

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
AHMEDABAD
REGIONAL BENCH, COURT NO. 2**

CUSTOM APPEAL NO. 10660 OF 2018-DB

(Arising out of OIA-KDL-CUSTM-000-APP-42-44-17-18 dated 30/01/2018 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax- Ahmedabad)

Sanghi Industries Ltd
Po Sanghipuram, Tal Abdasa
Kutch, Gujarat

.....Appellant

Versus

C.C.-Kandla
Custom House,
Near Balaji Temple,
Kandla, Gujarat

.....Respondent

WITH

CUSTOM APPEAL NO. 10661 OF 2018-DB

(Arising out of OIA-KDL-CUSTM-000-APP-42-44-17-18 dated 30/01/2018 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax- Ahmedabad)

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Appearance:

Shri Manish Jain, Advocate for the Appellant
Shri P Ganesan, Superintendent (AR) for the Respondent

CORAM:

HON'BLE MR. RAMESH NAIR, MEMBER (JUDICIAL)

HON'BLE MR. RAJU, MEMBER (TECHNICAL)

Final Order No. 11483-11485/2024

DATE OF HEARING: **24/04/2024**

DATE OF DECISION: **03.07.2024**

RAMESH NAIR

The issue involved in the present case is that for the purpose of custom value whether the dispatch money received from foreign supplier for early discharge of the vessel is includable in the transaction value in terms of Rule 10(2) of custom valuation (determination of price of imported goods) Rules, 2007. The brief facts is that the appellants entered into contract with foreign supplier which provides that value of imported goods would be CIF. It also provides that in case of delay in discharge of vessel the appellant can be liable to pay demurrage and in case of early discharge of vessel the appellants would be entitled for part of rate as dispatch money from the foreign supplier. The appellants had received dispatch money from the foreign supplier for early discharge of the vessel. The case of the department is that Rule 10 of custom valuation Rule, 2007 allowed only addition of certain item of cost to the transportation value and there is no provision for deduction of dispatch money.

2. Shri Manish Jain learned Counsel appearing on behalf of the appellant submits that custom valuation Rules, 1988 were replaced with Customs Valuation Rules, 2007 with effect from 10.10.2007. The explanation to Rule 10(2) of the 2007 Rules provided that demurrage charges shall be included in the cost of transport so as to form a part of assessable value of imported goods and includible in the assessable value.

2.1. It is submitted that dispatch money is reduction in freight, thus once the freight is reduced, the CIF value/ assessable value of imported goods is also reduced.

2.2 Undisputedly, demurrage charges whenever incurred are added to the assessable value. On the same analogy, the deduction of the dispatch money earned for unloading the vessel before stipulated time should also be allowed.

He placed reliance on the following Judgments :-

- Indian Farmers Fertilizers Co-Op. Ltd Vs CCE 2012 (284) ELT 266 (T)
- CC Vs Coromondal Fertilizers Ltd 1988 (33) ELT 451 (T)
- CC Vs Associated Cement Co. Ltd 1998 (104) ELT 395 (T)
- Hindustan Zinc Ltd Vs CC 2002 (150) ELT 500 (T)

3. Shri P. Ganesan, 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 the sides and perused the record. We find that there is clear contract between the appellant and foreign supplier that in case of delay in discharge vessel demurrage shall be charged to the appellant and in case of early discharge of the vessel the appellant shall be paid dispatch money. The issue is that whether such dispatch money should be includable or not in the transaction value of the imported goods. We find that the dispatch money is nothing but its reduction in cost of transportation and as per the provision of custom valuation the actual cost of transportation is added in the transaction value for the purpose of charging custom duty. The department's case is that Rule 10 of Custom valuation Rules does not provide for deduction of dispatch money in this regard we find that when the appellant receive the dispatch money that does not constitute the total transaction value of the imported goods obvious the money received by the appellant shall stand excluded from the total transaction value therefore there is no question of addition or subtraction of

dispatch money. Accordingly, in our considered view the dispatch money received by the appellant which is not part and partial of transaction value cannot be included in the transaction value of the imported goods. This issue has been considered in the following Judgment :-

- CC Vs Associated Cement Co. Ltd 1998 (104) ELT 395 (T) :-

4. On a careful consideration of the submissions, we notice that the cost of transport is part of assessable value. Now the question is if any deduction is given in the cost of transport in the form of despatch money, whether they are entitled for deduction in terms of Section 14 of the Customs Act read with Rule 9(2)(a) of the Customs Valuation (DOP of Imported Goods) Rules, 1988. There is no dispute in the present case with regard to deduction granted by the Shipping Company as despatch money on the cost of transport. When this point is clear then the question gets answered automatically in as much as that when this despatch money is a part of freight, such deduction granted will be eligible for exclusion from the assessable value, because only the noted cost of transport would be added to the assessable value. To this extent the Tribunal does not agree that the cost of transport is a fixed one as contended by Revenue in the grounds of appeal. Further we notice from the case of B.H.E.L. v. CC the Tribunal has held "the rebate allowed by the ship lines to the appellants was admissible for deduction to arrive at assessable value. The fact that the rebate in question is granted subsequently cannot be a ground for disallowing the rebate for the purpose of calculation of assessable value because even at the time of picking of the cargo it is known that this rebate would be forthcoming to the customer in due course". The Tribunal has, likewise, taken the same view in C.C.E., v. Coromandal Fertilizers Ltd. wherein it has been held that assessable value has to include unloading charges also, not merely on port charges but has also held that no bonus earned for quick unloading should be deducted under Section 14 of the Act. Respectfully following these two ratios, we hold that the Commissioner has rightly allowed the appellant's claim. We do not see any merit in this appeal and hence reject the same.

- Similarly, in the case of Indian Farmers Fertilizers Co-Op. Ltd Vs CCE 2012 (284) ELT 266 (T) same view was taken as under :-

" 5. We have perused the records and considered the submissions made from both sides. We find that in so far as the refund claim filed by the appellants is concerned, the show-cause notice was issued for rejecting of the refund claim of the appellant on the following grounds :

(i) Rule 10 of the Customs Valuation Rules allows only addition of certain items of cost and not deduction;

(ii) Despatch money cannot be treated on the same footing as demurrage charges;

(iii) The appellant's claim for refund on dispatch money is not on the basis of any provisions of law and accordingly, the same is not tenable.

However, the Id. Commissioner (Appeals) has dismissed the appeal filed by the appellant by relying upon the decision of the Hon'ble Supreme Court in the case of Priya Blue (supra), wherein it was held that the refund is not admissible in case the assessment order is not under challenge. We find that this issue was not the part

of the show-cause notice and the adjudication proceedings and the Id. Commissioner (Appeals) has travelled beyond the scope of show-cause notice. The Hon'ble Supreme Court in the case of Reckitt & Colman of India Ltd. (supra) has held as under :

"3. It will be remembered that the case of the Revenue, which the appellant had been required to meet at every stage from the show cause notice onwards, was that the said product was a preparation based on starch. Having come to the conclusion that the said product was not a preparation based on starch, the Tribunal should have allowed the appeal. It was beyond the competence of the Tribunal to make out in favour of the Revenue a case which the Revenue had never canvassed and which the appellants had never been required to meet. It is upon this ground alone that the appeal must succeed."

The appellants have claimed refund of duty on the element of despatch money which the appellants have got on quick turn around of the vessel. Undisputedly, demurrage charges whenever incurred are added to the assessable value. On the same analogy, the deduction of the dispatch money earned for unloading the vessel before stipulated time, should also be allowed. The Tribunal in the case of Collector of Customs, Madras v. Coronondal Fertilizers Ltd. (supra) has held as under :

"13.However, we do not consider it reasonable that elements of administrative overheads should be included right upto the Board of Directors' level. Only staff and officers directly dealing with the wharf work and one level of higher supervisory staff need be added. If the supervisory staff devotes a part of their time to supervision of the wharf work, only their part costs, pro rata, may be added. The rate at which the department computed the cost of depreciation and maintenance and repair is the same which the respondents themselves adopt for their accounting. Similarly, the rate of interest on capital employed is reportedly the normal bank lending rate. The rates adopted are, therefore, in order. However, since we are burdening the respondents with the costs of maintaining an efficient facility, it is only fair that the fruits of that efficiency should also accrue to them. We, therefore, order that dispatch money earned because of unloading of the chartered vessel before the stipulated lay time should be deducted from the costs. Conversely, if the appellants have paid any penalty for delayed unloading of the ship, the same should be added to the costs."

This Tribunal in the case of Collector of Customs, Visakhapatnam v. Associated Cement Co. Ltd. reported in [1998 \(104\) E.L.T. 395](#) (Tribunal), has held as under :

"4. On a careful consideration of the submissions, we notice that the cost of transport is part of assessable value. Now the question is if any deduction is given in the cost of transport in the form of despatch money, whether they are entitled for deduction in terms of Section 14 of the Customs Act read with Rule 9(2)(a) of the Customs Valuation (DOP of Imported Goods) Rules, 1988. There is no dispute in the present case with regard to deduction granted by the Shipping Company as despatch money on the cost of transport. When this point is clear then the question gets answered automatically inasmuch as that when this despatch money is a part of freight, such deduction granted will be eligible for exclusion from the assessable value, because only the noted cost of transport would be added to the assessable value. To this extent the Tribunal does not agree that the cost of transport is a fixed one as contended by Revenue in the grounds of appeal. Further we notice from the case of B.H.E.L v. C.C. the Tribunal has held "the rebate allowed by the ship lines to the appellants was admissible for deduction to arrive at assessable value. The fact that the rebate in question is granted subsequently cannot be a ground for disallowing the rebate for the purpose of calculation of assessable value because even at the time of picking of the cargo it is known that this rebate would be

forthcoming to the customer in due course". The Tribunal has, likewise, taken the same view in C.C.E., v. Coromandal Fertilizers Ltd. wherein it has been held that assessable value has to include unloading charges also, not merely on port charges but has also held that no bonus earned for quick unloading should be deducted under Section 14 of the Act. Respectfully following these two ratios, we hold that the Commissioner has rightly allowed the appellant's claim. We do not see any merit in this appeal and hence reject the same."

The Hon'ble Supreme Court dismissed the Civil Appeal filed by the Department against the aforesaid decision in the case of Collector v. Associated Cement Co. Ltd. - [2001 \(130\) E.L.T. A92](#) (S.C.). In these circumstances, we find that the order of the Id. Commissioner (Appeals) is not sustainable and therefore, the orders of both the lower authorities are set aside and the appeal is allowed with consequential relief, if any, as per law."

- In the case of Hindustan Zinc Ltd Vs CC 2002 (150) ELT 500 (T) which is affirmed by the Hon'ble SC following decision was given by the Tribunal :-

"8. We have gone through the judgment in the case of CC v. Coromondal Fertilizers Ltd. (supra). The Tribunal in para 13 of the order has clearly noted that "we therefore order that despatch money earned because of unloading of the chartered vessel before the stipulated lay time should be deducted from the costs". The findings arrived at by the Tribunal and confirmed by the Hon'ble Supreme Court are given in the citation referred to by them (supra) in the written submission filed by them. As regards the claim for benefit of penalty allowance, we note from the judgment in the case of IOC, in para 13 that the Larger Bench has held as follows :

13. On behalf of the Revenue it was contended that Rule 9(2)(a) of the Rules requires addition of cost of transport of the imported goods to the place of importation. So, the cost paid or payable by the importer to bring the goods up to the Customs barrier must form part of the value. That cost should necessarily take within demurrage as well. Therefore, according to counsel, the *Garden Silk Mills Ltd.* case is authority for the proposition that the entire cost incurred for bringing the imported goods up to the Customs barrier should form the assessable value. We find it difficult to agree with this argument. First of all, the apex Court was not concerned with the demurrage paid or payable by the importer on account of the delayed clearance of the goods from the ship. Demurrage becomes payable only on extraordinary situations. The provisions contained in the Rules were not adverted to by the Apex Court in the said decision. Their Lordships have categorically held that the price at which the imported goods are ordinarily sold should be the basis for valuation under Section 14(1) of the Act. Ordinarily demurrage is not payable. Only in extraordinary circumstances where delay in discharging the goods from the ship occurs, demurrage becomes payable. Such extraordinary circumstances are not falling within the purview of Section 14 (1) of the Act. This aspect can be illustrated by the following example :-

In a situation where Indian Oil Corporation Ltd, enters into a contract for purchase of crude oil from a foreign country, the quantity is such that it could not be shipped in one vessel. They are loaded in two vessels. They reach a port in India, say Mumbai. One vessel is anchored in a particular berth, say berth A and the second vessel at berth B. The vessel anchored at berth A could discharge the oil within the stipulated period fixed in the charter party, while that a berth B could not discharge the oil on account of certain mechanical defects or labour problem. That ship had to be delayed by three or four days. As a result, demurrage became payable in respect of that vessel. If that demurrage is also to form part of the assessable value of the goods discharged from that vessel, the duty

on that quantity will be greater. Consequence will be a part of the goods covered by the same contract is assessed at a lesser value and the remaining at a higher value. Such a situation is not one envisaged by the provisions of the Act or the Rules. Only the price at which the goods are ordinarily sold can be reckoned by the Customs authorities for finding out the value under the Act. Demurrage being an extraordinary situation cannot become part of the value of the goods.

The above ratio of the Larger Bench clearly applies to the claim made by the appellants with regard to penalty allowance. Hence the benefit of the claims made by the appellants in these seven appeals with regard to above two allowances is granted and allowed.”

5. In view of the above judgments the issue is no longer res integra. Accordingly, the dispatch money received by appellant from their foreign supplier is clearly not includable in the transaction value. Hence, demand on this count is not sustainable. Accordingly, the impugned order is set aside and appeals are allowed.

(Pronounced in the open court on **03.07.2024** *)*

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

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