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

Division Bench

Court – I

APPEAL No. C/692/2008

*(Arising out of **Order-in-Appeal** No. 01/2008(G)/Cus, dated 30.06.2008 passed by CCE&C (Appeals), Guntur)*

DHARTHI DREDGING & INFRASTRUCTURE LIMITED	..	APPELLANT
	Vs	
CC, VIJAYAWADA	..	RESPONDENT

Appearance

Shri Jitender Motwani, Advocate for the appellant

Shri C. Mallikharjun Reddy, Superintendent/AR for the Respondent.

Coram:

Hon'ble Mr. M.V. RAVINDRAN, MEMBER (JUDICIAL)

Hon'ble Mr. P.V. SUBBA RAO, MEMBER (TECHNICAL)

Date of Hearing: 06.02.2019

Date of Decision: 06.02.2019

FINAL ORDER No. A/30207/2019

[Order per: Mr. M.V. Ravindran)

1. This appeal is directed against Order-in-Appeal No. 01/2008(G)/Cus, dated 30.06.2008.

2. The relevant facts that arise for consideration are appellant herein imported a "Speed Boat" made of steel having 2 Diesel engines of 1000 HP and filed Bill of Entry and classified the said Speed Boat under Chapter Heading 8906 00 90 of Customs Tariff Act, 1975, claiming the benefit of 'nil' rate of duty under S.No. 354 of Notification No. 21/2002-Cus, dated 01.03.2002. At the time of assessment, after verification of the details of bill of entry, assessing officer felt that the speed boat is for surveying and taking sounding at the dredging site, hence to be classified under chapter heading 8905 90 90 not eligible for benefit of notification NO. 21/2002-Cus under Sl. No. 353 wherein reduced rate of customs duty is applicable. The adjudicating authority relied upon the Chartered Engineer's certificate to come to a conclusion that Speed Boat merits classification under Chapter Heading 8905 90 90. Aggrieved by such an order, an appeal was preferred to the first appellate authority, who, after following due process of law, upheld the Order-in Original. Hence this appeal.

3. Ld. Counsel appearing for the appellant, after taking us through the entire case records submits that both the lower authorities have not considered the entire issue in its correct perspective. It is his submission that the lower authorities have held that Speed Boat merits classification under Chapter Heading 8905 90 90 but did not notice the heading carefully, as the vessels classified under 8905 90 90 have navigability as a subsidiary to the main function. It is his submission that the Surveyor/Chartered Engineer appointed by Revenue has himself stated that Speed Boat in

question is self propelled having two Engines and capable of carrying passengers; that they are unable to lay the hands how the vessel is registered with the Indian registered for shipping but produces copy of the Boat Licence issued under Rules 3 & 10 of Orissa Boat Rules, 2004 made under Port Trust Act to submit that number of passengers that can be carried by this vessel is 15 nos. which would indicate that the navigation is the primary function of the said boat.

4. Ld. DR on the other hand draws our attention to the findings of the first appellate authority. It is his submission that speed boat was imported for a specific purpose in the dredging activity for surveying and taking soundings at the dredging locations. It is his submission that the primary function of the speed boat is not navigation. He reiterated the findings of the lower authorities.

5. On careful consideration of the submissions made, we find that the first appellate authority in the impugned order at para 9 has specifically stated that speed boat is imported for the purposes of dredging activity for surveying and for taking soundings at dredging locations but incorrectly held as navigation is secondary. In our considered view, surveying activity in the sea requires movement of vessel from one place to another which can be done only if there is a navigation and which is primary in nature. We also note further that the Boat Licence issued to appellant indicates that this speed boat is capable of carrying cargo and passengers in fair weather, which would mean that speed boat has navigation as a primary function.

We find that if a vessel needs to be classified under Chapter Heading 8905 90 90, the vessel should be of such a nature wherein navigability is subsidiary to the main function. Nothing is on record to show that the vessel imported in the case in hand had equipments in order to indicate that the primary function of the vessel was for surveying and taking soundings. It is on record that the vessel is capable of navigating on his own which is a primary function for surveying. In our view, the classification of chapter heading adopted by Revenue under 8905 90 90 is erroneous and cannot be sustained. Accordingly we hold that the impugned order is unsustainable and liable to be set aside and we do so.

6. Impugned order is set aside and appeal is allowed.

(Operative portion of the order pronounced in open court on conclusion of hearing)

(P.VENKATA SUBBA RAO)
MEMBER (TECHNICAL)

(M.V. RAVINDRAN)
MEMBER (JUDICIAL)

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