CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, CHENNAI

REGIONAL BENCH – COURT NO. IV

Customs Appeal No.40177 of 2013-DB

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

M/s. J M Baxi & Co
No.4 & 4A, Clive Battery Complex,
Rajaji Salai, Parrys, Chennai – 600 001. **: Appellant**

VERSUS

Commissioner of Customs,
Custom House,
New Harbour Estate, Tuticorin – 628 004 **: Respondent**

WITH

Customs Appeal No.40308 of 2013-DB

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

M/s. Jan De Nul Dredging India Pvt. Ltd.
No.2, 1st Floor, 25th East Street,
Kamaraj Nagar,
Thiruvanmiyur, Chennai 600 041. **: Appellant**

VERSUS

Commissioner of Customs,
Customs House,
New Harbour Estate, Tuticorin – 628 004 **: Respondent**

<u>APPEARANCE</u>:

Shri Harish Bindhumadhavan, Advocate for the Appellant

Ms. K. Komathi, Authorized Representative for the Respondent

<u>CORAM</u>:

HON'BLE SHRI C J MATHEW, MEMBER (TECHNICAL)
HON'BLE SHRI P DINESHA, MEMBER (JUDICIAL)

FINAL ORDER NOs. 41249-41250 / 2020

DATE OF HEARING: 13/12/2019

DATE OF DECISION:

Per: C J Mathew

The appellant, M/s Jan De Nul Dredging India Pvt Ltd, seeks setting aside of order-in-original no. 11/2012 dated 19th November 2012 of Commissioner of Customs, Tuticorin with the principal submission that the vessel in question was on 'foreign run' and, therefore, any dispute on the duty liability, arising from the proposed classification, is merely academic. The issue arose from the availment of concessional rate of duty, against notification no. 27/2002-Cus dated 1st March 2002, on the import of 'special service workboat [DN – 204 dredger]' *vide* bill of entry no. 29944331/11.03.2011. The vessel was sought to be cleared against tariff item no. 8901 9000 of First Schedule to Customs Tariff Act. 1975 which was reclassified by customs authorities against tariff item no. 8901 9090 of First Schedule to Customs Tariff Act, 1975.

2. According to Learned Authorized Representative, the claim of the vessel having been on 'foreign run' and, therefore, not liable to duty is not tenable because such vessel is not eligible for the claimed conversion. It is further contended that the second question that arises in this dispute is the retention of the said vessel beyond the period of six months prescribed in notification no. 27/2002-Cus dated 1st March 2002 in accordance with which, the total duty liability is restricted to 15%, if the vessel is retained for a period upto six months, and to 30%, if the vessel is retained for a further period of six months.

3. From the facts and circumstances, it can be seen that the vessel, imported against bill of entry filed on 11th March 2011 and exported against shipping bill, filed on 14th September 2011, on which 'let export order' was granted on 2nd September 2011, was held to have breached the prescribed limit of retention in India

leading to duty liability as confirmed in the impugned order. The premise thereon, apparent in the submission of Learned Authorized Representative, is that the relevant date in section 15 and section 16 determines the time lines within which the said condition in the notification is to be complied with.

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.

(Pronounced in the open court on)

(P DINESHA)
MEMBER (JUDICIAL)

(C J MATHEW)
MEMBER (TECHNICAL)

ksr
05-02-2020

	DRAFT			Remarks
	I	II	III	
Date of dictation	13.12.2019			
Draft Order - Date of typing	05.02.2019			
Fair Order Typing	.02.2019			
Date of numbering and date of dispatch	.02.2019			