to such goods."*

As per the above provision when the goods are permitted to be transited to any customs station, the same are liable for customs duty as such customs station at the destination, which in the present disputed matter was 'Alang". Accordingly the subject 5 tug vessels were imported at Alang and they were not on the coastal voyage from Bedi port to Alang as alleged by the revenue for demanding duty. We also find that the IGM of the said vessels was filed at Alang and thus, the subject 5 tug vessels become liable for custom duty only at Alang and no stage the subject vessels were converted into costal vessels. Therefore the fuel consumed during their transshipment from Bedi port to Alang cannot be considered as dutiable. As rightly claimed by the Appellant that the vessel was never converted to a coastal run and the dead vessel which was towed by the tug was actually imported cargo which was cleared on payment of duty after bill of entry was filed with Alang customs. The vessel had not been cleared for home consumption till it reached Alang. Therefore, we find considerable force in the contention of the appellants that the vessel was never converted into a coastal run and towing of a dead imported vessel not yet cleared for home consumption on its way to Alang via Bedi port did not change the character of the tug from foreign going vessel to a coastal vessel.

8. Further, to understand the controversy, it would be useful to extrapolate the relevant provisions in the Customs Act, 1962, relating to transit and transshipment of stores as follows :

"Section86. Transit and transhipment of stores. *- (1) Any stores imported in a vessel or aircraft may, without payment of duty, remain on board such vessel or aircraft while it is in India.*

(2) Any stores imported in a vessel or aircraft may, with the permission of the proper officer, be transferred to any vessel or aircraft as stores for consumption therein as provided in section 87 or section 90.

> ***Section 87. Imported stores may be consumed on board a foreign going vessel or aircraft. -****"Any imported stores on board a*

> *vessel or aircraft (other than stores to which section 90 applies) may, without payment of duty, be consumed thereon as stores during the period such vessel or aircraft is a foreign-going vessel or aircraft".*

9. Section 2(21) of the Customs Act defines "foreign-going vessel" as follows:

> *"(21) "foreign-going vessel or aircraft" means any vessel or aircraft for the time being engaged in the carriage of goods or passengers between any port or airport in India and any port or airport outside India, whether touching any intermediate port or airport in India or not, and includes -*
>
> *(i) any naval vessel of a foreign Government taking part in any naval exercises;*
>
> *(ii) any vessel engaged in fishing or any other operations outside the territorial waters of India;*
>
> *(iii) any vessel or aircraft proceeding to a place outside India for any purpose whatsoever".*

10. We find that Section 86(2) *inter alia* provides that any stores imported in a vessel or aircraft may with proper permission of the proper officer be transferred to any vessel as stores for consumption therein as provided in Section 87, which *inter alia* provides that imported stores may, without payment of duty be consumed on the vessel as stores during the period such vessel is a foreign going vessel. In order to appreciate the contention raised in the disputed matter, it is necessary to notice a basic premise that under Customs Act goods entering into India becomes imported goods and chargeable to duty under Section 12, unless they are exempt from payment of duty by virtue of specific provisions. It is significant to note that ship stores or spares thereof are not exempted from the operation of Section 12, but by virtue of Section 53 of the Act are allowed to be transited without payment of duty. Similar provision is found in Section 54 in respect of the goods imported into a customs port or customs airport but is intended for transhipment of goods. Section 86(2) of the Act *inter alia* provides that any Imported stores may be transferred to any vessel as stores for consumption therein as provided in Section 87. Section 87 *inter alia* provides that

imported stores imported without payment of duty be consumed on the vessel as stores during the period such vessel is a foreign going vessel.

11. In the present matter we find that the tug had originally arrived at Bedi ports from overseas port laden on mother vessel. Mother vessel was unable to complete the delivery of the said tug at Alang owing to requirement of deeper draught which was not available at the ship breaking yard at Alang. The said tug had arrived from foreign port, it was treated as a foreign –going vessel. There is no dispute over the fact that the said tug had not performed any costal voyage or undertaken any coastal operation. Therefore the fuel consumed during their transshipment from Bedi port to Alang cannot be considered as dutiable.

12. In view of the above discussion and findings, the impugned orders are not sustainable, hence the same are set aside. The appeals are accordingly allowed with consequential relief, as per law.

(Pronounced in the open court on 09.04.2024*)*

(Ramesh Nair)
Member (Judicial)

(Raju)
Member (Technical)

KL