CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, CHENNAI

REGIONAL BENCH – COURT NO. III

Customs Appeal No.00380 of 2012

(Arising out of Order-in-Original No.11/2012 dated 19.11.2012 passed by the Commissioner of Customs, Tuticorin)

M/s. St. John Frieght Systems Ltd. **: Appellant**
C-98, SIPCOT Industrial Complex,
Harbour Express Road,
Tuticorin - 628 008.

VERSUS

Commissioner of Customs, **: Respondent**
Custom House,
New Harbour Estate,
Tuticorin - 628 008.

APPEARANCE:

Ms. K. Nancy, Advocate for the Appellant

Ms. T.Usha Devi, Authorized Representative for the Respondent

CORAM:

HON'BLE SMT. SULEKHA BEEVI C.S, MEMBER (JUDICIAL)
Hon'BLE SHRI P. VENKATA SUBBA RAO, MEMBER (TECHNICAL)

FINAL ORDER NO.41592/2021

DATE OF HEARING: 16.04.2021

DATE OF DECISION: 16.04..2021

Per Smt. Sulekha Beevi C.S:

The appellant is a CHA and is aggrieved by the impugned order whereby penalty of Rs.5,00,000/- was imposed under Section 112 (a) of Customs Act, 1962.

2. Brief facts are that M/s.Jan De Nul Dredging India Pvt Ltd imported one old and used self propelled special service workboat/Fuel tank ship on lease basis under contract, dated 15.02.2011. The Bill of Entry was filed through the appellant herein, who is a CHA. The vessel was assessed to duty by classifying under CTH 89019000 and the total Customs duty ascertained was Rs.1,93,15,970/-. The importer claimed benefit of Notification No.27/2002, dt.01.03.2002 and paid 15% of the aggregate Customs duty i.e., Rs.28,97,395/- and furnished bond, dt.15.03.2011 for Rs.1,64,18,575/-.

3. Later, DRI received intelligence that importer has misclassified the vessel and that the correct classification is CTH 89059090 and that also contravened the conditions of notification by not re-exporting the vessel within the stipulated period. DRI collected documents and recorded statements. Show-cause notice dt.09.03.2012 was issued under section 28 of Customs Act, 1962 and other provisions to the importer and others including the appellant, *inter alia* proposing to reject the classification demanding short paid duty and for imposing penalties. After adjudication the original authority rejected the declared classification and held the classification to be under CTH 89019000. The demand of differential duty along with interest against the importer was confirmed. As per clause (ix) of the operative portion of the order, penalty of Rs.5,00,000/- was imposed on the appellant. The present appeal is against such order.

4. On behalf of the appellant the Ld.Counsel Ms.K.Nancy appeared and argued. She submitted that the main appeal filed by the importer M/s.Jan De Nul Dredging India Pvt Ltd and co-noticee M/s.J.M.Baxi and Co., was disposed by the Tribunal vide F.O.No.41249-41250/2020 dt.18/1/2020. The Tribunal set aside the impugned order and allowed their appeals. She prayed that the duty, penalty imposed on the importer having been set aside, the penalty imposed upon the appellant cannot sustain.

5. The Ld.Authorised Representative, Ms.T.Usha Devi appeared for the Department.

6. Heard both sides.

7. The main appeal filed by the importer and another co-noticee was disposed by the Tribunal by above stated final order dt.18.11.2020. The relevant paragraphs are reproduced as under :-

> "4. It is seen that the exemption notification prescribes export of the goods within a period of six months from the date of importation. According to section 2(23) of Customs Act, 1962,
> '*"import", with its grammatical variations and cognate expressions, means bringing into India from a place outside India;'*
>
> with section 2(25) and in section2(26) of Customs Act, 1962, defining 'imported goods' and 'importer' respectively to be of relevance till the goods are cleared for home consumption. From the procedure for clearance of goods for home consumption in section 46 and section 47, it would appear that that goods are at the disposal of importer only upon clearance for home consumption and, to the extent that the exemption notification prescribes deployment within the territory of India for a period of upto six months, the timeline for deployment can commence only from the date of such clearance. It is an admitted fact that the shipping bill was filed on 14th September 2011 and that 'out of charge' was granted for the imported goods on 17th March 2011. In these circumstances, the conclusion of the adjudicating authority that the impugned vessel was retained beyond the

period of six month is incorrect. Hence the duty liability is restricted to 15% of the total duty liability as assessed.

5. It is the finding of the adjudicating authority that the goods had been erroneously classified under heading no. 8901 of First Schedule to Customs Tariff Act, 1975 which corresponds to '*vessels*' as against the proposed classification under heading no. 8905 of First Schedule to Customs Tariff Act, 1975 which corresponds to '*light vessels, fire floats, dredgers, floating cranes and other vessels the navigability of which is subsidiary to their main function*'. It is, therefore, contended on behalf of the customs authorities that, considering the nature of activities for which the vessel could be deployed, the general heading of vessel would not be less appropriate in comparison with the specialized category proposed by them as the utility of the vessel is of more overwhelming significance than navigability. There is no doubt that the substantial distinction between the two rival headings lies in the navigability of the vessels being the determinant for classification under the heading claimed by the importer. On this classification, we have heard Learned Counsel and Learned Authorised Representative at length.

6. Chapter 89 of First Schedule to Customs Tariff Act, 1975 covers conveyances, and other floating structures, thar are distinguished by the buoyancy of the craft overcoming the weight and mass of the primary material from which they are constructed. Other than the conveyance of goods and persons from one place to the other, floating structures, which are encompassed in heading no.8905 of the First Schedule to the Customs Tariff Act, 1975, are required for a variety of activities at sea. We take note that the primacy of navigability is the definitional distinction between the two. We also take note that the impugned vessel arrived on its own steam and proceeded to the designated place as 'coastal vessel' till the prescribed period of six month was completed and, thereafter, was converted to 'foreign run' with filing of shipping bill.

7. The present claim of Revenue that the said vessel is not amenable to foreign run appears contrary to the factual matrix before us. Navigability is the determinant for transportation from one location to another and for being operated as 'foreign going' vessel or 'coastal' vessel. That she has been converted on both the occasions and that she arrived, and departed, on its own steam suffices to disregard the finding that navigability is merely a secondary characteristic. The question of classification of a vessel is fraught with complication as both section 2(9) and section 2(22) apply. It would, therefore, appear that it is only one occasion and, that too, at the time of import for registration under domestic law, that it can be goods. Thereafter, she becomes 'conveyance' covered by the prescriptions of control envisaged in chapter VI of Customs Act, 1962. In the present instance, notwithstanding the filing of bill of entry or availment of the said notification owing to temporary retention in India, neither does the conversion of 'foreign run' vessel to 'coastal' run nor the vice versa, subject 'conveyance' to the duty liability imposed under Customs Act, 1962. The 'vessel' remains a 'vessel' and its temporary sojourn in India does not devolve duty liability on the vessel itself.

8. In view of the above, we accept the claim of the appellant that the alteration of the classification does not in any way create a liability of enhanced duty. For this reason, we set aside the impugned order and allow the appeal."

8. From the above, it can be seen that the importer is absolved from all liabilities, and the impugned order has been set aside. Following the same, we hold that the penalty imposed upon the appellant cannot sustain. The same is set aside. Impugned order pertaining to the appellant herein is set aside.

The appeal is allowed.

(Dictated and pronounced in the open court)

(SULEKHA BEEVI C.S.)
MEMBER (JUDICIAL)

(P. VENKATA SUBBA RAO)
MEMBER (TECHNICAL)

ksr