CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL BANGALORE

REGIONAL BENCH - COURT NO. 1

Customs Appeal No. 23785 of 2014

(Arising out of Order-in-Appeal No. 300/2014 dated 12.09.2014 passed by the Commissioner of Customs (Appeals), Bangalore.)

M/s. Arihant Ship Breakers,
702-B, Manmandir Apartment,
Indra Nayan Road,
Santa Cruz (W),
Mumbai – 400 054.

Appellant(s)

VERSUS

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

Respondent(s)

APPEARANCE:

Mr. V.M. Doiphode, Advocate for the Appellant

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

CORAM: HON'BLE DR. D.M. MISRA, MEMBER (JUDICIAL)
HON'BLE MR PULLELA NAGESWARA RAO, MEMBER (TECHNICAL)

Final Order No. 21358 /2025

DATE OF HEARING: 24.02.2025
DATE OF DECISION: 22.08.2025

DR. D.M. MISRA

This is an appeal filed against Order-in-Appeal No.300/2014 dated 12.09.2014 passed by the Commissioner of Customs (Appeals), Bangalore.

2. Briefly stated the facts of the case are that the appellants are engaged in the business of ship breaking. They had

informed the Department through their letter dated 02.10.2007 that they had purchased the wreck vessel "MV ocean Seraya" on "as is where is" basis from a ground off Oyster rocks, Karwar Port, India from M/s. Star Matrix Ltd., Hong Kong against Memorandum of Agreement (MOA) dated 20.11.2006. The said vessel initially arrived at Karwar Port to load 23000 MTs of Iron Ore Fines to China on 30.05.2006. Due to sudden change in climatic condition, the anchored vessel lost control of its anchor and hit the rocks near Oyster Island and broke into two pieces and partially submerged at about 3 nautical miles off Karwar Port. After the accident, the District administration and Port Department had made the owners responsible to salvage the wrecked vessel. The owners appointed M/s. Smith International to carry out the salvaging operation of fuels and they salvaged the fuel from the submerged vessel. The owners of vessel sold the wreck to M/s. Chenco Marine, USA who in turn sold the same to M/s. Star Matrix, Hong Kong. The appellant intended to cut the wreck ship into transportable pieces at the place of wreck and intended to transport them through barges to unload at Karwar Port. Also, they intended to break the ship in the private bonded warehouse located on the Karwar Port wharf so that the same can be transported by trucks conveniently. Since it was impossible to shift to port wharf and also to pull the wreck vessel caught between the rocks, the appellants were permitted to salvage the wrecked ship at midstream and permitted to bring the salvaged parts to customs notified area at port wharf from salvaged point, for further breaking. Since the salvage work was being undertaken in the open sea under water and also between heavy waves impacting the rocks, there was uncertainty regarding salvage work, the appellant requested the Customs for acceptance for filing an Into Bond Bill of Entry. Later, the appellant was permitted to break the ship in private bonded warehouse located in the Customs notified area having Private Bonded Warehouse Licence No.02/2007 dated 05.10.2007. The appellant had filed Into Bond Bill of Entry No.272/07 dated 12.10.2007 for the wrecked ship for breaking. The net LDT of the said vessel was 10893 MTs. and MOA price declared was 1100193 USD C&F and added 1.125% on MOA as notional insurance charges. The assessable value as per the appellant was calculated at Rs.4131.46 PMT. Later, the appellant through their letter dated 12.10.2007 requested for provisional assessment of the Bill of Entry in response to a query from the Department to submit the details of freight charges and salvaging cost from the place of wreck to Karwar Port as the said charges cannot be ascertained at that time. The appellant also requested to add 20% of MOA value as freight charges to bring the salvaged materials to Karwar Port and cutting charges at 25 USD PMT. Accordingly, the Department, after enhancing the cutting charges from 25 USD to 30 USD PMT, assessed the said Into Bond Bill of Entry on provisional basis since the salvage charges and local freight was not ascertained at that time. Consequently, the assessable value was enhanced from Rs.4131.46 PMT to Rs.6162.02 PMT for which the appellant had agreed and filed 19 ex-Bond Bills of Entry for the clearance of materials obtained by ship breaking. All the ex-bond Bills of Entry were assessed provisionally as the exact salvaging cost and local freight from the place of wreck to the port was unavailable. After completion of the salvaging operation lasted during December 2007 to May 2009, the total salvaged material was 9200 MTs against the LDT 10893 MTs of the vessel. The Department through letter dated 12.01.2010 and 15.02.2010 finally assessed the Bills of Entry calculating the assessable value @ Rs.7072.72 PMT and requested the appellant to pay the differential duty of Rs.15,33,416/-. In response to the Departmental letters, the appellant has responded stating that the appellant agreed to invoice value of Rs.4789.43 PMT and they are entitled for a refund of Rs.21,61,530/-. Thereafter, the Department wrote letters to the appellant from 15.02.2010 to

20.10.2010 to furnish the details of expenses incurred on cutting and transportation of salvaged materials, which they failed to submit. In their letter dated 26.10.2010, the appellant had submitted various documents including balance sheet and other documents. The appellant was given a personal hearing. Later, the adjudicating authority after hearing the appellant and analysing the balance sheet and other documents submitted by the appellant, assessed the Bills of Entry and confirmed the differential duty of Rs.78,07,948/-. Aggrieved by the said order, the appellant filed appeal before the learned Commissioner(Appeals), who in turn rejected their appeal. Hence, the present appeal.

3.1. At the outset, the learned advocate for the appellant has submitted that as per Section 14 of the Customs Act, 1962, the place of importation is the place where the ship was lying off Karwar Port near Oyster Rock. The appellants were permitted to file warehousing bond Bill of Entry describing the ship as wreck ship for salvaging at the place where the it was lying. Further, as per Section 46 of the Customs Act,1962 Bill of Entry for warehousing or home consumption was filed as per sub-section 3 and it can be filed anytime after delivery of the goods. As per Section 30, import manifest is required to be filed within 12 hours after its arrival at Customs Station and as per Section 31 of the Customs Act, 1962, imported goods are to be unloaded only after inward entry is granted. Thus, the warehousing Bill of Entry was filed after import of goods into the Customs area. Therefore, the learned Commissioner has erred in holding that the importation was complete only when the broken parts were transported alongside of the Karwar Port. The learned Commissioner(Appeals) has failed to note that permitting to file warehousing Bill of Entry at the place where wrecked ship was lying itself is a declaration that it was Customs notified area as otherwise the Bill of Entry for warehousing could not have been filed. Further, he has submitted that the home consumption Bill of Entry does not describe the goods as salvaged part of the ship but was filed under CTH 89080000 for ship breaking and not for salvaged part of the ship.

3.2. The learned advocate has submitted that the Commissioner(Appeals) erred in applying the judgment of Hon'ble Supreme Court in the case of Garden Silk Mills Ltd. Vs. UOI [1999(113) ELT 358 (SC)] as the appellant's case is quite different inasmuch as the Customs had permitted to file warehousing Bill of Entry and provisions of Section 46 are applicable to both Bill of Entries whether for home consumption or for warehousing and the same could be filed only after Customs barrier is crossed. Therefore, as per the judgment of the Hon'ble Supreme Court, the taxable event has already taken place when the Bill of Entry was filed for warehousing. Further, he has submitted that the principle laid down in the case of Garden Silk Mills has been distinguished by the Larger Bench of the Tribunal in the case of Southern Petro Chemical Industries Ltd. Vs. CC, Ahmedabad [2008(224) ELT 537 (Tri. LB)]. Further, referring to the judgment of the Hon'ble Supreme Court in Ispat Industries Ltd. [2006(202) ELT 561 (SC)], he has submitted that the transportation charges for use of barges for carrying cargo from the mother vessel cannot be added to the value of the imported goods for levy of customs duty. He has submitted that in the present case, the contract for delivery of "MV Ocean Seraya" ship was on "as is where is" basis and the ship is in wreck condition was lying near Karwar Port and Customs had allowed filing of warehousing Bill of Entry at that place. Further, what they brought to the notified area was not the ship but after the breaking wrecked ship into further parts. Further, the learned advocate has submitted that reference to para 5(c) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 by the learned Commissioner is incorrect inasmuch as in the appellant's own case, the import was complete and warehousing Bill of Entry was filed and assessed; therefore, further expenses are incurred only for breaking the ship into parts and turning into scrap and loading and unloading, handling charges at the place of importation @ 1% of CIF is already included in the assessable value. Thus, in view of the judgment in Coramandal Fertilisers Ltd. Vs. CC [2000(115) ELT 7 (SC)], further loading and unloading charges cannot be added to the value of the wrecked ship.

4. Learned Authorised Representative (AR) for the Revenue has reiterated the findings of the learned Commissioner(Appeals). He has submitted that in the peculiar circumstances of the case, on the request of the appellant expressing their inability to bring the wreck ship broken into two and lying off Karwar Port, the Department allowed the appellant to file into bond warehousing Bill of Entry so as to facilitate the appellant to break the ship into smaller pieces and bring to their warehouse for further breaking and clearing in trucks. At that time, the appellant agreed to the assessable value arrived at on provisional basis, pending submission of the details of transportation charges and salvage charges, assessable value as Rs.6162.02 PMT which the appellant agreed and discharged duty accordingly while filing 19 Ex-bond Bills of Entry. He has submitted that in spite of repeated reminders, the appellant has not furnished the details of salvage cost and transportation charges in bringing the wreck ship to the warehouse. The Department proceeded to assess the Bills of Entry on the basis of the balance sheet and other documents furnished by the appellant. He has submitted that while confirming the demand, the cutting cost of scrap after bringing into the warehouse has not been included; therefore, the demand confirmed by the authorities is correct and sustainable.

5. Heard both sides and perused the records.

6. The short issue involved in the present appeal for consideration is: whether the transportation charges, handling charges and other charges be added to the agreed value of the wreck ship "MV Ocean Seraya" sold on "as is where is" basis, at Oyster Rock off Karwar Port, India, referred to the Invoice No.001/03/2007 dated 22.03.2007 pursuant to a Memorandum of Agreement dated 20.11.2006.

7. The peculiar facts of the case are that initially the vessel "MV Ocean Seraya" anchored at Karwar Port to load 23000 MTs of Iron Ore fines to transport to China. Due to rough weather and change in climatic condition, the said anchored vessel lost control and hit rocks near Oyster Rock and broken into two pieces and partially sub-merged. Later the wrecked ship was sold to the appellant by M/s. Star Matrix Ltd., Hong Kong who purchased it from the owner of the wrecked vessel M/s. Chenco Marine, USA. Since the vessel was broken into two pieces and lying at Oyster rock and difficult to bring the wrecked vessel to the Karwar Port for breaking into scrap, the appellant requested the Department to break the wrecked ship into transportable pieces at the said place of wreckage and bring them through barges to unload at Karwar Port. Also, they have intended to further break the said pieces in private bonded warehouse located on the Karwar Port wharf which could be transported in trucks, conveniently. Acceding to the said request, the appellant was allowed to file the In-to Bond Bill of Entry No.272/07 dated 12.10.2007 for wrecked ship for breaking even though the wrecked ship was at the place of wreckage away from the Karwar Port near Oyster Rock. Taking the net LDT of the broken vessel as 10893 MTs, the value was declared as 1100193 USD C&F for the wrecked ship on "as is where is" basis; added

1.125% on MOA value as insurance charges. Accordingly, the appellants have calculated the PMT value of the scrap as Rs.4131.46. The Department through their letter dated 12.10.2007 asked the appellant to submit details of freight charges from the place of wreckage off Karwar Port and also the entire salvage cost; in response, vide letter dated 12.10.2007, the appellant requested for provisional assessment of the Bill of Entry as they could not furnish details and exact expenditure to be incurred on freight and cutting cost of the wreck vessel; also the appellant requested to add 20% of MOA value as freight to bring the materials to Karwar Port and cutting charges at 25 USD PMT. Pursuant to the said request, the Department added 20% of the MOA value as local freight' however enhanced the cutting charges from 25 USD PMT to 30 USD PMT and arrived at the assessable value as Rs.6162.02 PMT which the appellant agreed and discharged duty on such assessment which was provisional, pending finalisation. The appellant filed 19 ex-bond Bills of Entry for clearance of material after breaking ship declaring the assessable value as Rs.6162.02 PMT. The salvage operation was commenced in December 2007 and completed in May 2009, where the vessel was assessed for only 9200 MTs against the 19 Ex-bond Bills of Entry. Later, the Department re-calculated the assessable value in absence of actual freight cost by loading local freight @ 20% and arrived at the revised assessable value was proposed as Rs.7072.72 PMT and the differential duty calculated against clearance of scrap under 19 Ex-bond Bills of Entry was Rs.15,33,416/-. Also, the appellant was asked for production of Chartered Engineer's certificate in support of the cost incurred in salvage operation and the transportation of the salvaged scrap on actual basis. However, the appellant through their advocate has submitted that the assessment is wrong and they are entitled to refund of Rs.21,61,530/-. Consequently, various letters were addressed by the Department to ascertain the actual expenses incurred on cutting and bringing the salvage materials to the Port / warehouse which were not responded by the appellant. The appellant however had submitted the balance sheet and ledger copy etc. which were analysed and after hearing the appellant, the assessable value was arrived at and differential duty was calculated as Rs.78,07,948/-.

8. Assailing the impugned order, the learned advocate for the appellant has advanced a two-fold argument. He has submitted that once the Into-Bond Bill of Entry has been filed by the appellant, thereafter loading of the assessable value with actual freight charges, handling charges and other charges in bringing the wrecked ship from Oyster rock to the Karwar Port is not sustainable and secondly, he has referred to the precedent decision in the case of Southern Petro Chemical Industries Ltd. Vs. CC, Ahmedabad in disputing the addition of barging charges i.e. cost of transportation of goods from the place of wreckage to the Karwar Port.

9. The Revenue's contention on the other hand is that in the peculiar facts of the case, the appellant was allowed to file into-Bond Bill of Entry when the appellant expressed inability to bring the wreck vessel towing from the place of wreckage to the Karwar Port, but could only be brought in pieces and thereafter further the process of breaking be carried out in the bonded warehouse at the Karwar Port Wharf; hence that cannot be construed as the basis for assessment, when the appellant itself has undertaken and requested for provisional assessment to file subsequently the actual cost of transportation and other charges in bringing the wrecked ship to the Karwar Port.

10. We find merit in the argument of the Revenue inasmuch as permission to file Into-Bond Bill of Entry was allowed by the Department in the peculiar facts and circumstances of the case

and that too at the request of the appellant since the broken vessel at the Oyster rock could not be shifted/ transported to the Karwar Port / warehouse for breaking without converting into smaller pieces. The appellant themselves had requested for provisional assessment stating that the actual cost of salvage and transporting the materials from the Oyster rock to the Karwar Port cannot be ascertained at that point of time and a provisional value of the scrap was declared. Therefore, the argument of the learned advocate for the appellant that after filing Into-Bond Bill of Entry, addition of salvage charges and actual cost of transportation cannot be added to the value is devoid of merit.

11. The second contention of the appellant is that barging / transportation charges in bringing the wrecked vessel from Oyster Rock to the Karwar Port cannot be added to the value as per the ratio laid down in Southern Petro Chemical Industries Ltd.'s case (supra) is also not correct. In Southern Petro Chemical Industries Ltd.'s case, the facts are that four consignments of fertiliser had been imported by the appellant from USA and at the port of discharge, the ships which brought the cargo had to be anchored in the sea, a few nautical miles away from the jetty for want of draft at the jetty for the vessels. At the anchorage point, the cargo was discharged from the vessel into barges which ferried the goods to the jetty. In such circumstances, addition of barging charges incurred by the importer not indicated in the relevant Bills of Entry nor included in the assessable value of the goods, which the Department proposed to add to the assessable value. Taking note of the fact that the sale was on C&F value and following the judgment in Ispat Industries Ltd.'s case (supra), the Tribunal concluded that the barging charges incurred by the importers therein for ferrying the goods from the ship to the jetty are not to be included in the assessable value of the goods. Contrary to the

facts of the said case, in the present case, it is an admitted fact that the sale was on 'as is where is' basis i.e. near the Oyster Rock and it is the responsibility of the purchaser / importer to bring the said broken ship / scrap to the Karwar Port and ultimately break into smaller pieces in their warehouse and clear the same from the Port on payment of appropriate customs duty. Thus, the ratio laid down by the Hon'ble Supreme Court in Southern Petro Chemical Industries Ltd.'s case (supra) is not applicable to the present case.

12. We find, on the contrary, the judgment in the case of Garden Silk Mills Ltd. vs. UOI [1999(113) ELT 358 (SC)] is squarely applicable to the facts of the present case as the place of import would be at the Karwar Port and not the place where the ship was lying after wreckage i.e. Oyster rock. Their Lordships held as follows:-

> "**20.** We do not agree with the aforesaid submission because what has to be arrived at is a deemed price in the manner indicated in the said Section. In determining this deemed price in international trade the element of port charges which have to be borne by the importer, in addition to the CIF value, before the goods can be cleared for human consumption must necessarily form a part or an element of the value. The said Section does not accept as final the price fixed by the purchaser and the seller in the course of international trade as reflected in the CIF contract but it requires determination of value by the customs authorities in the manner indicated therein. What has to be seen is the value or cost of the imported articles at the time of importation i.e. at the time when they reach the customs barrier. Landing charges which have to be paid to the Port Trust must therefore, be taken into consideration while determining the value of the imported goods for the purpose of assessment of duty. It is only if the importer establishes that the obligation to pay the landing charges is on the seller and not on the importer and that the seller or his agent has, in fact, paid the said landing charges to the Port Trust Authorities, that the importer can claim that the landing charges should not be again added to the price. In none of the cases before us has it been found by any fact finding authority, even in cases of CIF contracts, that the Port Trust Authorities did receive the landing charges from the shipper or the foreign seller and that the said charges were included in the CIF contract."

13. Applying the ratio of the Garden Silk Mills Ltd.'s case to the facts of the present case, we find that the wrecked ship "MV Ocean Seraya" was sold by the overseas seller in the condition "as is where is" basis lying off Oyster Rock. Therefore, the charges for bringing the said broken ship into smaller pieces ought to be added to the value. The appellant, neither before the adjudicating authority nor before us, has disputed the correctness of the quantum of charges added to the invoice value in arriving at the assessable value of the scrap by the learned Commissioner in the impugned order, which is based on the balance sheet and ledger accounts submitted by the appellant in response to the various communications sent by the Department to them. In such circumstances, we do not see any infirmity in the impugned order. Consequently, the impugned order is upheld and the appeal being devoid of merit is dismissed.

(Order pronounced in Open Court on 22.08.2025)

(D.M. MISRA)
MEMBER (JUDICIAL)

(PULLELA NAGESWARA RAO)
MEMBER (TECHNICAL)

Raja…