CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH - COURT NO. 1

Application(s) Involved:

C/CROSS/2/2011 in Customs Appeal No. 2361 of 2010

Customs Appeal No. 2361 of 2010

(Arising out of Order-in-Appeal No. 114/2010 dated 20/05/2010 passed by CC(Appeals), Bangalore)

Commissioner of Customs
MANGALORE-CUS
NEW CUSTOMS HOUSE
PANAMBUR
MANGALORE - 575010
KARNATAKA

Appellant(s)

VERSUS

SALGAOGAR MINING INDUSTRIES PVT LTD
SALGAOCAR CHAMBERS, LUIS MIRANDA ROAD, MARGOA, GOA-403601

Respondent(s)

Appearance:

Shri K.B. Nanaiah, Asst. Commissioner(AR) — For the appellant

Shri R.K. Tomar, Advocate — For the Respondent

CORAM:
HON'BLE MR. P.K. CHOUDHARY, JUDICIAL MEMBER
HON'BLE MR. P. ANJANI KUMAR, TECHNICAL MEMBER

Final Order No. 20267 / 2020

Date of Hearing: 02/03/2020

Date of Decision: 02/03/2020

Per : P. ANJANI KUMAR

Heard both sides.

2. Brief facts of the case are that the respondents are engaged in the business of export of iron ore. For the purpose of exports, they

have availed the services of a vessel 'MV Sunrise' for facilitating swift loading of cargo for export. Department demanded duty on the shipping stores consumed aboard the vessel. Learned AR for the Department relies upon a Certificate of Indian Registry given for the vessel registered on 21/07/1998 at Mumbai vide Registration No.2769. Learned AR relies on the declaration of the respondents themselves given to the effect that the vessel is involved in transshipment operation at Marmagoa, Panaji, Karwar and Bellikery ports. He also relies on a note given by the Superintendent of Customs on an intimation dt. 10/11/2007 given to the Asst. Commissioner of Customs, Karwar by the respondents stating that the subject vessel will be operating in Belikeri port as a transshipment vessel for their exports from Belikeri Port and will be arriving Karwar on or around 10/11/2007.

3. Learned counsel for the respondent submits that the vessel was nowhere involved in coastal run between any two Indian ports and was engaged in shifting of iron ore from the shore to the mother vessels in a high-seas bases stationed beyond 12 nautical miles of Indian coast and hence they are foreign going vessel and as such the exemption available to bunkers and stores have been rightly held to be admissible. He quotes the grounds of the appeal of the Department which stated that issue in the case of Shantilal Khushaldas and Bros. Vs. Asst. Collector of Customs, Goa [1997(94) ELT 472 (SC)] has not yet been finally decided and has been referred to the Chief Justice of India for appropriate directions. He submits that this case has been taken by the Supreme Court along with the case of MV Salgaocar Bros. [1998(99) ELT 3 (SC)] wherein it was held that the trans-shippers (vessels fitted with equipment for transshipping and topping operations and used for carrying cargo from the harbor and unloading it into large vessels afloat in high seas) are "ocean-going vessels".

Therefore he submits that the grounds taken by the Department do not survive.

4. Having gone through the rival submissions and records of the case, we find that though the Department alleges that the vessel has been on the coastal run, no evidence to that effect has been brought on record either by way of any permission granted for coastal run by Customs or D.G. Shipping or any copy of the log book of the vessel has been submitted. Moreover, we find from the judgment of the Hon'ble Supreme Court as cited by the learned counsel for the respondents that such vessels which are engaged in transshipment of export cargo from the port to the mother vessels stationed at high-seas are sea going vessels and are rightly eligible to be held as foreign going vessels in terms of Section 2(21) of the Customs Act, 1962. Section 2(21) of Customs Act defines foreign going vessels as under:-

> Section 2(21) "foreign-going vessel or aircraft" means any vessel or aircraft for the time being engaged in the carriage of goods or passengers between any port or airport in India and any port or airport outside India, whether touching any intermediate port or airport in India or not, and includes –
>
> (i) any naval vessel of a foreign Government taking part in any naval exercises;
>
> (ii) any vessel engaged in fishing or any other operations outside the territorial waters of India;
>
> (iii) any vessel or aircraft proceeding to a place outside India for any purpose whatsoever;

5. As per the above definition, we find that the vessel M.V. Sunrise was engaged in the carriage of goods between ports mentioned above to the high-seas. Going by the definition contained above under the clause (iii) of the inclusive clause, we find that the vessel is a foreign going vessel and accordingly, the exemption

available to the ship stores is rightly held by the learned Commissioner(Appeals) to be admissible. In view of the above, we find that the appeal filed by the Department is not maintainable and is rejected. Cross-objection also disposed of.

(Order was pronounced and dictated
in Open Court on **02/03/2020**)

(P.K. CHOUDHARY)
JUDICIAL MEMBER

(P. ANJANI KUMAR)
TECHNICAL MEMBER

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