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

REGIONAL BENCH- COURT NO. 3

Customs Appeal No. 11646 of 2013- DB

(Arising out of OIA-92-2013-CUS-COMMR-A-JMR dated 19.04.2013 passed by Commissioner of Customs-Jamnagar (Prev.)

M/s Priyank Ship Breaking Co. Pvt Ltd. ....Appellant
Plot No. 1501-02/C, First Floor,
Sarnath Compound, Ghogha Circle,
Bhavnagar-Gujarat

VERSUS

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

APPEARANCE:
Shri Jagdish K Narang, Advocate for the Appellant
Shri A.R. Kanani, Superintendent (Authorised Representative) for the Respondent

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

FINAL ORDER NO. 10985 /2024

DATE OF HEARING: 25.04.2024
DATE OF DECISION: 02.05.2024

RAJU

This appeal has been filed by M/s Priyank Ship Breaking Company Private Limited against rejection of the declared assessable value for import of ship.

2. Learned counsel appearing for the appellant pointed out that the appellant are ship breakers. The appellant entered into a MOA dated 28.12.2010 with the cash seller namely M/s Advance Distribution Company Limited for purchase of ship with a declared LDT of 10386 MT for USD 4947488. The cash buyer namely, M/s Advance Distribution Company Limited had purchased the ship from the ship owner "M.V. HORIZON 1" with declared LDT as 10386 MT at price of 4906773 USD. When the ship arrived and was inspected by the surveyor and the port

officer found that the LDT of the ship was 10200 MT and not 10,386 MT as declared at the time of making of MOA. The MOA were therefore, amended. In the revised MOA dated 10.01.2011 between M/s Horizon Bulk S.A. Nevis, the ship owner and M/s Advance distribution Company, the cash buyer was revised to indicate the LDT as 10,200 and the price was revised from USD 49,06,773 to USD 48,18,898. Consequently, the MOA between the cash buyer and the appellant was revised and the LDT was declared as 10,200 and price was declared as USD 4858876. The bill of entry was thereafter filed declaring the value as 48,64,533.96 USD which was the revised MOA value after adding value of tail shaft and difference of LT. The IGM was filed by the appellant on the basis of the first set of MOAs which were based on the LDT of 10386 MT. Learned counsel pointed out that the appellant paid only USD 48,18,898 as per the revised LDT found on the ship. The bill of entry was originally assessed provisionally on the basis of the price paid by the cash seller to the ship owner after considering the revised LDT i.e. USD 48,58,876/-, the price declared by the appellant included the factory on account of difference in LDT amounting to USD 179.08 and value of tail shaft amounting to USD 5478.88 thus bill of entry was filed for a total of USD 48,64,533.96. The duty obligation was discharged accordingly. Learned counsel pointed out that the show cause notice was issued to the appellant proposing final assessment at USD 49,47,448 i.e. the price without considering the LDT variance found at the time of survey of the ship. The assessment was finalised for total value of USD 49,53,105.96 i.e. the total of USD 49,47,448, the original price declared in the first MOA plus the difference on account of LT amounting to USD 179.08 and the value of tail shaft amounting to USD 5478.88.

2.1 Learned counsel pointed out that in similar circumstances in the case of **M/s Chaudhary Ship Breakers 2010 (259) ELT 161 (SC)** Hon'ble Apex Court has observed that if the goods at the time of import are found to be different from the goods for which the agreement was made then the revised price can be accepted for the purpose of payment of customs duty under Section 14 of the Customs Act. Learned counsel argued that in similar circumstances, Tribunal in the case of **Hussain Sheth Ispat** has given relief vide Order No. 11381 of 2023 dated 28.06.2023.

3. Learned Authorized Representative relies on the impugned order.

4. We have considered the rival submissions. We find that in the instant case the price was declared on the basis of the first MOA entered between the appellant and the cash buyer wherein it was believed that the LDT of the ship is 10386 MT. However, at the time of import it was found that the LDT of the ship was 10,200 MT. Thus, there was a short fall of approximately 186 MT in the LDT as compared to the originally agreed LDT. Consequently, the price was revised by entering into fresh MOA. The facts regarding the original and fresh MOAs were explained by the learned counsel as already recorded in his submission above. In the case of Chaudhary Ship Breakers (supra) the Hon'ble Apex Court as observed as follows in para 16:

> "**16.** Having regard to the afore-stated legal position, the controversy at hand narrows down to the question whether the transaction value of the vessel is to be price mentioned in the original MOA or the reduced price indicated in the addendum. We are of the opinion that in light of the statutory provisions, the factum of actual payment of the price in terms of the addendum cannot be ignored while determining the value of the vessel under Section 14 of the Act. We may, however, hasten to add that in such a situation the genuineness and the necessity of reduction in the price are required to be scrutinized very carefully."

In similar circumstances, in the case of Hussain Sheth Ispat (supra) Tribunal has observed as follows:

> "4. We have carefully considered the rival submissions and perused the records. It can be seen from clause 1 of the MOA dated 28.7.2011, that parties have agreed a lump sum purchase price of USD 5,815,747; there is no reference to LDT made for arriving at the purchase price by the parties to the agreement, in other words purchase price agreed between the parties is not in proportion to the LDT. Further, it is not the case of revenue that any consideration over and above the agreed purchase price has been paid by the importer to the foreign seller. Revenue has sought to assess higher duty only on the basis of commercial invoice submitted vide letter dated 4.7.2011 wherein details of additional LDT of 401.323 MT is mentioned. There is otherwise no corroboration whether LDT mentioned in the MOA and survey report is inclusive of 401.323 MT or otherwise. Be that as it may, it is observed that parties have agreed upon a lump sum price of USD 5,815,747 for the ship as a whole and absent any allegation or evidence of extra consideration having been made by the importer over and above the said price, transaction value as declared by the importer has to be accepted. Lower authorities clearly erred in loading the assessable value entirely based on the LDT when the LDT is irrelevant for assessment of duty. The said issue is already decided by this Tribunal in the decision of J.R.D. Industries vs. Commissioner of Customs, Jamnagar reported as 2011 (265) ELT 55 (Tri. - Ahmd.). It has been held in para 4 & 5 of the said decision as under:
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>> "4. We find that only dispute in the present appeal as to whether the transaction value as reflected in the Memo of Agreement between seller and buyer is to be accepted or the same is required to be enhanced based upon the LDT of the Ship. Apart from the fact that Commissioner (Appeals) has adopted the LDT from the original date of manufacture of the ship, we are of the view that any reference to LDT in the present case is irrelevant. Admittedly, the value of the ship between seller and buyer, has not been arrived at on the basis of LDT. It is a lump-sum quantum required to be paid by the buyer to the seller for the ship in question and the price not based on per unit of LDT, in which case, LDT would be given importance. Apart from the dispute on LDT, there is no other evidence on record to show any extra payment to the seller or flow back of money. The payment have been made by cheque through letter of credit. As such without going in the question as to whether LDT declared by the appellant was correct or not, we find that the LDT is not a relevant factor for arriving at the assessable value of the goods especially in respect of the vessel imported in the year 2003 when the tariff was changed and the duty was required to be paid only on the basis of ad valorem as also on the basis of LDT. It was in these circumstances that LDT gained importance for the period prior to 2003 and was required to be correctly arrived at, as duty was ad valorem + Rs 1400/- per Light Displacement Tonnage. In the present case the duty is not relatable to LDT. The memo of agreement arrived at between the two parties also does not refer to any fact showing that the price of the ship is proportionate to LDT of the said ship. The lower authorities have also not referred to any evidence that memo of agreement does not reflect the correct position.
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>> 5. In view of the above discussion, we find no merits in the contention of the lower authorities. As a result, all the appeals filed by the appellants are allowed. Cross objections filed by the Revenue which is in the shape of only written submissions also get disposed off."
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> 5. In view of foregoing discussion and finding coupled with the direct judgment supra on the issue in hand, the impugned order cannot be sustained and appeal of the appellant is required to be allowed. Accordingly we set aside the impugned order and allow the appeal."

5. In view of above, we do not find any merit in the impugned order rejecting the value based on the revised MOAs when the LDT declared in original MOA was found to be different from the actual LDT. In these

circumstances, ratio of aforesaid decisions squarely apply. Consequently, demand is set aside and appeal allowed.

(Order pronounced in the open court on 02.05.2024)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

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