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

REGIONAL BENCH - COURT NO. 3

CUSTOMS Appeal No. 13865 of 2013-DB

[Arising out of Order-in-Original/Appeal No 277-COMMR-A--JMN-2013 dated 12.09.2013 passed by Commissioner of CUSTOMS-JAMNAGAR(PREV)]

Navyug Ship Breaking Company .... **Appellant**
Plot No. 153m, Ship Breaking Yard,
Sosiya, P.o. Manar, BHAVNAGAR
GUJARAT

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/10923 / 2022

RAMESH NAIR :

This appeal arises against an Order-in-Appeal No. 277/COMMR(A)/JMN/2013 dated 12.09.2013 passed by the Commissioner of Customs (Appeals), Jamnagar

2. Brief facts of the case are that Appellant have signed an MOA, dated 21-9-2011 with M/s. Monteros Maritime INC, Charlestown for purchase of vessel MV KADMOS. As per Clause of the said MOA, the Light Weight of the vessel was 10,456 MT = 10291.3 LT. As per MOA price was US $ 5,231,000/- 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 course of accomplishing vessel arrival boarding formalities a Trim and Stability information booklet in the name of the vessel MV KADMOS was found on board the vessel which has been found approved by the class surveyor. In the Trim and Stability book, the LDT of the Vessel was found mentioned as 10456.30 MT. The said book has been stamped and signed by the Master of the vessel in token having found on board the vessel and certifying LDT of the same. The Bill of entry was assessed provisionally, the import duty of Rs. 4,33,73,508/- assessed provisionally thereon paid by the appellant Subsequently, the Appellant vide letter dated 22.11.2011 submitted a Builder's Certificate showing Light Weight of the vessel being 9846.60 MT/9691LT. Further Appellant also submitted Addendum 1 dated 19.11.2011 to the said MOA reducing the purchase price USD 4,828,000 and Addendum No. 2 dated 19.11.2011 mentioning the light ship of the vessel 9846MT/ 9690.90LT.

3. The provisional assessment was finalized by the Final Assessment order dated 28.09.2013 by which it was held that the Transaction value of the vessel has to be taken as USD 5,231,000/- which was mentioned in the MOA dated 21.09.2011 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 by the Appellant.

4. Shri J.C. Patel learned Counsel appearing on behalf of Appellant submits that since the original price of USD 5,231,000/- mentioned in MOA dated 21.09.2011 was by agreement between the seller and the Appellant substituted by the reduced price of USD 48,28,000/- by Addendum dated 19.11.2011, prior to the delivery of the vessel on 21.11.2011 and since only the agreed reduced price was actually paid by amendment to letter of credit on 19.11.2011, the said reduced price is the transaction value of the vessel under section 14 of the Customs Act, 1962. Learned Commissioner (Appeals) has clearly erred in holding that since at the time of entry of vessel in territorial waters of India, the price was USD 5,231,000/- 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)

5. He further submits that in view of the Building Certificate of the vessel Builder showing lesser Light Weight than that mentioned in MOA the Appellant by letter dated 08.11.2011 addressed to the local agent of the seller, declined to accept delivery of the vessel. In response to the Appellant's letter, the Seller gave legal notice dated 08.11.2011 to the Appellant through their London Lawyer. The Appellant responded to the said legal notice by their email dated 09.11.2011. The Seller abandoned their legal action against the Appellant and agreed to reduction in price and executed the addendum, thereby, vindicating the Appellant's stand as regards the Light Weight of the vessel. In the above circumstance it was not

open to the Ld. Commissioner (Appeals) to substitute their judgment for that of the Seller and hold that the Trim and Satability Book was more authentic.

6. 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)

7. After hearing both the 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 priced 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 present matter we noticed that the Ld. Commissioner (Appeals) passed the impugned order only by relying the finding of lower adjudicating authority. 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 examine the cogency of the reasons for price reduction.

8. 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)

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