

Deep Shipbreaking Industrial Vs. Cc

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : May-30-2002

Reported in : (2002)LC460Tri(Delhi)

Judge : K Usha, N T C.N.B.

Appellant : Deep Shipbreaking Industrial

Respondent : Cc

Judgement :

1. These appeals are directed against Order-in-Original No.1/Commr/Cus/1999, dated 29-4-1999 passed by the Commissioner of Customs and Central Excise, Rajkot. The impugned order confiscated a ship imported by the first appellants Deep Shipbreaking Industrial Co-Op.

Society Ltd., Bhavnagar and imposed a penalty of Rs. 2 lakhs on them. A penalty of Rs. 50,000/- was imposed on appellants Shri Jiten A. Jogadia who is the Secretary of the first appellant Co-Operative Society. The order also gave appellant an opportunity to redeem the ship on payment of fine of Rs. 20 lakhs. The confiscation of the vessel has been done under Clause (j) of Section 111 of the Customs Act 1962. It may be noted at the outset that this Clause renders "any dutiable or prohibited goods removed or attempted to be removed from Customs area without the permission of the proper officer" liable to confiscation.

2. Facts leading to the dispute are that appellants imported vessel M.V. Palanga for breaking. She was brought to Alang Anchorage on 14-5-97. The vessel was rummaged by Customs Authorities and I.G.M. filed on the same day. The physical delivery of the vessel was granted to the appellants on the very next day. The appellants also made a request to the Customs Authorities for extension of one month's time to file Bill of Entry for payment of Customs Duty. Thereafter, on 23-5-97, the vessel was beached at 145, Sosiya Shipbreaking Yard, Alang, Dist.

Bhavnagar on 25-5-1997. On 23-6-97, appellants made a request to the Customs authorities for granting further extension of time for filing Bill of Entry.

3. On 19-7-97, the Customs Officers visited the vessel and the ship-breaking yard (where the vessel had been beached) and took inventory of goods which had been removed from the vessel. After investigations, on 16-1-98, a show cause notice was served on the appellants seeking to confiscate the ship valued at Rs. 2.12 crores and parts valued around Rs. 3 lakhs which had been removed from the vessel and stored in the yard. The appellants unsuccessfully contested the notice. The impugned order of confiscation etc. was passed by the Commissioner.

4. The submission of the first appellant is that they are not guilty of the charge of removing or attempting to remove, from the customs area, any dutiable or prohibited goods, in order to attract the confiscation of the goods under Section 111(j) of the Customs Act. They have explained that the vessel itself had been beached at the allotted area.

They had accessed the vessel by creating an opening for entry by cutting the shell of the vessel. Further, they had removed loose items like life rafts, electric motors, electric cables etc. from the vessel and kept them in the yard for the purpose of safety. The appellant had not tampered with the vessel or its contents beyond this. It is the appellant's contention that the removing of loose items from the vessel and storing them safely in the shipbreaking yard, or cutting the vessel for the purpose of gaining entry inside, did not amount to removing dutiable goods or attempting to remove dutiable goods from authorized area. The vessel as well as its contents remained inside the authorized area. The only items removed by them from the shipbreaking yard were two life boats together valued at Rs. 50,000/-. It is the

appellant's submission that even the removal of those rafts are of no revenue implication, inasmuch as the vessel under import is assessed as one item to customs duty, for the entire value of the ship and at the rate applicable to a vessel and not at the rates or values applicable to each item contained in the vessel. The Id. Counsel for the appellants has submitted that in these facts and circumstances, the confiscations and penalties were entirely unjustified.

5. As against the above submission on behalf of the appellants. Id. SDR has pointed out that the appellants were entitled to commence ship-breaking activities only after the bill of entry for the ship had been assessed, duty assessed and paid and the vessel cleared out of customs charge. He submitted that it is clear in the facts of the present case that the appellants had cut open the body of the vessel, gained entry into the vessel and removed the goods worth about Rs. 3 lakhs from the vessel. They had also sold away two life rafts before the customs formalities were completed. The SDR emphasized that Clause (j) took in also "attempt to remove dutiable goods". He submitted that the cutting open of vessel, removing of goods from vessel and selling the life rafts were all clear violation of Clause (j) under Section 111 and amounted to unauthorized removal and attempted removal of dutiable goods. The Id. DR contented that these facts and circumstances justified the action taken in the impugned order.

6. It is clear that the vessel was imported for the purpose of breaking. Its import and beaching at the shipbreaking yard were with the permission of proper authorities. The customs authorities had rummaged the vessel and the appellant had filed import general manifest with the customs authorities. They had also sought time for filing the Bill of Entry. The appellants had not started breaking the ship. They had only cut open a portion of the shell of the vessel in order to gain access. This cannot be called breaking of the vessel. In respect of about, Rs. 3 lakhs worth of materials, the appellants had only brought them down from the vessel and kept them in the yard. When the customs authorities visited the yard the vessel and her stores were still present in the authorized area, i.e. the ship breaking yard. The appellants had not removed or attempted to remove the vessel or its parts from the customs area. Therefore, the finding that appellants had violated of Clause (j) of Section 111 of Customs Act is preposterous and without

any basis. The removal of Rs. 50,000/- worth life boats made no difference to the situation. Their value of Rs. 50,000/- is a trifle compared to the value of the vessel (over Rs. 2 crores) confiscated and the value of the goods removed from the vessel and kept in the shipbreaking yard (about Rs. 3 lakhs). The appellants' Counsel is right in his submission that the removal of two life rafts worth Rs. 50,000/- is not of any consequence to revenue, inasmuch as they were not required to be assessed separately and assessed for duty.

7. In the facts, circumstances and the legal position as discussed above, it is clear that the finding regarding violation of Clause (j) of Section 111 of the Customs Act is totally devoid of any merit.

Consequently, the confiscation of the vessel and imposition of penalties are set aside as entirely unwarranted, with consequential relief to the appellants. M/s. Deep Ship-breaking Industrial Co-operative Society shall be at the liberty to carry out the shipbreaking activity in respect of the imported vessel, M.V. Palanga, in compliance with the provisions relating to payment of duty.

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