CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL AHMEDABAD

REGIONAL BENCH, COURT NO. 1

CUSTOMS APPEAL NO. 13293 OF 2014

[Arising out of OIA-204-COMMR-A--CUS-JMN-2014 dated 22/05/2014 passed by Commissioner of CUSTOMS-JAMNAGAR(PREV)]

ASHWIN CORPORATION **Appellant**
Plot No. 77, Ship Breaking Yard, Alang,
Bhavnagar, Gujarat

Vs.

COMMISSIONER OF CUSTOMS-JAMNAGAR(PREV) **Respondent**
Sharda House...Bedi Bandar Road, Opp. Panchavati,
Jamnagar, Gujarat

Appearance:
Shri Rahul Gajera, Advocate for the Appellant
Shri P Ganesan, Superintendent (AR) for the Respondent

CORAM:
HON'BLE MR. SOMESH ARORA, MEMBER (JUDICIAL)

Date of Hearing : 06.02.2025
Date of Decision : 06.02.2025

FINAL ORDER NO. 10101/2025

The point of dispute is about the nature of goods as they are presented before the Customs authorities. The short point in this matter is whether the goods i.e. Marine Gas Oil which were brought in vessel for breaking purposes was properly considered as part of the ship or should have been considered as oil. The department considered the same as classifiable as oil separately under Chapter 27 whereas the party claimed that it was part of the ship only and therefore classifiable under Chapter 89 as the ship itself. The learned advocate states that the matter is no more *res-integra* and it has already been decided at the level of the Apex Court in 2023 (4) TMI 1250 - SC in the matter of M/s. Mahalaxmi Ship Breaking Corporation Etc. Vs Commissioner of Customs, Bhavnagar.

2. Confronted with the decision, the learned AR reiterates the findings of the lower authority and leaves the matter to the discretion of this court.

This Court finds that the matter already stands decided by the Apex Court wherein the matter was decided as follows:

> *"The issue agitated by it is that the Oil in the Bunker Tanks of the Engine Room/outside the Engine Room of the vessels sent for being broken up, are to be assessed separately or as part of the vessels to be scrapped. In the appeals preferred by the Revenue, which are directed against the orders of the CESTAT dated 16.02.2022 and 01.12.2022, the CESTAT ruled that the oil is to be assessed as part of the Ship.*
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> *However, in an earlier appeal [Mahalaxmi Ship Breaking Corp. ETC. Vs. Commissioner of Customs, Bhavnagar, which is the subject matter of Civil Appeal Nos. 5318-5342/2009 before this Court), the CESTAT ruled otherwise vide order dated 29.05.2009, stating that both the articles are to be separately assessed.*
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> *Having considered both the orders as well as the submissions of the parties, this Court is of the view that the later view expressed in the orders dated 16.02.2022 and 01.12.2022 (which are the subject matters of Diary No(s). 24220 OF 2022, Diary No(s). 8943 OF 2023. Diary No(s). 10272 OF 2023, Diary No(s). 10034 OF 2023, Diary No(s), 11290 OF 2023, Diary No(s). 8954 OF 2023, Diary No(s), 10267 OF 2023. Diary No (s). 10031 OF 2023) is correct. The Revenue's appeals are, accordingly, dismissed."*

3. Appeal is therefore allowed following the aforesaid decision. Appeal allowed.

(Dictated and pronounced in the open Court)

(SOMESH ARORA)
MEMBER (JUDICIAL)

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