CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH - COURT NO. 1

Customs Appeal No. 2028 of 2010

(Arising out of Order-in-Appeal No. 119/2010 dated 28.05.2010 passed by the Commissioner of Customs (Appeals), Bangalore)

Commissioner of Customs,
New Custom House,
Panambur,
Mangalore – 575 010. Appellant(s)

VERSUS

Salgaocar Mining Industries Pvt. Ltd.
Salgaocar Chambers,
Luis Miranda Road,
Margao Goa – 403 601. Respondent(s)

WITH

Customs Appeal No. 976 of 2012

(Arising out of Order-in-Appeal No. 03/2012/CUS(B) dated 13.01.2012 passed by the Commissioner of Customs, Appeals, Bangalore.)

Salgaocar Mining Industries Pvt. Ltd. Appellant(s)
Salgaocar Chambers,
Luis Miranda Road,
Margao Goa – 403 601.

VERSUS

Commissioner of Customs (Appeals)
C.R. Building, Respondent(s)
P.B No. 5400, Queen's Road,
Bangalore – 560 001.

AND

Customs Appeal No. 1729 of 2012

(Arising out of Order-in-Appeal No. 52/2012 dated 16.03.2012 passed by the Commissioner of Customs (Appeals), Bangalore.)

Salgaocar Mining Industries Pvt. Ltd.
Salgaocar Chambers, Appellant(s)
Luis Miranda Road,
Margao Goa – 403 601.

VERSUS

Commissioner of Customs (Appeals)
C.R. Building,
P.B No. 5400, Queen's Road,
Bangalore – 560 001.

Respondent(s)

APPEARANCE:

Mr. B.K. Tomar, Sr. Advocate with Mr. Gaurav S Safare, Advocate for the assessee

Mr. Maneesh Akhoury, Assistant Commissioner (AR) for the Revenue

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

Final Order No. 21077 - 21079 /2024

DATE OF HEARING: 15.07.2024
DATE OF DECISION: 15.07.2024

PER : DR. D.M. MISRA

These three appeals are filed against respective Orders-in-Appeal; appeals No. C/976/2012 and C/1729/2012 are filed by the assessee, whereas appeal No.C/2028/2010 filed by the Revenue. Since the issue involved in all these appeals are common, they are taken up together for hearing and disposal.

Appeal No.C/2028/2010 by Revenue

2. The respondent had imported a transhipment vessel viz. 'Andheri Nagari' and the description of the same was mentioned in the IGM as "Barge Andheri Nagari, fitted with three units of self contained 1000KVA electrical switch board, two 4 roped Liebherr cranes of SWL 30Tons 28 Meter outreach, installed on pedestals on deck with 2 nos. Mitsubishi marine engines with gear box kept on deck for the self propulsion". They had filed Bill of Entry No.06/08 dated 05.03.2008 declaring the goods as "ocean going deck barge" and classified the same under Chapter sub-heading 89011040. Along with Bill of Entry, they have filed

copy of Memorandum of Agreement of goods / materials. Since the description declared in the Bill of Entry and other documents filed did not conform, the Department examined the goods on 05.03.2008 and on the basis of the report, it was classified under Chapter sub-heading 89059090 after receiving the response on the queries raised by the Department, on provisional basis. The respondent paid the duty of Rs.3,05,50,461/- under protest against the classification under Chapter sub-heading 89059090. Thereafter, a show-cause notice was issued to the respondent on 18.03.2008 proposing its classification under CSH 89059090. The Assistant Commissioner after affording an opportunity of personal hearing, classified the goods under CSH 89059090 and appropriated the duty paid by the respondent. Aggrieved by the said order, the respondent filed appeal before the learned Commissioner(Appeals) who in turn rejected the said classification held by the adjudicating authority. Hence, the Revenue is in appeal.

Appeal No.C/976/2012 & C/1729/2012 by the assessee

3. Subsequently, the assessee has imported barge viz. "Olympic Belayan" on 07/12/2009 and filed Bill of Entry No.89/2009 dated 07/12/2009 declaring the same as "Deck barge Olympic Belayan" fitted with Liebherr LHM crane claiming its classification under CSH 89011040 and benefit of Notification No.21/2004-Cus dated 01.03.2002. similarly the assessee had imported another transhipment vessel "Chowpatlal" on 18/11/2009 and filed Bill of Entry No.77/2009 dated 18.11.2009 declaring the same as "Twin Screw Self propelled Transhipper Vessel" claiming its classification under CTH89011040 and exemption under Notification No.21/2002-Cus. dated 01.03.2002 (Sl.No.352). Both these vessels were put under physical verification by the Departmental officers and on the basis of verification reports, the classification has been provisionally proposed under CTH 89059090 and the differential duty

accordingly worked out by the Department. The assessee paid the differential duty under protest. Later, show-cause notices were issued alleging the classification of the product under CTH 89059090 without extending the benefit of exemption under Notification No.21/2002-Cus dated 01.03.2002. Later on adjudication, classification of the said transhipper vessels had been approved under CTH 89059090 and differential duty has been confirmed. Aggrieved by the said orders, the assessee preferred appeals before the learned Commissioner(Appeals) who in turn rejected their appeals. Hence, these two appeals are filed by the assessee.

4. In support of the Revenue's appeal, learned AR for the Revenue reiterating the grounds of appeal has submitted that against Bill of Entry No.6/2008 dated 05.03.2008, the assessee had imported 'Ocean Going Deck Barge' claiming its classification under CTH 89011040 along with benefit of Notification No.21/2002-Cus dated 01.03.2008 (Sl.No.352). The imported barge was subjected to examination and as per the examination report mentioned in the Order-in-Original, the vessel is flat bottomed platform installed with two big 4 roped Liebherr cranes of SWL 30 tons with 20 metre outreach with 2 nos. grabs; the vessel is dumb and it is towed by tug. It is not designed for carrying persons or goods; it is a crane mounted barge which is having main function of transporting bulk cargo from barge to ship and ship to barge in stationary position. Further, he has submitted that the Survey Report No.2008/018 dated 09.03.2008 mentioned that the vessel is dump barge and as such does not have any propelling machinery, the vessel was transported to Karwar from the last port Singapore by towing. It is further submitted that in the case of ***Adani Enterprises Ltd. Vs. CC, Mangalore*** [2017(357) ELT 1135 (Tri. Bang.)], it is held that bump barge mounted with crane and not having any engine for self-propulsion is classifiable under Chapter Heading 8905

and not under heading 8901; also they have placed reliance on the judgment of this Tribunal in the case of ***Sesa Sterlite Ltd. Vs. Commissioner*** [2018(362) ELT A234 (Tri. Mum.)], which was upheld by the Hon'ble Supreme Court reported in 2019(368) ELT A157 (SC). Further, he has submitted that in the assessee's own case, ***Salgaocar Mining Industries Pvt. Ltd. Vs. CC, Vijayawada*** [2019(365) ELT 842 (Tri. Hyd.)], it is held by the Tribunal that ocean going deck barge mounted with two cranes and not navigable on its own but can be towed is classifiable under heading 8905 and not under 8901.

5. Learned advocate appearing for the assessee has submitted that the issue related to classification of barge under appropriate heading of the Customs Tariff. He has submitted that the assessee has claimed the classification of the barge under CTH 89011040 whereas the Department proposed its classification under 89059090. He has submitted that for determination of the appropriate classification, the description of the goods which is akin to the description given in the particular sub-heading has to be preferred. In the present case, there is a specific heading for barges whereunder the assessee has classified the product. On the other hand, the Department proposed the classification under heading which is general in nature. Therefore, if one particular item is covered under specific entry, then Revenue authorities were not permitted to travel beyond the language employed under the specific entry and adopt a classification totally different which fall outside the ambit and purview of the specific entry. He has submitted that when the Department has refused to accept the description of goods for classification of the goods as mentioned in the respective invoices and Bill of Entry, it is for the Department to establish that the impugned goods are different from the goods, its classification by providing cogent reasoning supported by evidence. In classification matters, the burden of proof lies

heavily on the Department which must be discharged by clinching evidences. Further, he has submitted that the expression barges appearing in sub-heading 89011040 is wide enough to encompass within its fold barges of all forms and varieties whether self-propelled, assisted propelled or dumb whether flat bottomed or otherwise and irrespective of their size, shape, design, function or intended end-use, whether fitted with equipment, machineries, accessories etc or not. Assailing the finding of the learned Commissioner(Appeals) in the impugned order that only those barges which are principally designed for transportation of goods are classifiable under CTH 8901, he has submitted that the said inference is contrary and unduly confines the plain expression found in the sub-heading. It is his contention that the said Chapter 89 does not in any manner limit or exclude any kind of barges from Chapter sub-heading 89011040. Referring to HSN, he has submitted that heading 8901 includes barges of all kinds. Further, he has submitted that the learned Commissioner(Appeals) has erred in referring to CBEC Circular No.1/2005-Cus dated 11.05.2005. Also he has submitted that the decision of the learned Commissioner(Appeals) in Order-in-Appeal No.119/2010 dated 28/05/2010 in relation to barge viz. Andheri Nagari (appeal No.C/2028/2010) which is structurally and functionally similar in the case of other two barges viz. "Olympic Belayan" and "Chowpatlal" is binding on the assessing officer, hence the correct classification of the said barges is CSH 89011040.

6. Heard both sides and perused the records.

7. The short question involved in the present appeals is whether classification of transhipment vessels viz. Andheri Nagari, Olympic Belayan and Chowpatlal imported against Bills of Entry No.06/2008 dated 05.03.2008; No.089/2009 dated 07/12/2009 and No.77/2009 dated 18.11.2009 be under CSH

89011040 as claimed by the assessee or under CSH 89059090 as held in the impugned orders.

8. The appellant-assessee in their submission while contesting the impugned order passed by the Commissioner(Appeals) upholding the classification of the transhipment vessels 'Olympic Belayan' and 'Chowpatlal' has submitted that the decision of the learned Commissioner(Appeals) in relation to classification of the vessel 'Andheri Nagari' be followed as the structural design of all the three transhipment vessels are one and the same and imported for the same objective. The Revenue's contention on the other hand is that the learned Commissioner(Appeals) while deciding the issue of classification in respect of transhipment vessel Andheri Nagari erred in holding the classification under CTH 89011040.

9. After import of the transhipment vessel Andheri Nagari on 05.03.2008, the same was examined by the Inspector of Customs and a report in this regard furnished, which is relevant and is reproduced as below:-

> **Andheri Nagari**
>
> "Examined the goods with respect to BOE, Invoice, IGM, MOA, Bill of Sale and found that the vessel is flat bottomed platform installed with two big 4 roped Liebherr cranes of SWL 30 tons with 28 meter outreach with 2 nos grabs. Cranes are powered by 3 units self-contained 1000KVA diesel generators with electrical switch board. On the deck there are cabins, kitchen room, and store rooms for the crews operating the cranes. There is a cargo hold on the deck in which 6 units of rubber fenders are kept along with two big boxes said to contain Mitsubishi marine engines with gear box. The vessel is dumb and it was towed by the tug. It is not the vessels designed for carrying persons or goods. It is a crane mounted barge and main function of which is transhipping the bulk cargo from barges to ship and ship to barges in stationary position. No catalogue, drawing found on board of the vessel. Importers representative could not open the two boxes said to contain Mitsubishi Marine engines and jammed openings.

So bunkers position & status of the engine could not be ascertained. Photographs of the goods enclosed”.

Similar examinations were also conducted in the case of other two transhipment vessels viz. Olympic Belayan and Chowpatlal. The examination reports are:-

Olympic Belayan

"Examined the vessel wrt BOE, IGM, Memorandum of agreement and with vessel registry documents and found that the vessel is flat bottomed vessel of size 101.01 mtrs X 27.43 mtrs X 6.41 mtrs (LengthXBreadthXDepth). The vessel has a built up flat deck above which the following items are installed

i) 2 Nos 4 roped Liebherr rotating drum type cranes of SWL 30tons with 28 Mtr outrich with 2 nos grabs. These cranes are having huge pedestal installed on one side of the vessel

ii) 2Nos BEDESCHI ship loaders with conveyor belts installed on another side

iii) Built up covered conveyor belt system having 2 hoppers with apron feeders

iv) 3 units of self contained 1250 KVA diesel generators with electrical switch board

v) 3 decked crew cabins for 20 persons

vi) At the centre portion of the vessel there is a built up coaming of about 3 mtrs height above deck which provide cargo space above the deck.

vii) Separate cabin for controlling the movement of the cargo through conveyor belt

The vessel has 2 No Mitsubishi marine engines of capacity 691 KW. The vessel has one anchor windlass, anchor chain with shackles, 3 mooring winches. GRT of the vessel is 4960 and NRT of the vessel is 1488. As per ship registry, the vessel can be engaged on voyages of not more than 20 nautical miles from the nearest land (Annexure C 7). The vessel arrived to Karwar port by towing. The vessel is a transhipper, the main function of the vessel is to transfer the bulk cargo from one vessel to another in stationary position by standing in between them. The cranes with the help of grabs grab the bulk cargo from the vessel standing on one side and transfer it to the conveyor belt system. Cargo moves through conveyor belts to ship loaders and from ship loaders to another ship on the other side. The vessel is new one. The photographs enclosed”.

Chowpatlal

“Examined the vessel wrt BOE, IGM, Memorandum of agreement and with vessel registry documents and found that one new flat deck (floor) vessel by name 'Olympic Belayan' said to have size of 87.86 mtrs x 24.40 mtrs x5.5 mtrs (Length xBredth x Depth). The same was towed by tug Star Sumatra from Singapore. One end of the vessel has racked bottom and other three side walls are box shaped. GRT of the vessel is 3171 and NRT of the vessel is 951. The vessel has a built up flat deck, above which the following items are installed

i) 1 No used LHM 400 Liebherr crane having sl no 140134, hoisting capacity of 104 tons and out reach of 48 mtrs.
ii) 40 feet container made as cabin and store.
iii) Installed with 2 nos fresh water tanks
iv) Installed with 1 no fuel oil tank.
v) 1 no DENYO DG set C90-2
vi) 1 no switch board DB 150A
vii) 2 nos old grabs and 4 nos new grabs
viii) Double mooring drum winches -3 sets

ix) The vessel has built up coaming of about 3 mtrs height on two sides and accessories such as ramps, old tyres etc were lying on the deck.

Portion of the deck where the crane has been installed has been strengthened by additional steel plates above the deck and the void space below the deck has been reinforced and strengthened by additional steel columns, steel girders and steel angles. 64 tyred cranes have been rested on 4 hydraulic cylinder outrigger arm and arms are fixed on the platform by welding clamps to the platform holding the foot. The crane body is also tied with steel chains and end of the chains are welded to Deck. The vessel has no ballast tank and cargo space. As per international tonnage certificate (1969) dated 12.11.2009, remark is made as "This ITC is re issued due to change of class and modifications carried out, previous certificate was issued by ABS, certificate no YY204138- 000000-001 dated 8th May 2009" and also mentioned NO CARGO SPACE. Thereby the vessel Olympic Belayan is specially designed and constructed for mounting the subject crane and its accessories required for crane operation and gives required buoyancy.

The LHM 400 Liebherr crane is having sl no 140134. The crane has 64 tyres and presently rested on 4 hydraulic outrigger arms. It has Boom, ropes, rotator and grab hooks. The crane has one tower cabin and one slewing platform cabin. The crane is rotating type and can be rotated 360 degree. The crane can be used for loading and unloading operations of bulk cargo from barges to ships visa- versa, in stationary position by standing in between them. The photographs enclosed”.

10. On the basis of the examination reports and also from the description of the items as given in the Memorandum of Agreement of the respective vessels, the adjudicating authority in all the three cases concluded that the imported vessels are not the type of vessels like cruise ships, excursion boats and similar vessels principally designed for the transport of persons; ferry boats of all kinds; it is a dumb and to be towed, whose main function is loading and unloading lose bulk cargo, it is not a type of vessel principally designed for carrying persons or goods. The imported vessel is crane-mounted barge for loading and unloading bulk cargo and also held that it is not designed for transportation of persons.

11. The competing entries read as follows:-

8901		**CRUISE SHIPS, EXCURSION BOATS, FERRY-BOATS, CARGO SHIPS, BARGES AND SIMILAR VESSELS FOR THE TRANSPORT OF PERSONS OR GOODS**
890110	-	Cruise ships, excursion boats and similar vessels principally designed for the transport of persons; ferryboats of all kinds :
89011010	---	Ships
89011020	---	Launches
89011030	---	Boats
89011040	---	Barges
89011090	---	Other

8905		**LIGHT-VESSELS, FIRE-FLOATS, DREDGERS, FLOATING**

		CRANES, AND OTHER VESSELS THE NAVIGABILITY OF WHICH IS SUBSIDIARY TO THEIR MAIN FUNCTION; FLOATING DOCKS; FLOATING OR SUBMERSIBLE DRILLING OR PRODUCTION PLATFORMS
89051000	-	Dredgers
89052000	-	Floating or submersible drilling or production platforms
890590	-	Other :
89059010	---	Floating docks
89059090	---	Other

The relevant HSN notes in respect of said entries are as follows:-

89.01- Cruise ships, excursion boats, ferry-boats, cargo ships, barges and similar vessels for the transport of persons or goods.

8901.10 Cruise ships, excursion boats and similar vessels principally designed for the transport of persons; ferry-boats of all kinds

8901.20 Tankers

8901.30 Refrigerated vessels, other than those of subheading 8901.20

8901.90 Other vessels for the transport of goods and other vessels for the transport of both persons and goods

This heading covers all vessels for the transport of persons or goods, other than vessels of heading 89.03 and lifeboats (other than rowing boats), troop-ships and hospital ships (heading 89.06); they may be for sea navigation or inland navigation (e.g., on lakes, canals, rivers, estuaries).

The heading includes:

(1) Cruise ships and excursion boats.

(2) Ferry-boats of all kinds, including train-ferries, car-ferries and small river-ferries.

(3) Tankers (petrol, methane, wine, etc.).

(4) Refrigerated vessels for the transport of meat, fruit, etc.

(5) Cargo vessels of all kinds (other than tankers and refrigerated vessels), whether or not specialised for the transport of specific goods. These include ore vessels and other bulk carriers (for the transport of, e.g., grain, coal), container ships, Ro-Ro (roll-on-roll-off) ships and LASH-type vessels.

(6) Barges of various kinds, lighters and pontoons being flat-decked vessels used for the transport of goods and, sometimes, of persons.

(7) Vessels of the hydroglider type, hydrofoils and hovercraft.

89.05 - Light-vessels, fire-floats, dredgers, floating cranes, and other vessels the navigability of which is subsidiary to gesin function, floating docks; floating or drilling or production platforms.

8905.10 Dredgers

8905.20 Floating or submersible drilling or production platforms

8905.90 Other

This heading covers:

(A) **Light-vessels, fire-floats, dredgers, floating cranes, and other vessels the navigability of which is subsidiary to their main function.**

These normally perform their main function in a stationary position. They include: light-vessels; drill-ships; fire-floats, dredgers of all kinds (e.g., grab or suction dredgers); salvage ships for the recovery of sunken vessels; permanently moored air-sea rescue floats; bathyscaphes; pontoons fitted with lifting or handling machines (e.g., derricks, cranes, grain elevators) and pontoons clearly designed to serve as a base for these machines.

House-boats, laundry boats and floating mills are also covered by this group.

(B) Floating docks.

Floating docks are a type of floating workshop used instead of dry docks.

They are generally structures of a U-section comprising a platform and side-walls, and are equipped with pumping compartments which enable them to be partly submerged to permit the entrance of vessels requiring repair. In some cases they may be towed.

A further type of floating dock functions in a similar manner, but is self-propelled and equipped with powerful engines. These are used for the repair or transport of amphibious vehicles or other craft.

(C) Floating or submersible drilling or production platforms.

Such platforms are generally designed for the discovery or exploitation of off-shore deposits of oil or natural gas. Apart from the equipment required for drilling or production, such as derricks, cranes, pumps, cementing units, silos, etc., these platforms have living quarters for the personnel.

These platforms, which are towed or in some cases self-propelled to the exploration or production site and are sometimes capable of being floated from one site to another, may be divided into the following main groups:

(1) Self-elevating platforms which, apart from the working platform itself, are fitted with devices (hulls, caissons, etc.) which enable them to float, and with retractable legs which are lowered on the work site so that they are supported on the sea bed and raise the working platform above the water level.

12. It is the contention of the Revenue that the issue is no more *res integra* and covered by the judgment of this Tribunal in the case of ***Sesa Sterlite Ltd. Vs. CC, Pune*** (supra) which has later been upheld by the Hon'ble Supreme Court.

13. We find that the facts involved in ***Sesa Sterlite Ltd.***'s case are more or less similar the facts of the present case inasmuch as in that case, the vessel M.V. Royal Sesa which was

declared as 'self-propelled and navigable transhipment barge' imported in 2013 claiming its classification under CSH 89019000 whereas the Revenue rejected the said classification and classified under CSH 89059090. The relevant paras of the said judgment are reproduced below:-

> *4.3 From the structure of Chapter 89, it is quite evident that navigability is not a criteria for determination of the Classification under the said chapter. Navigability would be one of the features for all the goods classifiable under chapter 89. In Chapter 89, vessels performing specific functions are classified on the basis of the function performed although they may have navigability, self propulsions and cargo carrying facility i.e. fish vessel (8902), Tugs (CTH 8904), dredger, a salvage ship, house boat (CTH 8905), Warship, pilot boat, hospital ship (CTH 8906) are classified in separate headings and they obtain their essential character from the general structural design of the vessel and the equipments fitted onto the vessel to perform a specialized task. However the classification of the vessels cannot be determined on the basis of that criteria. Classification of any vessel is based on its essential character ascertained on the basis of the functional features, structural design and the equipment fitted on board the vessel. It is the basic design keeping in view the function that is intended to be performed which determine the classification of the particular vessel. In this regard reliance is placed on the following judgments:*
> *a. Urmila & Co. Pvt. Ltd. [1998(104) ELT-97(Trib.)]*
> *b. L.M.P.Precision Eng.Co.Ltd.[2004(163)ELT 290(SC)]*
> *c. Mahindra & Mahindra Ltd. [2013(296)ELT 485(Tri-Bang)]*
>
> *4.4 The description of the heading CTH 8905 categorically states that the navigability is subsidiary to their main function The phrase "the navigability of which is subsidiary to their main function" has been explained in the HSN in the following manner:*
>
> > *"These normally perform their main function in a stationary position they include light vessels, drill ships, fire floats, dredgers of all kinds (e.g.) grab or suction dredgers, salvage ships for the recovery of sunken vessels; permanently moored air sea rescue floats, bathyscaphes, pontoons fitted with lifting or handling machines (e. G. Derricks, cranes, grain elevators and pontoons clearly designed to serve as a base for these machines. House boats,*

laundry boats and floating mills are also covered by this group."

4.5 From the documents relating to RFP, Contract, Project Management etc it is evident that the vessel "M.V.Royal Sesa" was conceptualized and designed as a 'Floating Transfer Station' for the purpose of loading bulk cargo like Iron Ore and not as vessel for transportation of goods, the structural design of the Vessel 'M.V. Royal Sesa' and the equipment fitted onto the vessel determine its essential character.

4.6 The appellant are claiming classification of the vessels under CTH 8901 on the ground that the vessel is principally designed for transport of goods and navigability is one of the main functions of the vessel. It is submitted that capacity of being self propelled and fully navigational cannot be the basis of eligibility to be classified under CTH8901. To claim the said features they have relied upon the various certificates and experts classifying the said vessel transshipment cargo barge. On perusal of the aid certificates and experts classification it is observed that these certificates have been issued by the various authorities to certify the availability of certain features such as navigability etc, but none of these certificates identify the essential character and function of the said vessel. Further these certificates cannot be the sole basis of classification under the CTH and the classification needs to be determined only after ascertaining the main/ essential function intended/ performed by the vessel and terms of the relevant tariff heading. Reliance In this regard is also placed on the case of Indian Aluminium Cables Ltd. v/s UOI (1985 (21) ELT 3 (SC) and Akbar B Jiwani v/s Commissioner Customs 1990 (48) ELT 441 wherein it was held that the "ISI specification were not relevant (for classification under Customs Tariff) when they are only meant for quality control".

14. The said judgment of the Tribunal was upheld by the Hon'ble Supreme Court. In the present case also, the barges were not principally designed for transportation of persons and goods but it is flat bottomed dumb fitted with floating crane barge, designed for transhipping goods from daughter vessel to mother vessel and *vice versa* at stationary position. Also, it cannot be classified under CSH 89019000 as the same is not principally designed for transport of either persons or goods since it has no prime movers and also to be towed. It is fitted

with heavy duty cranes which lift cargo from the distance of 28 mtrs and these cranes function as lifting and discharging cargo which are nothing but floating structure fitted with cranes to tranship the goods in stationary position. Assessee claimed its classification under CSH 89011040; the heading 8901 covers cruise ships or excursion boats and similar vessels principally designed for transport of persons whereas the present transhipment vessels are dumb and to be towed and also its main function is loading and unloading of bulk cargo. The same is nothing but a mounted barge for loading and unloading of bulk cargo and not designed for transport of persons. The Tariff heading 8901 assigns the classification depending on the vessels principally designed for the purpose of which it is used.

15. The argument of the assessee that the word "barge" mentioned in CSH 89011040 includes barges of all kinds, forms and varieties and since it is specifically mentioned, no need to resort to general heading as such, an action would result in travelling beyond the specific entry. The said argument is unacceptable. A general term used to describe any commodity would cover all commodity in different forms and varieties cannot be a sound reasoning; hence not acceptable. The heading 89011040 covers only the barges principally designed for carrying persons. Barges for transportation of goods are classifiable under heading 89019000. Different types of ships are classifiable under different sub-headings of Chapter 89 and not under one sub-heading. CSH 8901010 specifically mentions ships but it is designed only for carrying persons i.e. cruise ships; Oil tanker ships are classified under 89012000; cargo ships are classified under 89019000, factory ships for processing whales and preserving fish under 8902, drill ships and salvage ships under 8905, ships designed for warfare under 89060010, laboratory ships under 89060090 etc. The essential characteristics and use of a ship plays a decisive role in

classifying and has been reasoned by this Tribunal in the case of ***Sesa Sterlite Ltd***., which is squarely applicable to the present case.

16. Following the aforesaid decision, we do not have any hesitation to hold that vessels Andheri Nagari, Olympic Belayan and Chowpatlal have been correctly classified under CSH 89059090. In the result, the impugned order in appeal C/2028/2010 is set aside and Revenue's appeal is allowed. Also, the other two impugned orders in appeal No.C/976/2012 and C/1729/2012 are upheld and appeals No.C/976/2012 and C/1729/2012 filed by the assessee are rejected.

(Operative part of this order was pronounced in court
on conclusion of the hearing.

(D.M. MISRA)
MEMBER (JUDICIAL)

(R BHAGYA DEVI)
MEMBER (TECHNICAL)

Raja…