Commissioner of Central Excise and Vs. New Pasta Traders

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Apr-17-2001

Reported in : (2001)(132)ELT502Tri(Mum.)bai

Appellant : Commissioner of Central Excise and

Respondent : New Pasta Traders

Judgement :

1. The question for consideration in this appeal is the determination of additional duty of customs payable on the ship M.V. Shanta Bhibani.

The ship came into Sikka Jetty, part of the Jamnagar Customs Port in 1986, after it discharged cargo that it had brought into Kandla on account of engine trouble. While there it caught fire and also collided against a ship. It was thereafter grounded. By order of port authorities it subsequently auctioned by the Gujarat Maritime Board, Jamnagar, apparently for recovery of port dues. It was purchased by New Pasta Traders, the respondent to this appeal with an intention to break it up into scrap.

2. The dispute relates to additional duty of customs payable on the ship. That duty is equal to the Central Excise duty for the time being leviable on such goods manufactured or produced in India. Heading 89.08 of the Central Excise Tariff covers vessels and other floating structures for breaking up. The rate of duty at the relevant time was Rs. 800/- per light displacement tonnatge. Note 2 to Chapter 89 defines light displacement tonnage (LDT) to mean the LDT as per the builder's

register, LDT referred to in the stability book or the builder's certificate at the time of initial commissioning of the vessel or the floating structure. The proviso to this note says that in case of any change in the LDT the highest of the LDT, indicated in any of the documents referred to above shall be taken into account for the purpose of levy of duty.

3. It appears that the respondent was unable to provide any of the documents referred to in Note 2. It claimed, in the bill of entry that it filed for the clearance of the goods, the LDT to be what Poseidon Marine Services, a marine surveyor at Jamnagar certified, after surveying the vessel in August, 1990. This report estimates the LDT to be 2004.945 MTs. The department chose not to accept the survey report and enquired from ABS Pacific, a Division of the American Bureau of Shipping. This company has informed the Superintendent of Central Excise that ascertained from its 1985 records, LDT is 6153 tons. It explains that the deadweight and displacement tonnage of the ship from which it derived the LDT are obtained from owner, designers and builders of vessel and the Bureau assumes no responsibility for the accuracy of the figures published.

4. In assessing the goods, the department took the LDT to be that certified by the ABS Pacific, and the Superintendent passed an order demanding duty on this basis. The manufacturer appealed this order. The Collector (Appeals) allowed the appeal and accepted the claim that the correct LDT was the one stated by Poseidon Marine Services. Hence this appeal by the department.

5. The report of the survey conducted by Poseidon Marine Services itself concludes that in the absence of drawings, plans and records it is not possible to arrive at an accurate assessment of the light displacement tonnage of an old broken down, grounded and stranded vessel. By applying the proviso under note 2 to Chapter 89, the higher of the two L.D.T.'s would have to be applied.

6. The contention raised by the counsel for the appellant that abatement of duty on account of damage should be deducted from the total duty payable on this LDT has to be accepted. Clause (b) of sub-section (1) of Section 22 provides for abatement of duty on account of damage to imported goods at any time after their unloading in India but prior to their examination and under Section 17, on account

of any accident not due to wilful act, negligence or default of the importer, his employee or agent. There being no unloading in the case of a ship that sails into port under its own power, we must take the date of its arrival in port to be the date of its "unloading" for the purposes of this sub-section. Hence, the damage that the ship suffered between then and the date of its examination would be covered by this clause.

Therefore even if we accept that the correct LDT would be around what ABS Pacific certified it to be, the abatement permissible under Section 22(1)(b) would have to be considered in determining the duty payable.

In determining the extent of damage the report of the survey conducted by Poseidon Marine Services has to be given due weightage.

7. Therefore the net result would not take us anywhere else than what the Commissioner (Appeals) has arrived at. He has noted the extent of damage that the ship suffered as a result of the fire, the collision and submergence in the sea for three years, all factors that the surveyor at Jamnagar has taken into account in arriving at its light displacement tonnage. He has also found confirmation for this figure from the certificate of the Central Excise Superintendent having jurisdiction over the place where the ship was broken up, which showed the quantity of material that was obtained by breaking it up to be about 10 tons less than the LDT that the surveyor determined. Although he does not say so, he has, in effect, applied the provisions of Sec.

22(1)(b) of the Act. There is therefore no justification for interference with his order.