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

REGIONAL BENCH- COURT NO.3

Customs Appeal No. 92 of 2010
(Arising out of OIA-132-133/COMMR-A-/JMN/2009 dated 18/11/2009 passed by Commissioner of CUSTOMS-JAMNAGAR (PREV))

Shree Saibaba Ship Breaking Company **......Appellant**
203-304, Prithvi Complex,
Kalanala,
Bhavnagar, Gujarat.

VERSUS

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

WITH

Customs Appeal No. 93 of 2010
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Jamnagar, Gujarat

APPEARANCE:
None appeared for the Appellant
Shri R.P Parekh, Superintendent (Authorized Representative) for the Respondent

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

Final Order No. A/ 10208-10209 /2022

DATE OF HEARING: 16.02.2022
DATE OF DECISION: 16.02.2022

RAMESH NAIR

The issue involved in the present case is that whether the Fuel oil/Lubricating Oil available in the tank is classifiable under CTH 89.08 or 27.10

2. None appeared on behalf of the appellant despite several notices. Therefore the appeals are taken up for the disposal.

3. Shri R.P Parekh, Learned Superintendent (Authorised Representative) appearing on behalf of the Revenue reiterates the finding of the impugned order. He referred to the following judgments:

- GHAZIABAD SHIP BREAKERS- 2003 (151) ELT 636 (Tri. Del.)
- PRIY BLUE INDUSTRIES LTD- 2006(200) ELT 506 (Tri. Mum)
- M/s PRIYA BLUE INDUSTRIES LTD – 2008 (221) ELT A152 (Guj.)
- PRIYA HOLDING (P) LTD- 2013 (288) ELT 347 (Guj.)
- SHIV MARINE INDUSTRIES P.LTD. -2004 (178) ELT 1048 (Tri. Mum)
- M/s Bhikkamal Chotelal vide Mumbai Tribunal Order No. C/II/3602-05/WZB/2000 dated 07.12.2000

3.1 He submits on the basis of various judgments of the Division bench of this Tribunal it was held that the Fuel oil/Lubricating oil stored in the tanks in the Engine room of the ship/vessel should be classified under CTH 27.10. Therefore the appeals be dismissed by upholding the impugned order.

4. We have carefully considered the submission made by Learned Authorised Representative and perused the records. The issue to be decided is that whether the Fuel &oil stored in the Engine Room of the vessel to be classified under 89.08 or 27.10. We find that on this issue much water has flown. There are contrary judgments of this Tribunal on this issue. However, the jurisdictional High Court in the case of PRIYA HOLDING (P) LTD- 2013 (288) ELT 347 (Guj.) decided the issue in the favour of the assessee in as much as it was upheld that the Fuel/oil stored in the tanks in the Engine Room should be classified under CTH 89.08. Accordingly, this judgment of the Hon’ble Gujarat High Court is binding and in force.

4.1 Following the said judgment of PRIYA HOLDING (P) LTD (Supra) .We hold that the Fuel and oil stored in the Tanks in the Engine room of the vessel is classifiable under CTH 89.08.

5. Accordingly, the impugned order is set aside. Appeals are allowed.

(Dictated & Pronounced in the open court)

RAMESH NAIR
MEMBER (JUDICIAL)

RAJU
MEMBER (TECHNICAL)

Geeta