

J.M. Industries Vs. Cc

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Oct-13-2003

Reported in : (2004)(91)ECC538

Judge : A T V.K., P Chacko

Appellant : J.M. Industries

Respondent : Cc

Judgement :

1. The issue involved in this appeal, filed by M/s. J.M. Industries, is whether the duty is payable by them separately on fuel oil found in the vessels imported by the appellants for breaking.

2. Shri A.D. Maru, learned Advocate, submitted that the appellants imported old and condemned vessels for breaking and paid duty under protest; that subsequently, he filed an appeal, which was rejected by the Commissioner (Appeals) on the ground that the assessment of Bill of Entry is not a decision or order; that, however, the Appellate Tribunal, vide Final Order No. 292/03-B dated 24.4.2003, remanded the matter to the Commissioner (Appeals) for deciding the matter afresh as the assessment of the Bill of Entry was held to be appealable order; that the Commissioner (Appeals), under the impugned order, has again rejected their appeal on the ground that they have not shown conclusively that the fuel oil was kept in the engine room tanks. He, further, submitted that it has been held by the Tribunal in another case of the appellants themselves, as reported in

Ghaziabad ship Breakers and J.M. Industries v. CC (Preventive), Ahmedabad, 2003 (86) ECC 307 (T), that fuel and oil in engine room tanks would be classifiable alongwith the ship under Heading 89.08 of the first Schedule to the Customs Tariff Act; that he has produced masters oil declaration and survey report to show that the oil was in engine room.

3. Countering the arguments, Shri Vikas Kumar, learned SDR, submitted that the survey report nowhere mentioned that the oil was in engine room; that survey report mentions that the vessel had onboard sufficient usable/pumpable bunkers and fresh water; that it is apparent from the report that nowhere it is mentioned that the oil is in the engine room; that the Commissioner (Appeals), has given a specific finding to the effect that "thus the surveyor's report on which the appellant has depended heavily only shows that the vessel had sufficient usable/pump able bunkers. The Board's instructions clearly mention in para (b) that only those fuel and oil form integral part of the vessel which are contained in the vessel's machinery and engine.

The idea behind this is that the oil which is separately kept and which can be sold as unused oil stock/bunker has to be classified as oil or bunker and not as forming part of the vessel," He, finally, submitted that the Commissioner (Appeals) has given a conclusive finding that the appellants have not shown conclusively that oil was kept in the engine room.

4. We have considered the submissions of both the sides. As per the Board's Circular No. 37/96-Cus dated 3.7.96, which has been issued after consulting World Customs Organisation, Brussels, fuel and oil contained in the vessel's machinery and engines can also be regarded as forming integral part of the vessels and be classified under heading 89.08. Circular, further, provides that remaining fuel and oil is classifiable separately under its appropriate heading. It is the responsibility of the appellants to show that the fuel and oil, in question, was in the engine room. The appellants have relied upon the Masters report and the Survey report. A perusal of both these reports do not reveal that the oil, which was found on the ship was contained in the engine room tanks. As mentioned by the Commissioner (Appeals), the survey report says that the vessel had on board

sufficient usable/pumpable bunkers and fresh water without indicating as to where this bunker was stored. We, therefore, find no infirmity in the Commissioner's findings that the appellants have not shown conclusively that the oil was kept in the engine room. Accordingly, we reject the appeal.

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