IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT MUMBAI
COURT No. I

APPEAL No. C/808/2012

(Arising out of Order-in-Appeal No. 339 & 340/MCH/DC/Oil Unit/2012 dated 25.6.2012 passed by Commissioner of Customs (Appeals), Mumbai)

Apar Industries Ltd. **Appellant**

Vs.

Commissioner of Customs (I), Mumbai **Respondent**

Appearance:

Shri D.P. Bhave, Advocate, for appellant
Shri Dharmender Singh, Superintendent (AR), for respondent

CORAM:

Hon'ble Dr. D.M. Misra, Member (Judicial)
Hon'ble Mr. Sanjiv Srivastava, Member (Technical)

Date of Hearing: 25.01.2019
Date of Decision: 25.01.2019

ORDER No. **A/85211/2019**

Per: Dr. D.M. Misra

This is an appeal filed against order-in-appeal No. 339 & 340/MCH/DC/Oil Unit/2012 dated 25.6.2012 passed by Commissioner of Customs (Appeals), Mumbai.

2. Briefly stated the facts of the case are that the appellant had imported bulk oil falling under Chapter 27 of the First Schedule to the Customs Tariff Act, 1975 during the relevant period. Alleging that the appellant

had short paid duty amounting to Rs.6,64,518/-, show cause notice was issued to them on 06.06.2006 for recovery of differential duty. On adjudication, the demand was reduced to RS.1,61,171/- holding that barging charges are not includible in the assessable value, however, confirmed the demand of Rs.1,61,171/- on the quantity short received. Aggrieved by the said order, they filed appeal before the learned Commissioner (Appeals) who, in turn, rejected their appeal. Hence, the present appeal.

3. Learned Advocate for the appellant submits that levy of duty on short quantity of goods imported, even though the transaction value remained constant, is no more *res integra* and covered by the judgment of the Hon'ble Supreme Court in the case of *Mangalore Refinery & Petrochemicals Ltd. vs. CC, Mangalore – 2015 (323) ELT 433 (SC)*.

4. Learned AR for the Revenue reiterates the findings of the learned Commissioner (Appeals).

5. Heard both sides and perused the records.

6. The short issue in the present appeal for determination is whether differential duty could be levied and collected on the short landing of goods imported, even though there is no change in the price declared in the respective invoices. We agree with the

contention of the learned Advocate for the appellant that the issue is no more *res integra* and considered by Hon'ble Supreme Court in *Mangalore Refinery & Petrochemicals Ltd.*'s case (supra). Their Lordships, after taking into consideration the principle of law in this regard, observed as under:-

> *"**16.** Secondly, the taxable event in the case of imported goods, as has been stated earlier, is "import". The taxable event in the case of a purchase tax is the purchase of goods. The quantity of goods stated in a bill of lading would perhaps reflect the quantity of goods in the purchase transaction between the parties, but would not reflect the quantity of goods at the time and place of importation. A bill of lading quantity therefore could only be validly looked at in the case of a purchase tax but not in the case of an import duty. Thirdly, Sections 13 and 23 of the Customs Act have been wholly lost sight of. Where goods which are imported are lost, pilfered or destroyed, no import duty is leviable thereon until they are out of customs and come into the hands of the importer. It is clear therefore, that it is only at this stage that the quantity of the goods imported is to be looked at for the purposes of valuation. Fourthly, the basis of the judgment of the Tribunal is on a complete misreading of Section 14 of the Customs Act. First and foremost, the said Section is a section which affords the measure for the levy of customs duty which is to be found in Section 12 of the said Act. Even when the measure talks of value of imported goods, it does so at the time and place of importation, which again is lost sight of by the Tribunal. And last but not the least, "transaction value" which occurs in the Customs Valuation Rules has to be read under Rules 4 and 9 as reflecting the aforesaid statutory position, namely, that valuation of imported goods is only at the time and place of importation.*

__17.__ The Tribunal's reasoning that somehow when customs duty is ad valorem the basis for arriving at the quantity of goods imported changes, is wholly unsustainable. Whether customs duty is at a specific rate or is ad valorem makes not the least difference to the above statutory scheme. Customs duty whether at a specific rate or ad valorem is not leviable on goods that are pilfered, lost or destroyed until a bill of entry for home consumption is made or an order to warehouse the goods is made. This, as has been stated above, is for the reason that the import is not complete until what has been stated above has happened. The circular dated 12th January, 2006 on which strong reliance is placed by the revenue is contrary to law. When the Tribunal has held that a demand or duty on transaction value would be leviable in spite of "ocean loss", it flies in the face of Section 23 of the Customs Act in particular, the general statutory scheme and Rules 4 and 9 of the Customs Valuation Rules.

__18.__ We therefore, set aside the Tribunal's judgment and declare that the quantity of crude oil actually received into a shore tank in a port in India should be the basis for payment of customs duty. Consequential action, in accordance with this declaration of law, be carried out by the customs."

7. Following the ratio laid down in the aforesaid case, the impugned order is set aside and the appeal is allowed with consequential relief, if any, as per law.

(Pronounced in court)

(Sanjiv Srivastava) **Member (Technical)**	**(Dr. D.M. Misra)** **Member (Judicial)**

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