

**IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
KOLKATA
EASTERN ZONAL BENCH: KOLKATA**

Customs Appeal No. 76178 of 2016

(Arising out of the Order-in-Appeal No. 12/Cus/CCP/2016 dated 29.03.2016 passed by Commissioner (Appeals), Central Excise, Customs & Service Tax, Bhubaneswar.)

M/s Seatrans Ship Management Service Pvt. Ltd.,

OBC Building, 2nd Floor, Room No. 202,
Bank Street, Paradip, Dist.- jagatsinghpur, Odisha

...Appellant (s)

VERSUS

Commissioner of Customs, Central Excise & S. Tax, BBSR.

C. R. Building, Rajaswa, Vihar, P.O. Vani Vihar, Bhubaneswar-751007 (Odisha).

...Respondent(s)

APPEARANCE :

Shri Aditya Dutta, Advocate for the Appellant

Shri S. Debnath, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. R. MURALIDHAR MEMBER (JUDICIAL)

HON'BLE MR. K. ANPAZHAKAN MEMBER (TECHNICAL)

FINAL ORDER No...77295/2023

DATE OF HEARING : 10.10.2023

DATE OF DECISION : 10.10.2023

PER K. ANPAZHAKAN :

The Appellant, M/s. Seatrans Ship management Services Pvt. Ltd. acted as agent for M/s. SPUR Shipping Pte. Ltd., who has chartered a vessel MV ZHENGKAI arrived at Paradip port for discharge of import cargo and on completion of discharge, the vessel was converted from 'foreign run' to 'coastal run' for carriage of coastal cargo viz. Thermal Coal from Paradip port to Mundra Port. On completion of conversion formalities, a B/E No. 245 dated 27.11.2012 was filed for payment of duty on Bunkers, Provisions and Stores likely to be consumed during her coastal run from Paradip to Mundhra Port carrying

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Thermal Coal. This was required since during the coastal run, the vessel would not be a 'Foreign going Vessel' under section 2(21) of the Customs Act, 1962 and whatever is consumed during the coastal run would have to be treated as 'import' under section 2(21) of the said Act.. Duty is leviable on the same in terms of Circular No. 58/97-CUS dated 06.11.1997 it makes a level-playing field for ships operating in the coastal run.

2. The said B/E was assessed provisionally and after getting the consumption report at the end of the coastal run at Mundra, the assessment was finalized vide letter dated 28/29.08.2023 from ACC, Paradip by *determining the value of fuel oil and diesel oil consumed during the coastal run on the basis of the price at which such goods are sold to ships by Indian Oil Corp. Ltd. (IOCL, for short) at Indian Ports to the vessels in India plus 20% of FOB as freight plus @1.125% as Insurance and @1% as Landing Charge. The Appellant's request to determine the value on the basis of contemporaneous import value was not accepted. Appeal filed against the said Assessment Order was rejected vide Order-in-Original No. 12/CUS/CCP/2016 dated 29.03.2016. The instant appeal is filed against the impugned Order-in-Appeal.*

2. The Appellant submits that the value of imported goods whether it is bunkers or otherwise, has to be determined in terms of Customs Valuation Rules, 2007. In this case there is no 'transaction value' for the impugned goods, as the vessel was chartered and fuelled by the owner at some unspecified port(s). Value, therefore, will have to be determined by proceeding sequentially through Rule 4 to 9, in terms of

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Rule 3(4) of the Valuation Rules. Value of the 'identical goods' or 'similar goods' as defined under Rule 2(d) or 2(f) of the said Rules respectively are not available. Proviso to Rule 9(2) specifically excludes the selling price in India of the goods produced in India and/or the price of goods for the export to a country other than India. Thus, taking the **IOCL Price in the instant case cannot be the basis of valuation of imported goods under Customs Valuation Rules.** The only remaining alternative is 'valuation of impugned fuel oil (FO) and diesel oil (DO) by the 'Residual Method' under Rule 9(1) *ibid*, which provides for determination of value using reasonable means consistent with the principles and general provisions of these Rules and **on the basis of data available in India.** Thus, contemporaneous import value which may be available in NIDB is the appropriate basis for valuation of the impugned goods in the present case. However, they have paid customs duty **under protest** on the value as assessed by Customs Department.

3. The Appellant further submits that the Commissioner (Appeals), Bhubaneswar has held the same principle while deciding the following appeals before him on the same issue.

(i) O/A No. 16-29/CUS/CCP/202 dated 23.02.2022

(ii) O/A No. 160-172/CUS/CCP/202 dated 17.12.2021

(iii) O/A No. 112/159/CUS/CCP/2021 dated 16.12.2021

4. None of these appeals has been reviewed and thus they have **attained finality** and a different stand cannot be taken as held by the Hon'ble Supreme Court in the case of ITC Ltd. CCE [2019-TIOL-418-SC-CUS-LB]. In view of the decision taken by the Commissioner (Appeals) by adopting the above method, a different stand cannot be

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taken now in the matter of final assessment of the bunkers consumed during coastal run of a foreign going vessel. Hence, the Appellant contends that the issue of valuation of the impugned goods stands settled.

5. Regarding inclusion of the elements freight, insurance and handling charges in the assessable value, the Appellant submits that the issue is no longer res-integra. A number of appeal cases of the same nature and of the same appellant have already been decided by CESTAT, Kolkata. In Appellant's own case in Appeal No. 75210/2019, it has been held that the practice of assessment by including notional freight, insurance and handling charges is **not permissible** and the appeals made therein were allowed with consequential relief.

6. The said issued is also settled in favour of the Appellant in the following judgments:-

M/s. Sical Logistics Ltd. v CCEX, Cus &STax, BBSR-I [Order No. MO/75030/2019 & FO/75076/2019]

CC(Airport & Admin), Kolkata v M/s. Jet Airways [Order No. 77008-77010/2019]

7. These decisions are also in line with Facility Notice No. 02/2023 dated 10.08.2023 issued by the concerned CC (Prev), Bhubaneswar. Under these circumstances, the Appellant prayed that their appeal be allowed with direction to the assessing officer to re-assess the impugned B/E on the basis of NIDB data in line with Orders-in-Appeal of CC(A), Bhubaneswar No. 112-159/CUS/CCP/2021 dated 16.12.2021. The Appellant submits that relief by way of refund of excess amount paid along with interest payable thereon should be granted to them.

8. The Ld. A.R. reiterated the findings in the impugned order.

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9. Heard both sides and perused the appeal documents.

10. We observe that the issue involved in the present appeal is valuation of fuel oil (FO) and diesel oil (DO) used during the coastal run of the vessel. The issue to be decided is whether the value should be on the basis of contemporaneous import value or on IOCL sale price to bunkers to vessel plus notional freight, insurance and loading & landing charges. We agree with the submission of the Appellant that transaction values of such goods are not available. There is no value of 'similar goods' or 'identical goods' available. Hence, valuation is to be done as per the 'Residual method' prescribed in Rule 9(1) of the Valuation Rules.

10. We observe that the department has adopted the price at which such goods are sold to ships by Indian Oil Corp. Ltd. (IOCL, for short) at Indian Ports to the vessels in India plus 20% of FOB as freight plus @1.125% as Insurance and @1% as Landing Charge. The Appellant's contention is that IOCL has already included the freight and insurance charges and hence to arrive at the value under the 'Residual Method' the freight and insurance need not be added again. We agree with the submission of the Appellant. When IOCL sells the goods the elements of freight and insurance are already added. Hence, these elements need not be added again to arrive the assessable value for the purpose of charging duty on the Fuel Oil and Diesel Oil used by the vessel during its coastal run. We observe that this method of valuation is supported by the decision of the Tribunal in the case of SICAL Logistics Ltd. Vs Commr. of CCE, Bhubaneswar-I, reported in 2019 (369) ELT 1104 (Tri-Kolkata),.The relevant para of the decision is reproduced below:

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"8. *The dispute on valuation has arisen in respect of value to be adopted for the purposes of payment of Customs duty on the bunker, which remains in the vessels at the time of its conversion from foreign run to coastal run. In the absence of any transaction value, the Customs authorities proceeded to determine the value to be adopted for such payment of Customs duty in terms of Customs Valuation Rules, 1988. The lower authorities have taken the view that Rule 9 comes into play and Rule 9(2) mandates addition of (a) the cost of transport of the imported goods to the place of importation, (b) loading, unloading and handling charges associated with delivery of the imported goods at the place of importation, and (c) the cost of insurance.*

9. *The claim of the appellant is that the above Rule will not come into play in the circumstances of the present case inasmuch as IOCL price declared by them has already included the elements of freight, insurance and landing charges. To this effect, the appellant has also submitted a certificate issued by IOCL.*

10. *We find that the issue is a recurring one and for the earlier period, the same first appellate authority i.e. Commissioner (Appeals), had decided in favour of the appellant. It is further submitted that the order passed by the Ld. Commissioner (Appeals) for the earlier period dated 20-2-2013, stands accepted by the Customs Department.*

11. *We have carefully perused the cited order of the Commissioner (Appeals) and note that the Commissioner (Appeals) had taken the view that the determination of value on the basis of Rule 9, is not justified. Further, he has taken the view that the valuation may be appropriately decided on the basis of Rule 7 of the Valuation Rules. His observations are reproduced below with our approval :*

"Rule 7 of the Valuation Rules reads as follows :

7. Deductive value. - (1) *Subject to the provisions of Rule 3 of these rules, if the goods being valued or identical or similar imported goods are sold in India, in the condition as imported at or about the time at which the declaration for determination of value is presented, the value of imported goods shall be based on the unit price at which the imported goods or identical or similar imported goods are sold in the greatest aggregate quantity to persons who are not related to the sellers in India, subject to the following deductions :-*

(i) *Either the commission usually paid or agreed to be paid or the additions usually made for profits and general expenses in connection with sales in India of imported goods of the same class or kind.*

(ii) *The usual costs of transport and insurance and associated costs incurred within India.*

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(iii) *The customs duties and other taxes payable in India by reason of importation or sale of the goods.*

(2) *If neither the imported goods nor identical nor similar imported goods are sold at or about the same time of importation of the goods being valued, the value of imported goods shall, subject otherwise to the provisions of sub-rule (1) of this rule, be based on the unit price at which the imported goods or identical or similar imported goods are sold in India, at the earliest date after importation but before the expiry of ninety days after such importation.*

(3) (a) *If neither the imported goods nor identical nor similar imported goods are sold in India in the condition as imported, then, the value shall be based on the unit price at which the imported goods, after further processing, are sold in the greatest aggregate quantity to persons who are not related to the seller in India.*

(b) *In such determination, due allowance shall be made for the value added by processing and the deductions provided for in items (i) to (iii) of sub-rule (1) of this rule.*

It would be seen from above that under the deductive valuation method the value of identical/similar goods sold in India is adopted. Following the above principle, the appellant has declared the price on the basis of bonded bunker price as notified in IOC price list for adoption at various locations in India, namely Kolkata, Haldia and Paradeep. The appellant has stated that the IOC prices are adopted for assessment of bunkers at other ports as a matter of practice it has submitted a few evidences to this effect. It is obvious that the price mentioned in the said IOCL price list is the price at which bunkers are supplied at these locations in India, in fact, it also includes local charges levied in India such as entry tax, delivery charge, State entry tax, sales tax, etc. It also includes barge charges at different Indian Ports, wherever applicable. Therefore, to presume that the prices specified in the said price list do not include freight and insurance charges for its first importation into India and therefore, needs to be loaded for such notional charges as directed under Rule 9(2) is not correct. The Valuation Rule 7, does not envisage that the prices adopted locally will have to be considered as international price, and freight, insurance, landing charges, etc., have to be included thereto to arrive at assessable value. On the contrary, a careful reading of Rule 7 would make it clear that it suggests certain deductions from the available price of goods sold in India, because such prices would already have suffered freight, transportation, insurance, duty elements, etc., specifically under Rule 7(1)(ii) "the usual costs of transport and insurance and associated costs incurred within India" have been identified as some of the relevant deductions. Therefore, having agreed that in the instant case valuation is to be resorted to under Rule 7 of the Valuation Rules, it will not be correct to suggest addition of International freight @ 20% and/or insurance @1.125% as directed in the impugned order. Needless

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to state that in all the 3 circumstances prescribed under Rule 7 of the Valuation Rules, due allowance has been prescribed for the value added by processing and the deductions provided for in terms of items (i) to (iii) of sub-rule (1) of Rule 7 of Valuation Rules."

12. *By adopting the earlier order of the Commissioner (Appeals), we find no basis for taking a different view."*

11. By following the decision cited above, we hold that the method of valuation of the Revenue is not proper. The elements of freight and insurance and Landing charges need not be added again as the same have already been included in the selling price of IOCL. Accordingly, the assessable value is to be re-determined based on the selling price of IOCL, without including freight, insurance and landing charges. Excess payment of customs duty, if any, needs to be refunded to the Appellant along with interest.

12. In view of the above discussion, we allow the appeal filed by the Appellant with consequential relief, if any, as per law.

(Dictated and pronounced in the open Court)

Sd/-
(R. Muralidhar)
Member (Judicial)

Sd/-
(K. Anpazhakan)
Member (Technical)

Tushar