CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

WEST ZONAL BENCH

CUSTOMS APPEAL NO: 487 OF 2009

[Arising out of Order-in-Appeal No: 48/2009/MCH/AC/Gr.VB/08-09 dated 23rd February 2009 passed by the Commissioner of Customs (Appeals), Mumbai – I.]

OceanCrest Marine
41 Deshmukh Marg, Mumbai - 400026 … ***Appellant***

versus

Commissioner of Customs (Imports)
New Custom House, Ballard Estate, Mumbai - 400001 ***…Respondent***

APPEARANCE:

Shri B B Mohite, Advocate for the appellant

Shri Ramesh Kumar, Assistant Commissioner (AR) for the respondent

CORAM:

HON'BLE MR ANIL CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)

FINAL ORDER NO: A / 85328/2022

DATE OF HEARING:	15/02/2022
DATE OF DECISION:	13/04/2022

PER: C J MATHEW

The core issue in this appeal of M/s Ocean Crest Marine, against order-in-appeal no. 48/2009/MCH/AC/Gr.VB/08-09 dated 23rd February 2009 of Commissioner of Customs (Appeals), Mumbai – I, is the finding of

> *'It is observed that Asstt. Commissioner while arriving at the conclusion to order classifying the goods under CTH 89039990 has taken into account the complete features of the boat as mentioned in the pamphlet, Manufacturer's Catalogue, Website on features of the boat imported, i.e. "Montery 180 FS", explanatory notes and various dictionary meanings of Excursion boat, and has rightly classified the goods as falling under CTH 89039990. The boats are found to be boats for pleasure or sport and not excursion boats as known in the common parlance, which are meant for transport of people. I have also come to the same conclusion after seeing all the relevant documents. The Tariff leaves no room for any doubt. Therefore I find no reasons to interfere with the order passed by the lower authority.'*

with which the claim of importer to be in conformity with the description corresponding to tariff item 8901 1030 of First Schedule to Customs Tariff Act, 1975 was discarded in favour of impugned classification against tariff item 8903 9990 of the First Schedule to Customs Tariff Act 1975 adopted in the order of the original authority.

2. The dispute arose on import of two vessels declared as 'Excursion Boat Monterey 180 FSW/Volvo Penta 3.0 GL; 135 HP' in bills of entry no. 830710/25.03.2008 and no. 830711/25.03.2008

seeking clearance for home consumption which, upon ‘first check’ examination and by relying upon catalogues and pamphlets of the manufacturer promoting vessels as ‘sports boat’, was re-classified to the disadvantage of the importer.

3. We have heard the elaborate exposition of Learned Counsel for the appellant and of Learned Authorized Representative on the merit of the respective tariff items espoused by them as more befitting description of the impugned goods and to which we shall refer in course of our findings.

4. The importer contended that ‘*boats’* within

> ‘*cruise ships, excursion boats and similar vessels principally designed for the transport of persons; ferry boats of all kinds;’*

corresponding to sub-heading 8901 10 under

> ‘*cruise ships, excursion boats, ferry-boats, cargo ships, barges and similar vessels for the transport of persons or goods’*

corresponding to heading 8901 of First Schedule to the Customs Tariff Act, 1975 was the appropriate classification. On the other hand, it was proposed by the customs authorities that ‘*other’* within sub-heading 8903 99, intended for

> ‘*yachts and other vessels for pleasure or sports; rowing boats*

and canoes'

corresponding to heading 8903 of First Schedule to the Customs Tariff Act, 1975 which, after excluding '*inflatables'*, *'canoes'* '*sailboats'* of all kinds and '*motorboats, other than outboard motorboats*', is more appropriate. In doing so,

> *'this heading covers all vessels for the transport of persons or goods, other than vessels of heading 8903 ……',*

in *Explanatory Notes* of *The Harmonised System of Nomenclature* as relegating heading 8901 of First Schedule to Customs Tariff Act, 1975 to secondary acknowledgement *vis-à-vis* heading 8903 within chapter 89 of First Schedule to the Customs Tariff Act, 1975 titled as *'ships, boats and floating structures*' has been cited as the guiding force. We may, at this stage itself, discountenance that line of thought for two especial reasons. The Convention, which adopted the *Harmonised System*, deliberately excluded the *Explanatory Notes* from the sanctity accorded to the *Harmonised Commodity Description and Coding System* with the proposition that, while it did constitute the official interpretation and an indispensable tool for interpretation, it was not integral to the *Harmonised System*. Furthermore, with the General Rules for the Interpretation of Import Tariff in Customs Tariff Act, 1975 prescribing the later of the two headings as the 'last resort decider' between two equally applicable headings in the Schedule and the lack of specifics in the descriptions enumerated in heading 8903 of

First Schedule of Customs Tariff Act, 1975, the construction placed upon the semantics therein renders the referred *Explanatory Note* redundant. The objective of the *Harmonised System* and, indeed, of the Tariff as legislated in India is not fitment for the highest possible rate of duty but for consistency even in the face of tax policy fluctuations. An adjudicatory foundation built on aptness of residual ‘others’ in groupings within the Tariff is also not in harmony with General Rules for the Interpretation of Import Tariff which places emphasis on identification of more appropriate description at the ‘heading’ level before going on to eliminate competing descriptions therein at the ‘sub-heading’ and ‘tariff item’ levels within. Before we advert to the design of the grouping that concerns the present dispute, it is necessary for us to dwell on the ‘onus’ aspect of classification that has been mandated by the Hon’ble Supreme Court.

5. Assessment, the most basic objective of customs law, is the application of the prescribed rate of duty to the value of imported goods. Unlike valuation, based on a conceptual articulation attended by an exhaustive string of sequential options that may be leveraged to discard value declared by the importer before substitution by an appraised value without compromise to the integrity of statutory intent, most appropriate fitment for classification can be implemented only by the default adoption of acceptable declaration in bill of entry to be disturbed only by independent, and not comparative, fitment of

the description corresponding to tariff item canvassed by customs authorities.

6. Thus it was that the decision in *HPL Chemicals Ltd v. Commissioner of Central Excise, Chandigarh [2006 (197) ELT 324 (SC)]* holding that

> *'29. This apart, classification of goods is a matter relating to chargeability and the burden of proof is squarely upon the Revenue. If the Department intends to classify the goods under a particular heading or sub-heading different from that claimed by the assessee, the Department has to adduce proper evidence and discharge the burden of proof. In the present case the said burden has not been discharged at all by the Revenue. On the one hand, from the trade and market enquiries made by the Department, from the report of the Chemical Examiner, CRCL and from HSN, it is' quite clear that the goods are classifiable as "Denatured Salt" falling under Chapter Heading No. 25.01. The Department has not shown that the subject product is not bought or sold or is not known or is dealt with in the market as Denatured Salt. Department's own Chemical Examiner after examining the chemical composition has not said that it is not denatured salt. On the other hand, after examining the chemical composition has opined that the subject matter is to be treated as Sodium Chloride.'*

and in *Hindustan Ferodo Ltd v. Collector of Central Excise, Bombay [1997 (89) ELT 16 (SC)]* holding that

> *'3. It is not in dispute before us, as it cannot be, that the onus of establishing that the said rings fell within Item 22F lay upon the Revenue. The Revenue led no evidence. The onus was not discharged. Assuming therefore, that the Tribunal*

> *was right in rejecting the evidence that was produced on behalf of the appellants, the appeal should, nonetheless, have been allowed.*
>
> *xxxx*
>
> *7. Learned Counsel for the Revenue submitted that the matter be remanded to the Tribunal so that the evidence on record may be reappreciated. As we have stated, no evidence was led on behalf of the Revenue. There is, therefore, no good reason to remand the matter.'*

stipulated the rules of engagement in adversarial contentions on classification of goods for assessment. Hence, the classification proposed, and adopted, in the impugned proceedings must pass muster as an appropriate description of the impugned goods before being subjected to comparison with the declared classification.

7. The design of the chapter titled '*ships, boats and floating structure*' does, for the most part and except 'vessels and floating structure for breaking up' particularly, comprise of water displacing crafts, designed for furthering human endeavour, that are either vessels or other floating structures. Among '*yachts and other vessels for pleasure or sports; rowing boats and canoes*', corresponding to heading 8903, '*inflatable*' craft find specific listing as do '*sail boats*' and '*motor boats excluding outboard motor boats*' though, peculiarly, the latter two are, along with a final residual '*other*', at the tariff item level, within the second of the primary segregation as '*inflatable*' crafts and residual '*other*' at the sub-heading level. Hence, in

conjunction with the description corresponding to heading 8903, it can be deduced that the primary residual '*other*' comprises, other than the two specific enumerations therein, '*yachts*', '*rowing boats*' and '*canoes*' by enumeration in the description of the heading and the intendment of '*other boats for pleasure or sports*' in the heading restricted by the enumeration of two specific descriptions corresponding to tariff items, *viz.*, '*sail boats*' and '*motor boats excluding outboard motor boats*' within the secondary, and relevant, residual '*other*' of the heading. This unusual grouping of overwhelmingly residual and the strictly limited enumeration that complements the description of the heading is in harmony with the *Explanatory Note* referred to only with the proposition that the specific enumerations at the tariff item level finds preferment over determination by elimination in the pyramidal scheme of heading 8901 of First Schedule to Customs Tariff Act, 1975. Conversely, the residual 'other' at the tariff item level of heading 8903 is intended for 'yachts' alone and none other. Any other interpretation of this grouping would render the *Explanatory Note* superfluous.

8. The impugned order being nothing other than mere endorsement of the finding of the original authority, it is to the latter that we turn to for ascertainment of discharge of onus mandated by the Hon'ble Supreme Court. The original authority appears to have relied upon some definition of 'excursion boats' which neither answers as a

description of the impugned vessel nor is validated to assist, by revealed provenance, in judicial determination. Emphasis placed on the meaning assigned to 'excursion' in dictionaries and the limited finding of

> *'The Monetary 180FS Boat is not covered under the said definition of "Excursion Boat" and moreover going by the specification and features as available in catalogues/websites, this boat falls under the category of Power boat and specifically Sport Boat type. Even Manufacture's catalogue also defines the Boat as 'Excursion Boat'. The invoices raised are not from the manufacturer but are from the dealer based in UAE wherein these boats are described as 'Excursion Boat'. Al over the world this model i.e.' Monterey 180FS' is being promoted as Powerboat/Motor Boat/Sport Boat and even importer in his pamphlets is mentioning the Boat as 'Sport Boat'.'*

to exclude classification as 'excursion' boats is contrary to the settled principles of classification that mandates acceptability of the proposed classification before subjecting the declared heading to comparative evaluation as last resort. There is no finding that asserts the includability of the impugned goods within the residual 'other' in heading 8903 of First Schedule to Customs Tariff Act, 1975.

9. Furthermore, the contents - pictorial and verbal - of the promotional material appear to have had such undue influence as to gloss over its pertinence to 'Monterey 180 FSW' therein even as it purports to advert only to 'Monterey 180 FS' which may well be the 'sports' version of a glamourless transport vessel. The original

authority appears to have indulged in conjecture which responsible discharge of authority to assess does not permit. We find it inexplicable that the lower authorities also adopted an adverse inference from the non-furnishing of invoices of the manufacturer to discard the invoice of the seller; the authority to require production of invoice of the manufacturer is conferred under Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 which is intended for a leg of assessment that is not in dispute. The invalidation of the description in the invoice of the seller is, thus, premised upon wrongful authority.

10. The lower authorities have not ascertained the fitment of the impugned goods as ‘yachts’, ‘sailboats’ or ‘motor boats’ except by incorrect attribution to promotional literature and from absence of invoice of manufacturer. In the process, the stipulation in *re HPL Chemicals Ltd* and in *re Hindustan Ferodo Ltd* have been observed in the breach.

11. With the failure to establish the appropriateness of the specific enumerations in heading 8903 of First Schedule to Customs Tariff Act, 1975 or of the enumerated specific descriptions corresponding to tariff items in heading 8903 of First Schedule to Customs Tariff Act, 1975, the description sought by the appellant does not have to be compared with that proposed by customs authorities. The declared

classification prevails by default without going into its merit; of course, the capacity of the imported vessels for carrying up to eight passengers and some luggage, implying unsuitability for endurance and speed that are hallmarks of vessels for sports and pleasure, immunizes the declaration in the bills of entry from being discarded. Consequently, the description and the classification declared in the bill of entry cannot be faulted.

12. For the above reason we set aside the impugned order and allow the appeal.

(Order pronounced in the open court on 13/04/2022)

(ANIL CHOUDHARY)
Member (Judicial)

(C J MATHEW)
Member (Technical)

**/as*