

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE
TRIBUNAL
BANGALORE**

REGIONAL BENCH - COURT NO. 1

Customs Appeal No. 2426 of 2012

*(Arising out of Order-in-Appeal No.96/2012 dated
11.4.2012/01.06.2012 passed by the Commissioner of
Customs (Appeals), Cochin.)*

M/s. Chemplast Sanmar Ltd. Appellant(s)
No.9, Cathedral Road,
Chennai – 600 086.

Versus

The Commissioner of Customs Respondent(s)
Customs House
Cochin – 600 009.

AND

Customs Appeal No. 2427 of 2012

*(Arising out of Order-in-Appeal No.97/2012 dated
11.4.2012/01.06.2012 passed by the Commissioner of
Customs (Appeals), Cochin.)*

M/s. Chemplast Sanmar Ltd. Appellant(s)
No.9, Cathedral Road,
Chennai – 600 086.

Versus

The Commissioner of Customs Respondent(s)
Customs House
Cochin – 600 009

Appearance:

Ms. Radhika Shriranjini, For the Appellant
Advocate

Mr. K. A. Jathin, AR For the Respondent

CORAM:

HON'BLE DR. D.M. MISRA, MEMBER (JUDICIAL)
HON'BLE MRS. R. BHAGYA DEVI, MEMBER (TECHNICAL)

Final Order No. 21209 to 21210 /2023

Date of Hearing: 01.11.2023

Date of Decision: 01.11.2023

Per : DR. D.M. MISRA

These two appeals are filed against Order-in-Appeal No.96/2012 dated 11.4.2012/01.06.2012 and Order-in-Appeal No.97/2012 dated 11.4.2012/01.06.2012 respectively passed by the Commissioner of Customs (Appeals), Cochin.

2. Briefly stated the facts of the case are that the appellants filed Ex-bond Bill of Entry No.162399 dated 15.7.2005 and No.168644 dated 7.11.2005 for clearance of 1575 MTs and 1570 MTs of Methanol, respectively imported from Southern Unicorn & Sun Great; initially the said Bills of Entry were provisionally assessed pending verification of the documents. The assessments were later finalised on the basis of the documents submitted by taking note of the quantity as shown in the imported document and not the actual quantity received in the Shore Tanks. The assessments were finalised on the basis of CBEC Circular dated 12.1.2006. Consequently, differential duty of Rs.8,978/- and Rs.15,420/- has been confirmed with interest. Aggrieved by the said orders, the appellant preferred appeals before the learned Commissioner (A), who in turn, rejected their appeals and hence, the present appeals.

3. The learned counsel for the appellant submits that the issue of assessment of bulk liquid cargo shown in the imported documents and actually received in the Shore Tank, is no more *res integra* as it is covered by the judgment of the Hon'ble Supreme Court in the case of **Mangalore Refinery and**

Petrochemicals Ltd. vs. CC: 2015-TIOL-199-SC-CUS.

Further, she submits that in supersession of the earlier Circular dated 27.12.2002, Circular No.34/2016 dated 26.7.2016 has been issued clarifying that in case of bulk liquid cargo, the quantity received in the shore tank be considered for determination of assessable value and not the value shown in the Bill of Entry. She submits that the judgment and circular have been subsequently followed by this Tribunal in number of cases including in the case of **Hindustan Petroleum Corporation Ltd.: 2023-TIOL-314-CESTAT-AHM** and in the case of **Gemini Edibles and Fats India Pvt. Ltd.: 2019 (369) ELT 957 (Tri.-Hyd.)**.

4. Learned Authorised Representative for the Revenue reiterated the findings of the learned Commissioner (A).

5. Heard both sides and perused the records. We find that the short issue involved in the present appeals is whether the quantity shown in the import invoices and other related import documents be considered for assessment of bulk liquid cargo or the actual quantity received in the Shore Tank after import, be the basis for determination of value as well as duty.

6. We find that this issue has been considered by the Hon'ble Supreme Court in the case of **Mangalore Refinery and Petrochemicals Ltd.** case (supra) after analysing the provisions of Customs Act, their Lordships observed that:

“15. We are afraid that each one of the reasons given by the Tribunal is incorrect in law. The Tribunal has lost sight of the following first principles when it arrived at the aforesaid conclusion. First, it has lost sight of the fact that a levy in the context of import duty can only be on imported goods, that is, on goods brought into India from a place outside of India. Till that is done, there is no charge to tax. This Court in *Garden Silk Mills Ltd. v. Union of India*, 1999 (8) SCC 744 = 1999 (113) E.L.T. 358 (S.C.), stated that this takes place, as follows :-

“It was further submitted that in the case of Apar (P) Ltd. [(1999) 6 SCC 117 = JT (1999) 5 SC 161] this Court was concerned with Sections 14 and 15 but here we have to construe the word “imported” occurring in Section 12 and this can only mean that the moment goods have entered the territorial waters the import is complete. We do not agree with the submission. This Court in its opinion in Bill to Amend Section 20 of the Sea Customs Act, 1878 and Section 3 of the Central Excises and Salt Act, 1944, Re [AIR 1963 SC 1760 = (1964) 3 SCR 787 sub nom Sea Customs Act (1878), S. 20(2), Re] SCR at p. 823 observed as follows :

“Truly speaking, the imposition of an import duty, by and large, results in a condition which must be fulfilled before the goods can be brought inside the customs barriers, i.e., before they form part of the mass of goods within the country.”

It would appear to us that the import of goods into India would commence when the same cross into the territorial waters but continues and is completed when the goods become part of the mass of goods within the country; the taxable event being reached at the time when the goods reach the customs barriers and the bill of entry for home consumption is filed.” [at paras 17 and 18]

16. Secondly, the taxable event in the case of imported goods, as has been stated earlier, is “import”. The taxable event in the case of a purchase tax is the purchase of goods. The quantity of goods stated in a bill of lading would perhaps reflect the quantity of goods in the purchase transaction between the parties, but would not reflect the quantity of goods at the time and place of importation. A bill of lading quantity therefore could only be validly looked at in the case of a purchase tax but not in the case of an import duty. Thirdly, Sections 13 and 23 of the Customs Act have been wholly lost sight of. Where goods which are imported are lost, pilfered or destroyed, no import duty is leviable thereon until they are out of customs and come into the hands of the importer. It is clear therefore, that it is only at this stage that the quantity of the goods imported is to be looked at for the purposes of valuation. Fourthly, the basis of the judgment of the Tribunal is on a complete misreading of Section 14 of the Customs Act. First and foremost, the said Section is a section which affords the measure for the levy of customs duty which is to be found in Section 12 of the said Act. Even when the measure talks of value of imported goods, it does so at the time and place of importation, which again is lost sight of by the Tribunal. And last but not the least, “transaction value” which occurs in the Customs Valuation Rules has to be read under Rules 4 and 9 as reflecting the aforesaid statutory position, namely, that valuation of imported goods is only at the time and place of importation.

17. The Tribunal’s reasoning that somehow when customs duty is *ad valorem* the basis for arriving at the quantity of goods imported changes, is wholly unsustainable. Whether customs duty is at a specific rate or is *ad valorem* makes not the least difference

to the above statutory scheme. Customs duty whether at a specific rate or *ad valorem* is not leviable on goods that are pilfered, lost or destroyed until a bill of entry for home consumption is made or an order to warehouse the goods is made. This, as has been stated above, is for the reason that the import is not complete until what has been stated above has happened. The circular dated 12th January, 2006 on which strong reliance is placed by the revenue is contrary to law. When the Tribunal has held that a demand or duty on transaction value would be leviable in spite of “ocean loss”, it flies in the face of Section 23 of the Customs Act in particular, the general statutory scheme and Rules 4 and 9 of the Customs Valuation Rules.

18. We therefore, set aside the Tribunal’s judgment and declare that the quantity of crude oil actually received into a shore tank in a port in India should be the basis for payment of customs duty. Consequential action, in accordance with this declaration of law, be carried out by the customs authorities in accordance with law. All the aforesaid appeals are disposed of in accordance with this judgment.”

7. Pursuant to the said judgment of the Hon’ble Supreme Court, Board has issued Circular No.34/2016 dated 26.7.2016. The aforesaid principle of law as well as the Board Circular has been followed by the Tribunal in the case of **Hindustan Petroleum Corporation Ltd.** (supra) and **Gemini Edibles and Fats India Pvt. Ltd.** (supra). In these circumstances, we do not find any merit in the impugned orders. Consequently, the impugned orders are set aside and the appeals are allowed with consequential relief, if any, as per law.

(Order dictated and pronounced in Open Court.)

(D.M. MISRA)
MEMBER (JUDICIAL)

(R. BHAGYA DEVI)
MEMBER (TECHNICAL)