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

REGIONAL BENCH-COURT NO. 3

EXCISE Appeal No. 11294 of 2017 - DB

(Arising out of OIA-BHV-EXCUS-000-APP-255-256-16-17 dated 14/02/2017 passed by Commissioner of Central Excise, Customs and Service Tax-RAJKOT)

Ashish Vessel Demolition Private Limited ....**Appellant**
C-919-920, Shree Ram Nagar,
Near Natraj Shopping Center, Kalvibid
Bhavnagar, Gujarat

VERSUS

Commissioner of C.E. & S.T.-Bhavnagar ......**Respondent**
Plot No.6776/B-1...Siddhi Sadan, Narayan Upadhyay Marg,
Beside Gandhi Clinic, Near Parimial Chowk,
Bhavnagar, Gujarat- 364001

WITH

EXCISE Appeal No. 11295 of 2017 - DB

(Arising out of OIA-BHV-EXCUS-000-APP-255-256-16-17 dated 14/02/2017 passed by Commissioner of Central Excise, Customs and Service Tax-RAJKOT)

Shri Harikrishna Agarwal ....**Appellant**
Director Of M/s. Ashish Vessel Demolition Private Limited,
C-919/920, Shree Ram Nagar, Near Natraj Shopping Center, Kalvibid
Bhavnagar, Gujarat

VERSUS

Commissioner of C.E. & S.T.-Bhavnagar ......**Respondent**
Plot No.6776/B-1...Siddhi Sadan, Narayan Upadhyay Marg,
Beside Gandhi Clinic, Near Parimial Chowk,
Bhavnagar, Gujarat- 364001

APPEARANCE:
Shri Sarju Mehta, Chartered Accountant for the Appellant
Shri Ajay Kumar Samota, Superintendent (AR) for the Respondent

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

Final Order No. 11825-11826/2024

DATE OF HEARING: 03.06.2024
DATE OF DECISION: 27.08.2024

RAMESH NAIR

The issue involved in the present case is that allegation of the department that the valuation of scrap generated by the breaking up of old and used ships to be done on the basis of prices circulated by Market Research Agencies is legal and correct or otherwise.

2. Shri Sarju Mehta, Learned Chartered Accountant appearing on behalf of the appellant at the outset submits that these issues have been raised against various ship breaking companies and in a bunch of cases this tribunal vide final order No. A/10428-10506/2022 dated 11.05.2022 in the matter of Bharat Sheth & Ors. held that merely on the basis of price published in publication of M/s. Major & Minors price cannot be analyzed. Therefore the issue is no longer res-integra.

3. Shri Ajay Kumar Samota, 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 the sides and perused the records. We find that the identical issue in the case of various ship breaking companies/ firms, this Tribunal passed the order dated 11.05.2022 (supra), which is reproduced below:-

> *"4.5 As regard the demand of Central Excise Duty on the ground of undervaluation of the goods, we find that the differential duty demand on this count was worked out by the revenue on the difference of invoice value of the Appellants and steel rate published in the publication of M/s Major & Minors. The data given by M/s Major & Minors indicates the daily prices for various sizes of rolling plates as well as mixed melting scraps obtained out of ship breaking activities. After comparing both data revenue found that Appellant have undervalued the scrap and evaded Central Excise Duty. After undergoing the changes in Section 4 in the year 2000, the value of excisable goods is the transaction value and there is no provision to adopt any other deemed value. Therefore only on the basis of rate published in a publication, the transaction value can not be doubted. Except the basis of publication, there is no charge of extra consideration flowing from buyers of goods to the appellant over and above the invoice value. Therefore charge of under valuation has no legs to stand.*
>
> *4.6 In one case of Vijay Kumar & Co., the adjudicating authority has confiscated the cash of Rs.17.50Lacs. In this regard we find that the*

investigation could not establish that the said cash is towards the sale proceed of alleged clandestine removal of goods. On the contrary, the appellant clearly established the source of the said cash. They have given the names of the buyers from whom they have received the cash and the same was accounted for in the appellant's cash book. Therefore we do not find any reason for confiscation of cash. Hence in our considered view that the confiscation of cash must be vacated and we do so.

05. As per the above discussions and findings, we hold that demands of duty, interest and penalty are not sustainable in the facts of these cases. Consequential penalty imposed on other Appellants also does not survive. Therefore, all the Appeals are allowed with consequential reliefs, if any, as per the law."

5. In view of the above order, it is settled that merely on the basis of prices published in the publication the value under Section 4 cannot be enhanced. Hence, the impugned order is not sustainable. Accordingly, the impugned order is set aside. Appeals are allowed.

(Pronounced in the open court on 27.08.2024)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

Raksha