CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
HYDERABAD

REGIONAL BENCH - COURT NO. – I

Customs Appeal No. 197-199 of 2002
(Arising out of **Order-in-Original** No.51 & 52/2001-02-SCC, dated 14.02.2002 passed by Commissioner of Central Excise & Customs, Visakhapatnam)

3F Industries Ltd., .. **APPELLANT**
Tanuka Road, Tadepalligudem,
West Godavari,
Andhra Pradesh – 534 101.

VERSUS

Commissioner of Central Tax, .. **RESPONDENT**
Visakhapatnam– I
GST Commissionerate,
Port Area, Visakhapatnam,
Andhra Pradesh – 530 035.

APPEARANCE:
Shri Ch. Sumanth, Advocate for the Appellant.
Shri P. Amresh, Authorised Representative for the Respondent.

CORAM: **HON'BLE Mr. R. MURALIDHAR, MEMBER (JUDICIAL)**
HON'BLE Mr. A.K. JYOTISHI, MEMBER (TECHNICAL)

FINAL ORDER No. A/30153-30155/2023

Date of Hearing:07.06.2023
Date of Decision:07.06.2023

[ORDER PER: R. MURALIDHAR]

The Appellant has imported edible oil from the port of Kakinada during the period August 1996 to March 2001. Show Cause Notice was issued on the ground that valuation adopted by them while filing the Bill of Entries which was not correct. The Department sought to add the value of barge charges incurred by them between the anchorage port and the port of unloading. Accordingly, Show Cause Notice was issued and Customs Duty of Rs. 34,04,227/- was confirmed in respect of two Show Cause Notices issued to the Appellant. Being aggrieved by the impugned Order-in-Original, the Appellant has filed their Appeal before the Tribunal along with their Stay Application. This Tribunal after going through Stay Application and their arguments directed the Appellant to pre-deposit of Rs. 15 lakhs to hear the Appeal. Against this Stay Order, the Appellant approached the High Court of Andhra Pradesh. In the meanwhile being informed that the pre-deposit condition was not fulfilled by the Appellant, the Tribunal dismissed their Appeal. The Appellant was able to get the Stay Order from the Hon'ble High

Court and on producing the same the Appeal was restored. Recently, the Hon'ble High Court of Andhra Pradesh has vacated the stay. After this the Appellant had paid the pre-deposit of Rs. 15 lakhs. This has been taken on record by the Registry, therefore, we proceed with the Appeal now.

2. The Learned Counsel appearing on behalf of the Appellant submits that an amendment was carried out to Rule 10 of the Customs Valuation (determination of value of imported goods Rules 2007) wherein explanation was added as under:

> *Explanation – <u>The cost of transport of the imported goods referred to in clause (a) includes the ship demurrage charges on charted vessels, lighterage or barge charges.</u> [emphasis supplied]*

After this amendment was carried out, the Counsel concedes that the assessee importer is required to add the value of barge charges when the Bill of Entry are presented for assessment. He draws our attention to the judgment of Hon'ble Supreme Court in the case of Ispat Industries Vs CCE, Mumbai [2006 (202) ELT 561 (SC)] wherein the Supreme Court had gone into the issue as to whether barge charges, freight charges etc., were to be included in the total value and they had concluded that the same are not required to be included. He submits that taking into account the decision of the Hon'ble Supreme Court, the amendment was carried out in 2007. Since the imports by the Appellant are for the period August 1996 to March 2001 the amendment has no bearing and their Appeal is required to be allowed based on the Supreme Court's judgment in the case of Ispat Industries. He further relies on the case law of Grasim Industries Ltd., Vs CC, Jam Nagar wherein the Larger Bench of Tribunal has considered various issues and one of the issues before them was as to whether the amendment carried out in 2007 was retrospective in nature or not. The Larger Bench concluded that these provisions were not applicable retrospectively. Therefore, relying on this case law he submits that the present Appeal is required to be allowed.

3. The Learned AR submits that the same issue was before CESTAT, Bangalore in the case of Andhra Sugars Ltd., where the Tribunal has held that such charges were not includable in the value. The Department has filed an Appeal before the Hon'ble Supreme Court. However, after verification, the Learned AR has found that the Appeal filed by the Revenue has been dismissed on account of monetary limits.

4. Heard both sides. After going through the factual details and the case law cited by the Appellant, we find that the Hon'ble Supreme Court in the case of Ispat Industries Ltd., Vs Commissioner of Customs, Mumbai [2006 (202) ELT 561 (SC)] has held as under:

> 60. In the impugned order dated 7-3-2001 the Tribunal has based its decision on its conclusion that the place of import was the Dharamtar Jetty and not the BFL (vide paragraphs 9 to 18 of The Tribunal's order).<u>Without commenting on the correctness or otherwise of this view, we are of the opinion that whether we treat the place of import as BFL or the Dharamtar jetty it will make no difference to the conclusion we have reached viz. that charges for transport of the goods by barges from BFL to Dharamtar jetty cannot be included in the valuation of the goods.</u>

In this case, the Hon'ble Supreme Court has also gone into the applicability of Garden Silk Mills Ltd., Vs Union of India [1999 (13) ELT 358 (SC)] which was relied upon by the Adjudicating Authority while passing the Order-in-Original:

> 38. Learned Counsel for the Revenue has relied upon a decision of this Court in Garden Silk Mills Ltd., V Union of India -1999 (13) ELT 358 (S.C), in which it was observed thus:
>
> "It was further submitted that in the case of Apar's Private Limited this Court was concerned with Sections 14and 15 but here we have to construe the word "imported" occurring in Section 12 and this can only mean that the moment goods have entered the territorial waters, the import is complete. We do not agree with the submission. This Court in its opinion in Re. The Bill to Amend Section 20 of the Sea Customs Act, 1878 and Section 3 of the Central Excises and Salt Act, 1944, 1964 (3) SCR 787 at page 823 observed as follows :
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>> "Truly speaking, the imposition of an import duty, by and large, results in a condition which must be fulfilled before the goods can be brought inside the customs barriers i.e. before they form part of the mass of goods within the country."
>>
>> It would appear to us that the import of goods into India would commence when the same cross into the territorial waters but continues and is completed when the goods become part of the mass of goods within the country; the taxable event being reached at the time when the goods reach the customs barriers and the bill of entry for home consumption is filed.
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> 39. On the strength of the above observation in the Garden Silk case (supra), learned counsel has submitted that the place of importation is not where the ship is anchored (BFL), but the jetty which has been approved for unloading of the goods under Section 8 of the Act. Hence, he submitted that the transportation charges for carrying goods from the mother ship by barges to the jetty has also to be included in the valuation of the goods for imposing

> duty. In our opinion, the decision of this Court in Garden Silk (supra) is clearly distinguishable.[emphasis supplied]

The Larger Bench of this Tribunal in the case of Commissioner of Customs, Jamnagar Vs Grasim Industries Ltd., [2013 (296) ELT 39 (Tri-LB)] has gone into the aspect as to whether the amendment carried out has retrospective effect or not and has held as under:

> 10. It can be seen from the above reproduced provisions of Rule 10(2) of the Customs (Valuation) Rules, 2007,the said rules are pari materia to the earlier provisions and it is seen that it includes an explanation which specifically talks about inclusion of ship demurrage charges lighterage or barge charges in the cost of transport of the imported goods. Both sides could not lay on record, any material to hold these provisions were applicable retrospectively. [emphasis supplied]

On going through these decisions, it is seen that the issue is no more *res-integra*. A harmonious reading of the cited case law along with amendment carried out to Rule 10 would clarify that during the period under dispute i.e. August 1996 to March 2001, the Department had no provision to get the barge charges included in the total value for payment of Customs Duty. Accordingly, we allow the Appeal along with consequential relief, if any.

5. It is observed that the third Appeal is on account of personal penalty imposed on the Senior Executive. Since we are holding the basic issue is in favour of the Appellant and their Appeals have been allowed, we also allow the Appeal filed by the third Appellant setting aside the personal penalty imposed to him.

6. The Appeals stand thus disposed.

(Order dictated and pronounced in open court)

(R.MURALIDHAR)
MEMBER (JUDICIAL)

(A.K. JYOTISHI)
MEMBER (TECHNICAL)

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