

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST ZONAL BENCH : AHMEDABAD**

REGIONAL BENCH - COURT NO. 3

CUSTOMS Appeal No. 12037 of 2015-DB

[Arising out of Order-in-Original/Appeal No JMN-CUSTM-000-APP-001-14-15 dated 10.04.2015 passed by Commissioner of CUSTOMS-JAMNAGAR(PREV)]

Diamond Industries (SBD)

.... Appellant

337/338, 3rd Floor, Madhav Darshan, Waghawadi
Road, BHAVNAGAR, GUJARAT - 364001

VERSUS

Commissioner of Customs, Jamnagar (Prev.)

.... Respondent

Sharda House...Bedi Bandar Road,
Opp. Panchavati, Jamnagar, Gujarat

APPEARANCE :

Shri J.C. Patel and Shri Rahul Gajera Advocates for the Appellant
Shri R P Parekh, Superintendent (AR) for the Revenue.

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

DATE OF HEARING : 13.04.2022

DATE OF DECISION: 05.08.2022

FINAL ORDER NO. A/10924 / 2022

RAMESH NAIR :

This appeal arises against an Order-in-Appeal No. JMN-CUSTOM-000-APP-001-14-15 dated 10.04.2015 passed by the Commissioner of Customs (Appeals), Jamnagar.

2. Brief facts of the case are that Appellant has signed an MOA, dated 05-08-2013 with M/s. Karnak Holding Ltd. of British Virgin Island for purchase of vessel called 'MSC Antwerp' for the purpose of demolition/breaking-up. As per Clause of the said MOA price was US \$ 7,870,500/- and the same was payable by means of Letter of Credit as specified in Clause of said MOA. The vessel was required to be delivered by the Seller to the Appellant at safe

Anchorage Alang, West Coast of India as provided in clause of said MOA. As per the said MOA the vessel was to be at the Sellers 'risk' and expenses until delivered to the Appellants. During the boarding of vessel, the representatives of the Seller and the Appellants noticed that the Generator was not in working condition and some machinery parts were missing and accordingly the price of the vessel was reduced by mutual agreement between the seller and Appellant to USD 7,695,500/- by execution of Addendum dated 06.09.2013. The Vessel was delivered to the Appellant on 6.09.2013 at 16.30hrs as per Physical Delivery Certificate. The Bill of entry was assessed provisionally at the original price of USD 7,870,500/- mentioned in MOA.

3. The Provisional assessment was finalized by assessment order dated 25.08.2014, by which it was held that the transaction value of the Vessel has to be taken as USD 7,870,500/- which was mentioned in MOA dated 05.08.2013 and the Bill of Entry was finally assessed on that value. Being aggrieved, Appellant filed appeal before the Commissioner (Appeals), who vide impugned order upheld the assessment order. Against which the present appeal filed by the Appellant.

3. Shri J.C. Patel, learned Counsel appearing on behalf of Appellant submits that since the original price of USD 7,870,500/- mentioned in MOA dated 05.08.2013 was by agreement between the seller and the Appellant substituted by the reduced price of USD 7,695,500/- by Addendum dated 06.09.2013, prior to the delivery of the vessel on 06.09.2013 and since only the agreed reduced price was actually paid by amendment to letter of credit on 07.09.2013, the said reduced price is the transaction value of the vessel

under section 14 of the Customs Act, 1962. Ld. Commissioner (Appeals) have clearly erred in holding that since at the time of entry of vessel in territorial waters of India, the price was USD 7,870,500/- in terms of MOA, the same has to be taken as the transaction value for the purpose of Section 14 of the Customs Act, 1962 and that the reduced price agreed upon after the goods entered in territorial waters of India cannot be the transaction value. He placed reliance on the following decisions.

(a) CC Vs. Jai Bharat Steel Industries – 2005 (192) ELT 792.

(b) Chaudhary Ship Breakers Vs. CC- 2010 (259) ELT 161(SC)

4. Countering the arguments, Shri R P Parekh, learned Superintendent (AR) appearing on behalf of Revenue reiterates the finding of impugned order. He placed reliance on the following decisions:-

(a) International Steel Corporation vs. CC, Jamnagar – 2015(325) ELT 881 (Tri. Ahmd)

(b) CC, Bhavnagar vs. Lucky Steel Industries- 2007-TIOL-2182-CESTAT-AHM

(c) CC, Bhavnagar vs. Mahavir Ship Breakers -2009 (234) ELT 176 (Tri. Ahmd)

(d) CC, Jamnagar vs. Shree Ram Steel & Rolling Industries- 2005 (188) ELT 80 (Tri. –Mum)

(e) CC, Ahmedabad vs. Guru Ashish Ship Breakers -2003 (157)ELT 277 (Tri- Mum)

6. After hearing both sides and on perusal of the record, we find that 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 scrutinised very carefully. In the instant case, the Ld. Commissioner (Appeals) has not examined the genuineness of the addendum, and has proceeded to reject the appeal of the appellant. We may, however, add that the Commissioner (Appeals) did not examine the cogency of the reasons for price reduction.

7. For all these reasons, we are of the opinion that the Commissioner (Appeals) needs to examine the matter afresh. Accordingly, the impugned order is set aside, and the matter is remitted back to the Commissioner (Appeals) for fresh consideration, particularly in relation to the genuineness of the addendum entered into between the appellant and the supplier. All the issues are kept open. Appeal is allowed by way of remand to the Commissioner (Appeals).

(Pronounced in the open court on 05.08.2022)

(Ramesh Nair)
Member (Judicial)

(Raju)
Member (Technical)