

**Commissioner of Customs Vs. Guru Ashish Ship Breakers**

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**SooperKanoon Citation :** [sooperkanoon.com/29210](http://sooperkanoon.com/29210)

**Court :** Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

**Decided On :** Oct-29-2002

**Judge :** S T Gowri, G Srinivasan

**Appellant :** Commissioner of Customs

**Respondent :** Guru Ashish Ship Breakers

**Judgement :**

1. The Guru Ashish Ship Breakers, the importer imported a ship MV Transent for breaking. The memorandum of agreement entered into by the importer with the seller of the ship on 14.9.1998 indicated the price of the ship to be US\$617421. The ship came to the anchorage of Alang port on 24.5.1998. An addendum to the memorandum of agreement was signed by the buyer and seller on 26.5.1998, reducing the price for long ton of light displacement tonnage to US\$ 135 and the total purchase price reduced to US\$ 556678.90. The basis of the amendment was on account of following discrepancies: 2. All Generators of the vessel are not according to the specifications as shown in the M.O.A. and hence it has no releasable value at all.

3. There is water leakages in the cargo compartment at the bottom and as such the plate of the bottom is heavily damaged.

5. The vessel is of very poor condition and has been laid up for a period of long time and therefore the plate of the vessel is very rusted and poor quality.

6. In the bill of entry that it filed for clearance of the goods, the importer indicated the lower value for the basis of assessment on 14.5.1990. The assessing officer however enhanced the value taking as the basis the price as originally agreed upon. The importer appealed this order. The Commissioner (Appeals) found that the transaction value of the ship, as the one that was arrived at between the buyer and the seller as incorporated in the addendum to the memorandum of agreement, and that should be the value that should apply. The relies upon the decision of the Supreme Court in Eicher Tractors Ltd. v. CCE 200 (41) RLT 651. This is challenged in this appeal by the Commissioner.

7. The respondent is absent and unrepresented and requests decision on the basis of its submissions. These have been considered by us, after hearing the department representative.

8. There can be no quarrel with the proposition that the transaction value as defined in Rule 4 of the Customs valuation Rules is the value for assessment. The question however is what the transaction value in the present case is. As we have narrated, the value that was arrived at between the buyer and the seller was initially at US\$ 617421. It can also not be questioned that if after arrival of the ship, it was not found in accordance with the description in the memorandum of agreement revision of the value would be justified. In that situation, the goods which have arrived for delivery, are different from the goods which the buyer contracted to buy and the seller contracted to sell. Therefore, the value that was decided between the buyer and the seller would not be the value of transaction of purchase and sale of goods different and it would be justified to accept as the value now arrived at. This is what we have said in our earlier orders.

9. The facts in this case do not justify the conclusion that what was delivered the different from what is agreed to be purchased and sold. The memorandum of agreement makes it clear in Clause 6 that "The buyers have accepted the vessel without inspection and the sale is, therefore, outright subject only to the terms, conditions and exceptions of this Agreement." Clause 11 also provides that the ship will be delivered on "as is where is" basis complete, substantially intact with everything on board including bronze working propeller and one steel alloy spare

propeller. The full description of the ship contained in Clause 19 which sets forth the date on which it was built, its type, tonnage, dimensions, details of propeller, anchor, engine, generators etc.

onbaord. The reasons 2, 3 and 4 in the amendment to its memorandum of agreement, that there was water leakage in the cargo compartment at the bottom and the plate is heavily damaged, No. 5 derricks is not in working condition and the vessel is in very poor condition therefore are not any of the exceptions specified in the original memorandum of agreement. As we have noted there were no provisions in that agreement for reduction in the price on that account. The first ground, that the generators are not according to the specifications and hence "has no realisable value at all." is completely unsubstantiated. Of the four survey reports submitted by the surveyor of the ship, none points out that the generators are not in accordance with the specification. The statement that the generator has no realisable value at all obviously cannot be accepted. Even if it is true, that the generators were not according to the specifications in their memorandum of agreement, it could perhaps be concluded that their value was lower than what it could otherwise have been. How it can be claimed that generators have no value at all is beyond our comprehension.

10. The importer's only contention is that the reduction in price mutually agreed upon between the buyer and seller is justifiable in the eye of law. We have however noted that this is done after the goods have bene imported into India. It is the price of the goods that they are available at the time of import into India that we are concerned with. We find no basis for any reduction in that price.

11. The order of the Commissioner (Appeals) is accordingly set aside and the assessment determined by the Superintendent is restored.

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