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

REGIONAL BENCH-COURT NO. 3

Customs Appeal No. 10624 of 2024

(Arising out of OIA-JMN-CUSTM-000-APP-145-24-25 dated 28/06/2024 passed by the Commissioner of Customs (Appeals)-Ahmedabad)

GU SHIPPING INDIA PRIVATE LIMITED ....Appellant
Formerly Ms Gu Crude Carrier Pvt Ltd
4th Floor Akdr Towr Door No 3/381
Rajiv Gandhi Salai Omr, Metttukuppam
Chennai, Tamil Nadu-600097

VERSUS

Commissioner of CUSTOMS - Customs (P) Jamnagar.......Respondent
Jamnagar Seema Shulka Bhawan,
Jamnagar-Rajkot Highway,
Near Victoria Bridge,
Jamnagar, GUJARAT-361001

APPEARANCE:
Shri Vikas Mehta,Consultant for the Appellant
Shri Sanjay Kumar Superintendent (AR)) for the Respondent

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

Final Order No. 12739/2024

DATE OF HEARING: 11.11.2024
DATE OF DECISION: 19.11.2024

RAMESH NAIR

The briefed facts of the case are that the appellant purchased one ship (vessel), namely, M.V. Advaita from M/s. Global Grace Shipping Pte. Ltd., Singapore under MOA dated 24.01.2020 (Page 50). The vessel was delivered at Penglai Zhonghai Jinglu Ship Industry Co. It sailed from China to Pipavav on self-propulsion. The vessel was meant for export-import cargo and hence, the same was considered a foreign going vessel.

1.1 On arrival at Pipavav, it was decided to undertake a coastal voyage from Pipavav to Mumbai and back (trial run). Hence, Custom authorities of Pipavav was requested to draw inventory of ship stores. Pursuant to this, a Bill of Entry No. 2339265 dated 13.01.2021 was filed for making payment of duty on vessel as well as ship stores. The same was provisionally assessed and duty (IGST) was paid on the vessel (Rs. 9,43,74,958/-) as well as ship stores (Rs. 1,00,59,604/-).

1.2. On return from Mumbai, inventory was again drawn and Bill of Entry was finalized after deducting the duty involved in ship stores consumed during the voyage from Pipavav to Mumbai and back. A final assessment order by Ld. Deputy Commissioner of Customs, Pipavav (Page 31) determining final duty liability post-reversion as Rs. 9,49,64,274/- (Rs. 9,43,74,958/- on vessel & 5,89,316/- on ship stores consumed during coastal voyage). Consequent upon final assessment order, Rs. 94,70,288/- became refundable to appellant. This was excess duty paid on ship stores at the time of arrival at Pipavav.

1.3. The department filed appeal against final assessment order with Ld. Commissioner (Appeals) on the ground separate bill of entry was required to be filed for conversion and Ld. Deputy Commissioner erred in combining the two separate acts of import of vessel and conversion. Further, freight, either actual or @ 20% of fob value was required to be added to the value of vessel for discharging duty at the time of import. Ld. Commissioner (Appeals) has allowed the appeal filed by department.

2. Shri Vikas Mehta, Learned Consultant appearing on behalf of the appellant submits that the Learned Commissioner(Appeals) has failed to point out revenue loss in filing common bill of entry for payment of duty on the vessels as well as total quantum of ship stores ascertained by the custom officers at the time of entry. Moreover, Learned Commissioner (Appeals) also erred in failing to appreciate that Learned Deputy Commissioner has actually deducted the amount of duty payable on ship stores consumed during the coastal run and not reduced the duty liability as held by them. As regard inclusion of freight, the issue is squarely covered by the decision of Hon'ble Tribunal in the case of Sachin kshirsagar – 023 (383) ELT 190 (Tri. Mumbai) wherein it was held that freight is not includible when the vessel is imported into India for the first time.

3. Shri Sanjay Kumar, 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 sides and perused the records. We find that the assessing authority while finalizing the bill of entry after the coastal run has correctly deducted the duty involved in ship stores consumed during the voyage from Pipavav to Mumbai and back, therefore, on this count we do not find any error on the part of assessing authority . Hence the finalisation of assessment is correct and in order. As regard the inclusion of freight, the issue is squarely covered by this Tribunal judgment in the case Sachin kshirsagar – 2023 (383) ELT190 (Tri. Mumbai) which is reproduced below:-

> ***"11.*** *Before proceeding to resolve the controversy over valuation, and even before examination of the rival submissions on the classification to be adopted, there are several aspects of this dispute that bear elucidation. Vessels and aircraft, not strangely, occupy sufficiently special place in the customs statute to be assigned dual character as is evident from*
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> *'(9) "conveyance" includes a vessel, and aircraft and a vehicle'*
>
> *in Section 2 of Customs Act, 1962, attendant upon which certain obligations devolve on the 'in-charge' therein in Chapter VI of Customs Act, 1962 as do certain privileges, and from*
>
> *(22) "goods" includes -*
>
> *(a) vessels, aircrafts and vehicles;...'*
>
> *which, though devoid of distinct definition therein, may, for our purposes, be placed along with*
>
> *(21) "foreign-going vessel or aircraft" means any vessel or aircraft for the time being engaged in the carriage of goods of passengers between any port or airport in India and any port or airport outside India, where the touching any intermediate port or airport in India or not, and includes -*
>
> *xx xx xx'*
>
> ***12.*** *Any vessel expends her entire life in waters - domestic or international - and, similar to aircraft, are remunerative to the extent that they are on the move. Though every arrival at the harbour or airport involves, technically, import from outside the country, the personality of the vessel/aircraft as 'conveyance' entitles separate treatment; the alternative would generate inconvenience bordering on chaos in international travel and traffic. Nonetheless, for certain statutory requirements attended upon ownership, and appendant privileges, vessel/aircraft may have to be imported as 'goods' requiring compliance with attendant customs procedures. That, however, does not derogate from its functionality as 'conveyance' which is the purpose of, and defines, its very existence as vessel/aircraft. Except for the one purpose of obliterating its existence as 'conveyance', and most often by 'breaking', import of vessels is generally for reverting to use as 'conveyance' for transportation of goods and*

persons. Such transformation, being momentary, converts vessel/aircraft into 'goods' within the window for compliance with statutory requirements before reverting to its natural character of 'conveyance' for carriage of persons and goods upon clearance for home consumption in accordance with Section 47 of Customs Act, 1962 - even if, paradoxically, it may be 'foreign going vessel' immediately thereafter. It is, therefore, of utmost essence that assessing authorities tread that tightrope with extreme caution lest the universally acknowledged freedom of the seas and freedom of the skies be compromised at the altar of revenue harvest beyond the intent of law.

13. *With this caveat, we approach the issue of valuation. Valuation, by its very nature, is susceptible to multifarious understanding and not the least of which is the commonality of intent in a seller-buyer transaction. The insinuation of governmental mechanism into what is essentially a commercial transaction is justified only by the sovereign power of the State to impose levies and is, therefore, to be construed as limited to that purpose alone. The universally acknowledged convention on valuation is intended to ensure that commercial engagement between two entities operating from distinct national jurisdictions is not distorted by discriminatory treatment and revenue maximization. Section 14 of Customs Act, 1962 and the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, framed thereunder, are enacted to assure that uniformity of approach not only reflects international consensus but also is a restriction on the bounds of assessment vested in customs authorities.*

14. *In the extant valuation regime, the concept of 'transaction value' and the sanctity of 'declared price' as the 'gold standard' converge; in the erstwhile regime, such convergence was merely deemed with 'transaction value' was conceptually articulated in Section 14 of Customs Act, 1962 and the 'gold standard', to be normally donned by the 'declared price', ensconced in the Rules prevailing then. This transformation was of such recent origin that the legacy of an entirely different paradigm had yet not been fully burned out of operational memory, and practice, of assessing authorities; notwithstanding reiterations, in different contexts, under the policy formulation authority of Central Board of Excise & Customs (CBE & C). The valuation dispute, initiated in the show cause notice leading to the impugned order, has every appearance of the chasm that separates conformity with international convention from its disposition at the administering level.*

15. *The extant scheme of valuation for assessment is predicated upon acceptance of the declaration in the bill of entry except in circumstances of deviation from the specific parameters that comprise the totality of Section 14 of Customs Act, 1962 and, thereby, empowering customs authorities to invoke Rule 12 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007.*

16. *Bearing in mind that the scheme of valuation is intended for general application to 'goods', and not to 'conveyances' that, for a time and for the purpose, are statutorily transformed into 'goods', the parameters of Section 14 of Customs Act, 1962 remain, indiscriminatingly, applicable. It is only in application of Customs Valuation (Determination of Value of Imported*

Goods) Rules, 2007, and, more particularly, in the minutiae for fastening of full extent of transaction value that the parody is played out. Just as no vehicle may venture into public space without some form of registration, no vessel may put out to sea save with some territorial mooring of its existence with right to bear the national flag after import; every vessel arriving at the shores of India for import is 'used' and, therefore, may not find fitment within the orthodoxy of purchase from manufacturer which, for assessing officers ingrained in the traditions of 'real value' in Sea Customs Act, 1878, suffices for embarking upon the last of the options for valuation available under the Rules. Nevertheless, there is no reason, except from contrary evidence, to deny acknowledgement of the 'declared value' of the vessel as the 'gold standard' of 'transaction value' for assessment and for resorting to Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 only upon presentation of circumstances that do so permit.

17. *The Rules, though for the most part pertains to redetermination from non-acceptance of declared value, contemplate three different contingencies : the situational alternatives consequent upon rejection of the declared price under the authority of Rule 12, the reiteration of the 'gold standard' in Rule 3 and the empowerment of additions without, in any way, faulting the declaration itself for lacking conformity with Section 14 of Customs Act, 1962.*

18. *The declared price may be discarded in favour of the actual 'transaction value', subject to availability of evidence of direct or indirect flow of additional consideration to the seller, for conformity with the concept enshrined in Section 14 of Customs Act, 1962 without recourse to any provision other than Rule 3 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007. Any other substitution of declared value as 'transaction value' must conform to one of the situations envisaged in Rule 4 to Rule 9, taken sequentially, for validation of assessment for determination of duty of customs after recourse to Rule 12 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007. It must be borne in mind that the substituted values are approximations permissible solely on the ground that Rule 12 of the said Rules has been properly invoked. The third component, or Rule 10 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, interferes with the declared value solely for fairness and non-discriminatory treatment without in any way questioning the credibility of the contractual value determined between the buyer and the seller in normal commercial engagement. That inclusion may comprise value of specified services which, otherwise, is not permissible in valuation of goods, payments to the benefit of the seller that are conditions of sale or freight and insurance which adds value to the goods at the time of import. In the present dispute, we are concerned with recourse to Rule 9 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 for adoption of the value estimated by the Chartered Engineer appointed by customs authorities and the last of the specifics in Rule 10 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 for evaluation of the enhancement upheld in the impugned order.*

19. *The appellant had furnished bill of sale for US $ 21,000,000 purporting to be the 'transaction value' for assessment of the vessel. The Chartered*

Engineer appointed by the appellant had estimated value approximating that declaration which, apparently, was not acceptable to customs authorities, who designated yet another Chartered Engineer to undertake survey afresh, and preferred to accept the value of ` 40,58,64,821 estimated by him over the equivalent, ` 13,82,89,200, in the bill of sale. The justification offered in the impugned order is the admission of several flaws in the survey undertaken by Shri Harish Bhatia. Notwithstanding the inadequacies, customs authorities were in breach of the instructions pertaining to estimation by Chartered Engineer contained in Circular No. 25/2015-Cus., dated 15th October, 2015 of Central Board of Excise & Customs. The admitted facts also bear out investigative overreach in the recording the statement of a professional and in relying upon the 'admission' therein of deficiency in survey undertaken by that professional. It is not necessary that a Chartered Engineer undertakes the survey on his own and the extant instructions do not bar entrusting of such technical evaluation to appropriate experts. As far as the computation, commencing with value at the time of construction of the vessel, is concerned, the sole counter is a much higher estimation by the Chartered Engineer designated by customs authorities - that both are estimations, and any justification offered for the preferment of one over the other is fraught with bias and prejudice, is unarguable. In such circumstances of estimation by the second Chartered Engineer and in not having acceded to the request for cross-examination, the reliance placed upon the report of Shri Rajendra S. Tambe is not tenable as to be sufficiently in conformity with Rule 9 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007.

20. *The justification offered for invoking Rule 12 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, i.e., alleged misdeclaration of tariff item in First Schedule to Customs Tariff Act, 1975, does not logically pan out without evidence that such technical distinction, even if uncontested, impacts value of the vessel. The impugned order has not allotted any space for such scrutiny. Recourse to sequential application of Rule 4 to Rule 9 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 is, thus, without authority of law. The concatenated invoking of Rule 9 and Rule 10 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 does not appear to have taken into account that in*

*'**3. Determination of the method of valuation. -** (1) Subject to rule 12, the value of imported goods shall be the transaction value adjusted in accordance with the provisions of rule 10;*

xx xx xx'

additions are permissible only to 'transaction value' and, to the extent that the 'residual method' is not 'transaction value' at all, there is no scope for further addition to the determined value of the impugned goods. Even otherwise, it is only the specifics intended by Rule 10 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, and in the circumstances elaborated therein, that validate such additions. The payment of 'buying commissions' is not to be included. There is no scope for addition of 'pre-shipment inspection' charges save in circumstances of incorporation as a condition of sale between buyer and seller. There is no *evidence of such and, indeed, no examination of such in the impugned order.*

21. *As we have premised supra, import of a vessel arriving under its own steam does not lend itself to the processing that awaits normal import of 'goods'; such vessels are 'conveyances' saddled with obligations prescribed in Chapter VI of Customs Act, 1962. Additionally, to comply with registration requirements that go hand-in-hand with ownership, the vessel ceases to be 'conveyance' for a time and is, statutorily, deemed to be 'goods' for subjecting to assessment under Section 17 of Customs Act, 1962. The inclusion of 'freight' and 'insurance' in the assessable value under the authority of Rule 10(2) of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 stems from the requirement in Section 14 of Customs Act, 1962 for 'transaction value' to be the price at the place of import and which, in commercial parlance, is designated as 'CIF' in transactions. These payments are made for transportation from the place of shipment and, being paid either to the seller or, on advice of the seller, to the provider of such service, add to the value of 'imported goods' when deployed for further processing or in the pricing for subsequent sale as such. The vessel, ever coursing the seas and oceans, does not take on additional insurance merely for the purposes of movement to a destination for registration and the cost of self-propulsion does not add to the value of the vessel. Furthermore, between the event of 'conveyance' and transformation as 'goods' before reverting to its former form, it cannot be conjectured that any transportation occurs for invoking the proviso in Rule 10(2) of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007. Consequently, the enhancement of 'assessable value' beyond the declared value fails on every count.*

22. *The claim of the appellant that the imported vessel merits classification against Tariff Item 8901 90 00 corresponding to*

'other vessels for the transport of both persons and goods'

is based on the intended use between the base and offshore platforms and the interchangeability of description in the 'certificate of class' issued by several authorities between 'supply' and 'support' vessel. Reliance is placed by Learned Counsel on Rules and Regulations for the Construction and Classification of Steel Ships of Indian Registry of Shipping (IRS) as well as Rules for Building and Classing Marine Vessels of American Bureau of Shipping (ABS). On the other hand, Learned Authorized Representative has placed emphasis on 'fire-fighting vessel class I' in the several certificates to demonstrate that the impugned vessel has been designed for such specialised purpose. On behalf of the appellant, it is contended that capability of fire-fighting is intrinsic to every vessel at sea and that the particular attention devoted to this aspect in certificates does not derogate from its design, and use, as 'supply' vessel. The settled law on classification imposing the burden of establishing the aptness of the alternative tariff item on the customs authorities relegates the comparison between the rival discussions to secondary importance and solely for determining, under the authority of the General Rules for the Interpretation of Import Tariff, the more appropriate of two equally applicable tariff items. Therefore, it is necessary to take note of *'other vessels the navigability of which is a subsidiary to their main function'*

corresponding to Tariff Item 8905 90 90 in the First Schedule to Customs Tariff Act, 1975 within which the adjudicating authority has placed the impugned vessel. We are not inclined to accept inordinate reliance on the certification of different authorities for, if that were the intent of the Convention and/or the supreme legislature, there would have been no hesitation in referring to the institutional arrangements for registration and classing. In the scheme of the headings and sub-headings, no scope is offered for determination based on end-use. The classification will have to be sustained on the descriptions corresponding to the two rival items and, acknowledging the exercise of preference between the two to be preceded by discharge of the burden imposed upon assessing authorities by the decisions of the Hon'ble Supreme Court in Hindustan Ferodo Ltd. v. Collector of Central Excise, Bombay [1997 (89) E.L.T. 16 (S.C.)] and in HPL Chemicals Limited v. Commissioner of Central Excise, Chandigarh [2006 (197) E.L.T. 324 (S.C.)], as more appropriate.

23. *It is seen from the record of proceedings in the impugned order that the appellant had also claimed re-classification against Tariff Item 8906 90 00 of First Schedule to Customs Tariff Act, 1975 from which the adjudicating authority concluded that the appellants were, themselves, uncertain of classification claimed by them initially. We are not inclined to appreciate the logic of that proposition as also the detailed analysis of the design of the vessel which led to the conclusion that Tariff Item 8905 90 90 of First Schedule to Customs Tariff Act, 1975 is an appropriate description that conforms to the classification of the impugned vessel thus*

'12. As per evidence/documents available on record that the Provisional Certificate of Singapore Registry for the Vessel "Dalini Topaz" dated 8-1-2008, the Certificate of Singapore Registry for the vessel "Pacific Amethyst", issued on dated 30-4-2009, the Provisional Certificate of Indian Registry dated 30-6-2017 for the vessel "Sagar Fortune", the final certificate of Indian registry dated 5-10-2017 issued for the vessel "Sagar Fortune", all describe the said vessel as "Steel Offshore Supply Vessel". It is also clear from the statements of Shri K.K. Sanjeev, Head of the Department (Classification and Certification) Indian Registry of Shipping, and Capt. Bijoy Kumar Sharma, Senior! Surveyor, Indian Registry of Shipping, that all these above documents give only generic description of the said vessel and that it is the class certificate which provides the exact class notation and description of a vessel. It can therefore be seen that the description "Offshore Supply Vessel" is merely a general description of the vessel Sagar Fortune and that the exact description and class of the said vessel would be as per the description and class mentioned in the class certificate of the said vessel. Now it can be seen that the Interim certificate of class No. BOM17F016, dated 4-7-2017 issued by Indian Register of Ships (IRS) and the final certificate of class No. 17472, dated 28-9-2017 issued by class IRS for the vessel Sagar Fortune give the description and class of the said vessel as "SUL, Offshore Support Vessel, IY, Agni 1(2400 Cum/hr), DP (2)". Further the survey status report dated 7-7-2017 of IRS also gives the description and class of the subject vessel as "SUL, Offshore Support Vessel, IY, Agni 1(2400 Cum/hr), DP (2)". It also be seen that the class certificate dated 2-10-2013 issued by the American Bureau of Survey (ABS)

*and its survey status report (print date 23-1-2017) have also given the description and class of the vessel "Pacific Amethyst" (Now known as "Sagar Fortune") as "*AI, Fire Fighting Vessel Class 1, Offshore Support Vessel, Circle E, AMS, *DPS-2". The DNV-GL vide their inspection report certificate No. 20817008, dated 26-4-2017 for the Vessel Pacific Amethyst (now known as 'Sagar Fortune3) have mentioned the Class of the subject vessel as "ABS *AI, Fire Fighting Vessel Class 1, Offshore Support Vessel, Circle E, AMS, *DPS-2". It is therefore evident that the vessel "Sagar Fortune" is an Offshore support vessel having additional features like firefighting capability of Class 1 and DPS-2 (or DP-2). These two features which are found to be available in the subject offshore support vessel are generally not found on offshore support vessels and this vessel has been built with these feature with specific purpose. This vessel is equipped, since its manufacture, with advanced firefighting capabilities of class 1, with the help of which it is capable of dousing fires on other vessels/oil rigs/platforms efficiently. This capacity gives this vessel a major edge over the other vessels falling in the category of Offshore support vessels. Besides this advanced firefighting capacity this vessel is also equipped, since its manufacture, with an advance dynamic positioning system (DPS-2) which provides it with a capability to maintain its position in close proximity to other vessels/oil rigs/platforms even in monsoons. This means that the vessel is meant for being in very close proximity to the oil rigs/platforms to provide support to such oil rigs/platforms including the support in the form of firefighting and that is why the importer has imported it. It is to be employed. This vessel is also equipped with 40 cabins onboard. Capt. Shri Bijoy Kumar Sharma, Surveyor of IRS, who has surveyed the said vessel, has deposed in his statement these cabins are meant to provide accommodation to specialized persons (SPS persons) like Technicians, Surveyors, Engineers, Divers, Ship's crew, etc. and that these cabins can also be used for rescuing the staff of Rigs/Platforms in case of an emergency. It therefore is evident that the importer, has imported this vessel so that it can be kept in very close proximity to oil rigs such as of M/s. ONGC to provide support in various forms and if need be it can douse the fire on such rigs and also accommodate its technicians in the cabins available onboard this vessel. It is, therefore, evident from all these features available; on this vessel that these functions and purposes are its main functions and that the navigability of this vessel is subsidiary to these functions because if navigability and supply is to be considered its primary functions then these special and features/functions like firefighting, DPS and large number of cabins, which are otherwise not available on other supply/support vessels, become redundant and ineffective. In this context deposition of Capt. Shri Bijoy Kumar Sharma, expert Surveyor of IRS, who has personally surveyed the said vessel, is also very important. Capt. Shri Bijoy Kumar Sharma, who is an expert in this field, in his said deposition has said that as Agni I and DP-2 require the vessel to remain stationary and that it can be said that the navigability of this vessel becomes subsidiary to these two functions. He has further stated that navigability of this vessel has become subsidiary to two main functions of this vessel namely Agni 1 and DP-2, i.e. Fire Fighting and Dynamic Positioning System. He is an expert in surveying vessels and classifying them as per shipping parlance and as such is technically qualified to determine the class notation which he has agreed remains the same as that given by ABS i.e. American Bureau of Shipping. In that sense the opinion of Capt. Shri Bijoy Kumar Sharma regarding classification under the*

*Customs Tariff can definitely be considered an expert's opinion. It can be seen from the Chapter heading 8905 of Customs Tariff that it covers those vessels the function of navigability of which are subsidiary to their main function. According to Rule 3 of the same Principles of general rules of interpretation - the heading which provides the most specific description shall be preferred to headings providing a more general description. In the instant case it is seen that, the term Offshore Support Vessel is generic term as evidenced by the statements of experts, whereas the ABS class notation "ABS, *A1, Fire Fighting Vessel Class 1, Offshore Support Vessel, Circle E *AMS. *DPS-2" which has remained unchanged (lack of evidence of any modification having been carried out in the subject vessel), makes the subject vessel appropriately classifiable under Chapter 8905 90 90. However, even if it is assumed by the Importer that there are two CTHs that merit equal consideration, the subject vessel is to be classified under the heading which occurs last in numerical order among those which equally merit consideration as per Rule 3 of the above rules. It therefore is clear from the above that the vessel 'Sagar Fortune' which had been classified by the importer under CTH 8901 90 00 is rightly classifiable under CTH 8905 90 90, which attracts Basic Customs Duty @ 5%. Therefore, it is evident that the importer had deliberately misdeclared the OTH of the subject vessel as 8901 90 00 with an intention to evade duty. Now that the subject vessel is liable to be properly classifiable under CTH 8905 90 90, the basic customs duty @ 5% now is leviable on the subject vessel by virtue of it getting classified under CTH 8905 90 90. Therefore, the total differential duty on the subject vessel on 'account of its re-classification and re-determination of value amounts to Rs. 3,53,25,921/-, as detailed in para 3.4 above. The said differential duty therefore needs to be demanded and recovered from the Importers M/s. S.S. Offshore Pvt. Ltd. in terms of the provisions of Section 28(4) of the Customs Act, 1962, along with the applicable interest thereon under section 28AA ibid.'*

to counter which no arguments have been offered on behalf of the appellant except to submit that the carrying capacity and its intended use render it classifiable against Tariff Item 8901 90 00 of First Schedule to Customs Tariff Act, 1975. On the other hand, the disposal of the alternative proposition thus

'13. I find that the importer in their written submission dated 6-3-2018/7-3-2018 have now claimed that the subject vessel is classifiable under the chapter heading 89.06, which in other words and by their own admission means that it was never classifiable under the chapter heading 89.01. It would therefore be in order for me to examine their claim that the said vessel is properly classifiable under 89.06. I find that the chapter heading 89.06 reads as follows :

89.06	*OTHER VESSELS, INCLUDING WARSHIPS AND LIFEBOATS BOATS OTHER THAN ROWING*
8906 10 00	*- Warships*
8906 90 00	*- Other*

It is therefore evident from the chapter heading 89.06 and the explanatory notes thereto that the subject vessel cannot, by any stretch of imagination, be classified under that heading. On the other hand I find, from the evidence on record and the discussions above, that the subject vessel is a firefighting vessel of class I having very advance dynamic positioning system in the form of DPS-2. The subject vessel is capable of playing multiple roles by remaining alongside other vessels or rigs for a very long period. These capabilities, which were inbuilt in the vessel and have increased it's cost and value exponentially. Thus has clearly made its navigation subsidiary to these specialised roles. Further, the importers in their written submission have also admitted that the vessel is not classifiable under the chapter heading 89.01 and that it is instead classifiable under 89.06. Therefore, it is evident that they knew from the beginning that the subject vessel is not classifiable under 89.01 and they have deliberately misclassified the same for the purpose of evasion of duty and that the vessel is correctly classifiable under 89.05. This attempt at alternate classification is nothing but an afterthought to escape from the legitimate duty that becomes due on account of the subject vessel's correct classification under chapter heading 89.05. I therefore hold that the subject vessel "Old & Used self-propelled Platform supply Vessel Sagar Fortune, earlier known as Pacific Amethyst" imported vide bill of entry no. 2630993, dated 28-7-2017 is correctly classifiable under CTH 8905 90 90 and that the importer M/s. S.S. Offshore Pvt. Ltd. had mis-declared its classification only with an intention to evade duty thereon.'

renders the finding to be incomplete.

24. *In the light of this inadequacy, we are unable to firm up on the applicable classification for want of determination in the impugned order between Heading 8905 and Heading 8906 of the First Schedule to Customs Tariff Act, 1975. That gap must be bridged to enable which we set aside the impugned order and remand the matter back to the original authority for a fresh decision on the claim of the appellant for fitment within Heading 8906 of First Schedule to Customs Tariff Act, 1975. As this remand is intended to arrive at the appropriate classification, the appellant may also make its submissions for fitment within the original classification, in addition, should they choose to do so.*

25. *The enhancement of value of the impugned vessel is set aside in accordance with our findings supra. The sole issue that remains is the choice of the appropriate classification. The controversy is contentious and the alternative classification proposed by customs authorities is based upon reliance on technical features to distinguish it from a capability inherent in all vessels that put out to sea in terms of subordination to its principal function. With that complexity to be resolved, there is no scope for indicting the individuals in these proceedings for deliberate misdeclaration. That the benefit of an exemption has been sought to be availed does not, of itself, render such claim to be with intent to evade duty. Furthermore, the role of these individuals in the misdeclaration of stores and bunkers is not evident in the impugned order. The penalties imposed on the individuals are, accordingly, set aside to allow their appeals.*

> ***26.*** *With this limited remit of decision on classification in remand proceedings, the four appeals are disposed of."*

In view of the above judgment, the Commissioner (Appeals) contention that the freight should be included is not legal and correct. On careful perusal of the order-in- original, we find that there is absolutely no infirmity in the order of the Adjudicating Authority, therefore, the same needs to be upheld.

5. Accordingly, we uphold the order-in-original and the impugned order being devoid of any merit, is set aside. Appeal is allowed with consequential relief.

(Pronounced in the open court on 19.11.2024)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

Raksha