CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH AT HYDERABAD

Division Bench
Court - I

Appeal No.C/466/2009
(Arising out of Order-in-Appeal No.7/2007 (V-II) CUS dated 14.03.2008 passed by CCCE & ST (Appeals), Visakhapatnam)

Salgaocar Mining Industries Pvt Ltd ….. Appellant(s)

Vs.

CC, Vijayawada ….. Respondent(s)

Appearance
Smt R.K. Tomar, Advocate for the Appellant.
Shri Moin Anwar, Asst. Commissioner/AR for the Respondent.

Coram:
HON'BLE Mr. M.V.Ravindran, MEMBER (JUDICIAL)
HON'BLE Mr. P. Venkata Subba Rao, MEMBER (TECHNICAL)

Date of Hearing: 23.10.2018
Date of Decision: 12.11.2018

FINAL ORDER No. A/31424/2018

[Order per: P.V. Subba Rao.]

1. The appellant herein is a company engaged in the business of mining and export of iron ore. They imported a second hand Ocean Going Deck Barge named "Pyaree Amma" classifying the same under chapter heading 8901.1040 of the Customs Tariff Act and claimed benefit of Exemption Notification No. 21/2002-Cus dated 01.03.2002 (S.No.352). This exemption was available to all the goods falling under 8901 of the Customs Tariff Act excluding vessels and other floating structures as are imported for breaking-up. The department sought to classify the goods under 8905.9090 of Customs Tariff Act and charge it to duty applicable since exemption notification 21/2002-Cus is not applicable to the goods falling under 8905. The original authority has passed a speaking order confirming the classification under 8905.9090 of Customs Tariff Act and finalised the

assessment accordingly. Aggrieved, the appellant preferred an appeal before the first appellate authority who, vide the impugned order, rejected the appeal and upheld the impugned order. Aggrieved by this Order-in-Appeal, the present appeal is filed. The short point to be decided is whether the vessel in question would be classifiable under 8901.1040 or 8905.9090. These two headings read as under.

> ***"8901 Cruise Ships, excursion boats, ferry boats, Cargo Ships, Barges, and similar vessels for the transport of persons and goods.***
> *.....*
> *.....*
> *8901.10.40...... Barges*
>
> ***8905 Light-Vessels, free floats, Dredgers, Floating Cranes, and other vessels the navigability of which is subsidiary to their main function; floating docks, floating or sub-miscible drilling or production platforms***
> *.....*
> *.....*
> *8905.90.90.... Others."*

2. While 8901 deals with cruise ships, excursion boats, ferry boats, cargo ships, barges and similar vessels for the transport of persons and goods, 8905 deals with 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. In this case, the appellant imported vessel which has been registered as SU PONTOON by the Indian Register of Shipping. It also has cranes built on it. The issue in question is whether the cranes installed on them are the main function and their navigability is secondary or the capacity to carry the goods is main function and the cranes are subsidiary facility available on the vessel. It is the case of the appellant that the vessel in question is meant for carrying goods from one place to other and the cranes in question have only been installed to facilitate loading and unloading of goods and they, by themselves, do not perform main function. It is the case of the revenue that once the cranes have been installed, their main function is that of cranes and

storage of the vessel is secondary and therefore, the goods are classifiable under 8905.9090. Consequently, the benefit of exemption notification is not available. In his speaking order, original authority has recorded in Para 5 as follows:

> *"5. I have carefully gone through the case records, technical literature, written and oral submissions of the importer, case laws cited by the importer vide his letter dated 29.08.2006 and at the time of personal hearing on 15.12.2006. The short point to be decided in the instant issue is whether the goods imported are classifiable under sub-heading No.890059090 or under sub-heading No.89011040 of Customs Tariff Act, 1975. My observations are as under: M/s Salgaocar Mining Industries, Goa vide B.E.No.600363 dated 18.03.2006 imported ocean going deck barge transhipper "pyaree amma" classifying the goods under sub-heading No.89011040 of CTA, 1975 claiming nil rate of duty stating that the imported item was a dumb barge. The Department after calling for the technical literature and after taking into consideration of the fact that the declared item is fitted with 2 Nos. of Mitsubishi jib cranes of SWL 30 tons with 30 meters outreach installed on pedestals with height 9 meters from deck, 4 nos. of Demag make electro hydraulic grabs of variable capacity, 35 ballast tanks, 10 ton anchor, 2 deck cargo holds for storage of about 4200 tons and 3200 tons of iron ore respectively, DG generator of 906 KVA capacity powered by caterpillar engine with electrical control panel has classified the imported item under sub-heading No.89059090 of Custom Tariff Act, 1975 treating the imported item as floating crane."*

3. The first appellate authority has also recorded as follows:

> *"I perused the description of the vessel mentioned in the certificate of valuation. I find that the two holds in the form of hoppers are constructed upon the deck, which are incomplete and the two cranes are located on the star board side of the vessel. I find that the structure is not meant for carrying the goods or persons, but to carry the two hydraulic cranes placed on the deck. I, therefore, find that the navigability of the vessel is not its prime function. The appellants have contended that it is dumb barge. I do not find any mention of the cargo hold in the barge except the mention of two incomplete cargo holds on the deck. I, therefore, find the barge to be a vessel designed to carry the cranes on the deck."*

4. Learned counsel for the appellant vehemently argued that the vessel in question is only a barge and is not primarily meant for the cranes and hence it must be classified under Customs Tariff Heading 8901.

5. Learned departmental representative reiterates the impugned order.

6. We have considered the arguments on both sides. The description of the vessel in the certificate of valuation issued by the Chartered Engineer was as follows:

> *"<u>DESCRIPTION OF THE VESSEL:</u>*
> *The vessel was originally built as a steel pontoon for carriage of deck cargo. The vessel is a dumb barge with all steel wielded construction. The vessel was built to the specifications of AMERICAN BUREAU OF SHIPPING*

and has been assigned to be a type B vessel with reduced free board. The load line marks have been assigned and have been embossed on all the six sides. The vessel is classed for unmanned tow. The vessel has also been entered into the Indian Register of Shipping after docking and extensive repairs to the hull. The vessel has a light ship weight of 1897.86 MT and is capable of loading 11090 MT of cargo on deck. The under deck spaces have been divided into ten compartments. None of the spaces could be inspected internally.

HULL:
As far as it could be seen the hull was observed to be in sound condition with paint intact. While the plate was found to have moderately pitted at places overall condition satisfactorily. The underwater areas were found free from sea growth. All the tank vents, sounding pipes and other attachments which raise over the deck were observed to have been renewed.

DECKS:
The vessel had been modified (details and dates not known) and following have been incorporated on the deck.

- *Two holds above the deck level. The holds in the form of hoppers have been constructed to hold about tons of homogenous cargoes. The structure is incomplete.*
- *Two 30 ton electro hydraulic cranes which are located on the starboard side of the vessel.*
- *An all steel structure in the form of an accommodation with three decks. The structure is incomplete.*
- *An all steel wielded structure (on the S side and abreast of forward hold)."*

7. The capacity of the vessel has been mentioned in the International Merchant Marine Registry of Belize as gross tonnage – 4691 tons and net tonnage – 1407 tons. Thus it is evident that there was capacity of about 1407 tons in the vessel in question. Being a Pontoon, it has no navigability on its own. It has two cranes and a diesel genset. There are holds in deck level in the form of hoppers constructed to hold homogenous cargoes on the vessel. Thus, we find that it is a Pontoon with some carrying capacity and also with two cranes and is not navigable on its own but can be towed. We find that explanatory notes to 8905 states as follows:

"These normally perform their main function in a stationary position. They include light vessels, drill-ships, fire-floats, dredgers of all kinds, 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."*

8. Thus we find that pontoons which by definition are not navigable on their own but need to be towed fitted with lifting and handling machines

such as present one are classifiable under chapter heading 8905.9090. In this particular factual matrix, we do not find any infirmity in the impugned order classifying pontoons in question under 8905.9090. Consequently, the appeal is liable to be rejected and we do so.

9. The appeal is rejected and the impugned order is upheld.

(Pronounced in the Open Court on 12.11.2018)

(P.VENKATA SUBBA RAO)
MEMBER (TECHNICAL)

(M.V. RAVINDRAN)
MEMBER (JUDICIAL)

Veda