

**Chaudhary Ship Breakers Vs. C.C.E.**

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

**Decided On :** Feb-02-2005

**Reported in :** (2005)(101)ECC121

**Judge :** S Kang, Vice-President, A T V.K.

**Appellant :** Chaudhary Ship Breakers

**Respondent :** C.C.E.

**Judgement :**

1. Appellants filed this appeal against the order in appeal passed by the Commissioner (Appeals) 2. Brief facts of the case are that appellants made an import of vessel as per the agreement. The price of the vessel was agreed as US\$ 992887.20. After the import of the vessel as per amended memorandum of agreement the price was reduced to US \$ 929388.60. The Customs authority rejected the revised price.

3. The contention of the appellants is that as the supplier of the vessel, reduced the price because the ship was double skinned and as the appellants paid the reduced price and there was no evidence to show that appellants had paid over and above the agreed price. Hence the demand is unsustainable. The appellants relied upon the decision of the Tribunal in the case of Commissioner of Customs, Ahmedabad v. Atam Manohar Ship Breakers Pvt. Ltd., reported in 2003 (156) E.L.T. 151 (Tri.-Mumbai) to submit that in this case the Tribunal held that assessment is to be done as per the reduced price.

4. The contention of the Revenue is that in the Memorandum of agreement the total sale price was US \$ 929887.20 and in the agreement there was no provisions for reduction of price for any account. The Revenue relied upon the decision of the Tribunal in the case of Commissioner of Customs, Ahmedabad v. Guru Ashish Ship Breakers, reported in 2003 (157) E.L.T. 277 (Tri.-Mumbai). The contention of the Revenue is that in this case the price reduction after the import of the ship is not accepted by the Tribunal.

5. Appellants relied upon the decision of the Tribunal in the case of M/s. Atam Manohar Ship Breakers (P) Ltd (Supra). In this case the Tribunal after noticing that the provisions of the agreement whereby there was a clause for price reduction on account of material different and it was found that what has been imported is a different material from what had been agreed to re-import. In such a situation, the Tribunal accepted the reduction in price. The fact of the present case is different. In the present case there is no provision in the Memorandum of agreement for reduction of price on any account. We find that Tribunal in the case of Guru Ashish Ship Breakers (Supra) held that in absence of any provision in the memorandum of agreement regarding variation in price, the reduction in price after import is not sustainable. In the present case as discussed above, the price was revised after import and in the absence of any provisions regarding price variation in the memorandum of agreement, we find no merit in the appeal. The same is dismissed.

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