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

REGIONAL BENCH- COURT NO. 3

Customs Appeal No. 11429 of 2017- DB

(Arising out of OIO-JAM-CUSTM-PRV-APP-COM-02-17-18 dated 16.05.2017 passed by Commissioner of Customs-Jamnagar (Prev.)

M/s Shree Venketesh Engineering Works **.........Appellant**
Valsura Road,
Jamnagar-Gujarat

VERSUS

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

APPEARANCE:
Shri Devansh Modi, Advocate for the Appellant
Shri H. P. Shrimali, Superintendent (Authorised Representative) for the Respondent

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

FINAL ORDER NO. 10977 /2024

DATE OF HEARING: 01.04.2024
DATE OF DECISION: 01.05.2024

RAMESH NAIR

The brief facts of the case are that during January,2006 to January,2007 appellant was engaged in providing marine technical support. They used to provide service of cleaning oil tankers so that the inner walls could be cleaned and vessels could then be capable of storing another cargo. The appellant holds the permission of Gujarat Pollution Control Board as well as Indian Custom Department to go along site, the vessels with its berth and trunk clean the inner walls of the said tanker by applying water with the help of pressure jet. While carrying out such activity the ship generated waste/slop was collected and dispatched to an authorized waste recycler/ authorized re-processor (Authorized by GPCB/CPCB). Consequent upon the request received from the charterer of the vessels, contracts were entered into between the appellant and the charterer. As per the terms of the contracts if at all any customs duty is found payable on the slop, the same may be paid by the appellant and then it was required to be reimbursed to the appellant by the charterer as the slop has no commercial value and that it required cleaning for which the appellant used to provide cleaning service. The appellant was paid job charges @ Rs. 2250 per cubic meter by the charterer towards the service of cleaning of slop from the vessels.

1.2 The case of the department is that during the cleaning the oil taken while cleaning from the inner walls of the tankers which is mixed of dominantly water is liable to custom duty. Accordingly, a show cause notice dated20.09.2006 was issued wherein the following proposals were made against the appellant:-

1.3 The Adjudicating Authority adjudicated the show cause notice vide Order-In-Original dated24.12.2007 against which the appeal was filed before this Tribunal. The Tribunal vide Final Order No. A/10949-10950/20166 dated 20.10.2016 remanded the matter to the Learned Commissioner. In De novo adjudication, the Learned Commissioner vide Order-In-Original dated 16.05.2017 reiterating the previous observation once again confirmed the demand of Rs. 4,97,594/- along with interest and imposition penalty of Rs. 4,97,594/- under Section 114 A of Customs Act, 1962 on the appellants. Being aggrieved by the impugned order dated 16.05.2017, the appellant filed the present appeal before this Tribunal.

2. Shri Devansh Modi, Learned Counsel appearing on behalf of the appellant reiterates the detailed synopsis filed on 01.04.2024 according to which he submits that learned commissioner has confirmed the demand in regard to the so called foreign origin waste/

slop oil and that he had dropped the demand qua Indian Origin waste/slop oil. He submits that Learned Commissioner has completely lost sight on the fact that irrespective whether the waste/ slop oil whether of Indian origin or of foreign origin when the vessel itself was on coastal run and that as evident from para 24 of the said Order-In-Original dated 20.04.2007 itself. At the time of conversion of vessel the duty amounting to Rs. 6,95,546/- was paid in regard of the entire quantity of foreign origin oil irrespective whether subsequently the same would be cleaned from inner walls of the tank by applying water through pressure jet or collected in form of waste/ slop from the vessels for the clearance no duty of customs is required to be paid second time on the same goods. He invited our attention to Notification No. 43/1997- Cus (NT) dated 11.09.1997 which was in force up till 27.04.2016 and subsequent Notification No. 56/2016 –Cus (NT) dated 27.04.2016. It clearly provides that there was an exemption from payment of duty when the vessel was on coastal run. It is evident from the Order-In-Original that the vessel in regard there of duty was confirmed on coastal run. He referred to various documents of vessel Shogun and vessel **Jagpadma**. From the documents of these vessels it is evident that the waste/ slop oil had no commercial value and the vessel was on coastal run. Accordingly, the entire basis for demanding duty is on the assumption that the vessels are of foreign origin is incorrect. Therefore, the demand is not sustainable.

2.1 He further submits that the show cause notice has considered the value of slop/waste oil of Rs. 4000 per MT, however, as evident from the letter dated 02.01.2007 being addressed to the Superintendent of Customs , it is clearly mentioned that slop/waste oil has no commercial value, therefore, even in that view of the matter no duty could have been demanded. He submits that since the product has no marketability , it is settled law that no duty of custom or additional duty of customs can be demanded on such product. In this regard, he placed reliance on the following judgments:-

2.2 He also submits that the classification of the waste/slop oil was made under tariff item 2710 of Customs Tariff which is not tenable. He submits that on perusal of note 3 of chapter 27 it shows that only admixture oil which contains **much** oil is covered therein, however, as per the facts of the present case in the mixture of waste/slop oil there is more than 50% water. Therefore, the goods cannot be classified under tariff item 2710. For this reason also demand of custom duty is not sustainable.

3. Shri Himanshu P Shrimali, Learned Superintendent (AR) appearing on behalf of the Revenue reiterates the finding of the impugned order.

4. We have carefully considered the submission made by both sides and perused the records. We find that there is no dispute about the fact that the waste oil on which the duty was demanded for an amount of Rs. 4,97,590/- is not imported as such waste. It is obtained while cleaning the inner walls of the tanker by applying water with the help of a pressure jet. Therefore, the oil obtained by cleaning the tanker is pre- dominantly mixed with water. Only approximately 10% is oil and 90% is water. In this position, the waste oil/slop oil cannot be classified as crude oil under heading 2710 in terms of chapter note 3 of chapter 27 which prescribes that the petroleum product should contain more than 50% by weight of benzene, toluene, xylene or naphthalene whereas in the present case the oil content is only 10% and 90 is water, therefore demanding duty considering that product as crude oil is not correct.

4.1 Without prejudice to above, we further find that it is admitted fact that while converting the vessel from foreign going to coastal run, the custom duty of Rs. 6,95,546/- was paid in regard of the entire quantity of foreign origin oil irrespective whether the subsequently same would be cleaned from the inner walls of the tank by applying water through pressure jet or collected in form of waste/ slop oil from the vessels for clearance , therefore, no custom duty can be demanded for the second time. On this fact, on the waste oil/slop oil duty cannot be demanded twice as the same goods have already suffered the custom duty while converting from foreign going vessels to coastal vessels. Accordingly, we are of the view that in the present case the demand of custom duty, interest and penalty are not sustainable.

5. Hence, the impugned order is set aside. Appeal is allowed.

(Order pronounced in the open court on 01.05.2024)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

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