

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
MUMBAI**

WEST ZONAL BENCH

CUSTOMS APPEAL NO: 85852 OF 2014

[Arising out of Order-in-Original CAO No: 135/2013-14/CAC/CC(E)/YG/GR.VII dated 29th November 2013 passed by the Commissioner of Customs (Export), Mumbai.]

Commissioner of Customs (Export)

New Customs House, Ballard Estate, Mumbai-400001

... Appellant

versus

Lift & Shift India Pvt Ltd

96 Chembur-Mankhurd Link Road
Mumbai - 400043

...Respondent

APPEARANCE:

Shri S B Hatangadi, Assistant Commissioner (AR) for the appellant

Shri Anurag Mishra, Advocate for the respondent

CORAM:

**HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)
HON'BLE MR AJAY SHARMA, MEMBER (JUDICIAL)**

FINAL ORDER NO: A /86146/2023

DATE OF HEARING:

27/02/2023

DATE OF DECISION:

13/07/2023

PER: C J MATHEW

Consequent upon import of a barge, Aqua Float 300', towed by
tug, Fordeco 61, declaring value to be ₹ 13,68,75,586 and claiming to

be 'old and used', for import of which bill of entry no. 757734/05.04.2007, had been filed by M/s Lift & Shift India Pvt Ltd, proceedings were initiated for undervaluation thereof as the documentation indicated that the tug was new and as the barge allegedly had on board two winch sets and one generator set. The value of the tug was proposed to be enhanced to ₹ 12,00,00,00, under rule 8 of Customs Valuation (Determination of Value of Imported Goods) Rules, 1988, to which the value of the equipment on board the barge was added and, by assigning value of ₹ 12,00,00,00 for other stores on board, to demand differential duty of ₹ 59,44,897 beyond the discharged duty liability of ₹ 82,56,345, under section 28 of Customs Act, 1962, along with applicable interest, and for imposition of the usual detriments attendant upon confiscation under section 111 of Customs Act, 1962.

2. In order¹ of Commissioner of Customs (Export), New Customs House, Mumbai, it was held that, as there was no duty liability, declaration as 'old and used' was merely a technical irregularity, that confiscation was not warranted and that the details of the tug, having been properly declared, did not merit recourse to Customs Valuation (Determination of Value of Imported Goods) Rules, 1988 leaving only the freight component, admitted by importer, to be added to the declared value. It was also held that value of other equipment on board the barge was not required to be added separately and limited the penalty to that

¹ [order-in-original no. 135/2013-14/CAC/CC(E)/YG/Gr VII dated 29th November 2013]

equivalent to duty on freight, amounting to ₹ 6,84,479, under section 114A of Customs Act, 1962 and, upon confiscation of tug under section 111(m) of Customs Act, 1962, permitted to be redeemed on payment of fine of ₹ 20,00,000 under section 125 of Customs Act, 1962.

3. Revenue is in appeal to the extent that the impugned order has dropped proposal in the notice to adopt revised value and the equipment not assessed to duty separately besides non-imposition of penalty on two individuals.

4. We have heard Learned Authorized Representative at length as also Learned Counsel for respondent-importer. We find that the two individuals who were not imposed with penalties in the impugned order are not notices and, to that extent, the appeal proceedings is limited to the importer.

5. For asserting that the equipment on board the barge should be charged, independent of the barge, to duty separately, the appellant-Commissioner has relied upon an unauthenticated and untenable source for claiming that these were not integral to the barge. We find no evidence on record that these were not on board the barge when acquired by the importer and, in such circumstances, these cannot be disaggregated from the barge for separate determination of assessable value.

6. Insofar as value of the tug is concerned, the proposal in the show cause notice rests on the values obtained from various manufacturers and statutory bodies in India. The findings in the impugned order are very clear and unambiguous inasmuch as it was held that

‘15.5.2 From the documents submitted by them in defense I find that M/s. Forward Marine Enterprise Sd. Bhd., Sibulude their letter dated 20.04.2007 (submitted to CIU vide Noticee’s letter dated 23.04.2007) it has been certified that the Tug in question was sold by them in April 2006 to M/s. Fordeco Sdn. Bhd. Malaysia for S\$ 18,00,000. This actually substantiates the claim of the noticee’s that in December 2006 they purchased it from M/s. QSA Marine, Singapore for Singapore Dollars 16,75,000/- which is the purchase value as per the MOU and Invoice of supplier also. As such I find that while substantial grounds exist for rejection of transaction value of the Tug Fordeco 61 as the terms were declared as CIF as against FOB, a fact admitted by the Noticees during the course of investigations, no grounds exist for rejection of invoice value of the Tug specially since the same appears to be value of sale and no evidence has come up during investigations to indicate that the sale involved any special discounts or other extraneous considerations. It is also relevant that the appraiser had accepted the value declared by them. As such I find that the charge regarding the Tug being new and the re-determination of base value of the Tug does not survive.’

7. Furthermore, there is no allegation in the show cause notice that the cost, in CIF terms, is in question and rejection of declared value was proposed, under rule 10A of Customs Valuation (Determination of Value of Imported Goods) Rules, 1988, only owing to the purchase

price, and declared value, not being inclusive of freight. Non-inclusion of freight is to be proceeded with under rule 9(2) of Customs Valuation (Determination of Value of Imported Goods) Rules, 1988 whereas rule 10A of Customs Valuation (Determination of Value of Imported Goods) Rules, 1988 is limited to recourse to rule 5 to rule 8 of the said Rules.

8. The appeal of Revenue appears to have ignored this fundamental and crucial difference between adjustment of transaction value for cost and services and alternatives to declared price upon rejection under rule 10A of Customs Valuation (Determination of Value of Imported Goods) Rules, 1988. The determination by the adjudicating authority cannot, therefore, be displaced on the grounds preferred in the appeal.

9. As no misdeclaration has been found insofar as the import is concerned, there is no reason to consider imposition of penalties, too, on the individuals.

10. For the above reasons, the appeal, being devoid of merit, is dismissed.

(Order pronounced in the open court on 13/07/2023)

(AJAY SHARMA)
Member (Judicial)

(C J MATHEW)
Member (Technical)