Commissioner of Customs Vs. Atam Manohar Ship Breakers Pvt.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Oct-14-2002

Judge : S T Gowri, G Srinivasan

Appellant : Commissioner of Customs

Respondent : Atam Manohar Ship Breakers Pvt.

Judgement :

1. Appeal taken up for disposal today along with other appeals involving identical issue which has been listed for hearing.

2. The common issue for consideration in these five appeal sis the determination of value of a ship imported by each of the respondents for breaking up. In each case, after the vessel arrived at the port, some defects or short coming was noticed by the buyer which led them to renegotiate the price. The details of the defects and short comings, the date of having them noticed and the reduction in price are summarised in the annexure to this order.

3. The bills of entry which were filed for clearance of the goods has indicated as the basis for valuation the reduced price. These reduced prices were not accepted by the department on the view expressed in the orders of the adjudicating authority that the reduction in the prices after the goods arrived in India cannot be accepted. The provisional assessments, under which the goods were cleared on arrival were finalised by not giving accord to the reduction in prices.

4. Each of the importer appealed the orders to the Commissioner (Appeals). The Commissioner (Appeals), in the various orders passed, held that transaction value i.e. the price which was actually paid for the goods was the reduced price, accepted and allowed the appeals.

Hence these appeals by the department.

5. The identical grounds in the appeals are that allowing the appeals will result in importers reducing the value on baseless ground.

Reliance is also placed upon the order of the Tribunal in CC v. Saibaba Ship Breaking Corporation (C/1039/99).

6. The agreements for the sale of the ship appear to have more or less similar wordings. We shall take, as an example, the agreement entered into by Rai Metal Works Pvt. Ltd. Clause 1 describes the ship with is tonnage and other appurtenances of the vessels. Clause 2 emphasises that the buyers will accept the vessel without inspection. The sale is definite and outright subject only to the terms and conditions and exceptions. Clause 3 makes for delivery and taking possession on totally "as is" condition as specified. Clause 7 provides that except as expressly provided in Clauses 11 and 19 thereof, the sellers make no representation, warranties or guarantees of any kind, either express or implied as to the vessel or the condition of classification status of the vessel, with all her outfit, equipment and spares, shall be taken with all faults and errors and description without any allowance or abatement." Clause 19 has specific description of the vessel. Its type, gross tonnage, light displacement tonnage, details of the engine, propeller and generator which is described as 3 x Daihatsu (6PST-26B) ABT 450 KW.7. The addendum to the memorandum of agreement, substitutes for the description of the generator "3 x Daihatsu (6PST-26B) ABT 450 KVA." 8. The value referred to in Rule 4 of the Customs Valuation Rules, 1988 is the value for sale of goods that are imported into India. In terms of the said rule, it is the transaction price paid for the goods. It can hardly be disputed that, for that price to apply, it must be the price for the goods which the buyer and the seller had contracted to buy and sell respectively. If the goods which are actually imported in pursuance of an agreement are different from the goods which were contracted to

be bought and sold, the value as agreed to in the agreement will not be the transaction value for he goods which have arrived. The transaction value was for sale and purchase of another commodity and not the commodity that has arrived. Thus, if for example, the ship was a sailing ship, namely "NEVA-II" instead of ship for breaking up it can hardly be disputed that insistence of acceptance of agreed value would be incorrect. Similar would be the case, if it was actually a ship with a lesser tonnage. In other words, if the goods which are actually delivered, are different material from the goods which have been agreed to be purchased and sold what would actually happen is that there is a renegotiation. As a result such renegotiation there is an amendment to the price and the price now being agreed upon is the price of goods which have arrived.

9. In the department's appeals what is essentially urged is that the original price is the price of importation. The apeal however, overlooks that it is the price of the goods that are being imported that has to be considered. There are numerous variations between the goods which were agreed upon to be imported and those which arrived.

The departmental representative emphasises Clauses 2 and 3 of the agreement which provide that the buyer has accepted the goods and that the contract is "as is where is." However, Clause 7 itself provides for exceptions contained therein and the capacity of the generator is one of the exceptions. The contention by the departmental representative that the ship is intended to be broken up and therefore the capacity of the generator or other factors of the goods is irrelevant, is not acceptable. No doubt, much of the ship, and other metal parts will be reduced as scrap by its buyer and sold as crap but this does not mean that such a buyer cannot salvage from the ship some removable parts and sell them. There is nothing in law against this practice and it is well known that this is what actually happens. Parts such as fitments, furniture, engine parts etc are dismantled and sold as such. It is only after serviceable parts are removed, whatever is left over is then broken up into scrap.

10. The earlier decision of the Tribunal relied upon has not in fact dealt with this issue. The question in that appeal was the reduction in the value as a result of loss

of ports side anchor and chain of the ship. The Tribunal did not accept the argument before it by the importer as to the date of beaching of the craft being the relevant date for determination of duty. It also noted that the importer could not substantiate the claim that the chain and anchorage were in fact missing before the vessel was imported. In the cases before us the department's appeals do not dispute the same. We agree that, if the change in the capacity of the generator really took place after the ship has arrived, different consideration would apply because in that situation what has been imported is, what had been contracted for.

However, whereas in this case there is no dispute that what has been imported is different material from what had been agreed to be imported and there is a provision in the agreement to take note of this material difference. The difference in value is justifiable. We, therefore, do not find any ground for interference.

11. We must, at the same time, address ourselves to the department's concern. It is possibly with regard to any unscrupulous attempt to utilise grounds for reducing the price. However, that could happen in the case of import of any goods and the cases of undervaluation are known and brought to light as a case of misdeclaration. The possibility that the importer may misdeclare the value or misutilise a concession or procedures by itself is no ground to strike down the concession or procedure at this root, particularly a commercial procedure which is generally internationally followed as well as locally.