Commissioner of Customs Vs. Chaudhry Industries

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : May-25-2005

Reported in : (2005)(188)ELT95Tri(Mum.)bai

Judge : J Balasundaram, Vice-, A M Moheb

Appellant : Commissioner of Customs

Respondent : Chaudhry Industries

Judgement :
1. This is the Revenue's appeal against the order of the Commissioner of Customs (Appeals), Ahmedabad.

2. Briefly the facts are that the respondents imported a vessel by name "Solon of Athens" for the purpose of breaking. The vessel entered Alang anchorage on 6-6-1999. The shipping agent presented a copy of MOA, dated 7-6-1999 entered into between M/s. Cane Shipping and Trading and M/s. Chaudhry Industries (respondents). As per the MOA, the vessel was sold at a price of US$ 17,61,588 @ US$ 108 per LT of the vessel. The ship was boarded on 9-9-1999 and the import general manifest was handed over to the customs department on the same date. Later, a survey report at the behest of the respondents was drawn and in the said report, the surveyor has not pointed out any discrepancy regarding the electrical capacity of the diesel generator of the vessel. Neither the surveyor nor the importer brought to the notice of the boarding officer about any discrepancy in the diesel generator. The master of the vessel gave physical delivery of the vessel

to the importer on 23-6-1999. A bill of entry was presented for clearance of the vessel on 28-6-1999 wherein the declared price was US$ 17,01,588. This difference between the price declared in the bill of entry and the one mentioned in the original MOA, according to the respondents, was due to an addendum dated 13-6-1999 wherein the supplier seemed to have accepted for reduction of the price in view of some discrepancy in the rated capacity of the diesel generator on board the vessel. The AC/DC who finalised the bill of entry, did not accept the declared value but assessed the ship on the basis of the price indicated in the MOA originally entered into.

The reasoning of the lower original authority was that the reduced price is not acceptable as such price reduction took place after the vessel was imported. In appeal, the Commissioner (Appeals), Ahmedabad, vide the impugned order held that the assessable value of the subject vessel should be in accordance with the revised MOA and thus allowed the value of the vessel to be reduced by Rs. 10,68,750/-. The Revenue is aggrieved by this order.

4. The Revenue points out that any reduction in price after the vessel has been imported is not permissible because the import was complete when the vessel entered Alang anchorage on 6-6-1999. The Revenue relies on the decision of this Tribunal in CC, Ahmedabad v. Guru Ashish Ship Breakers and Birla VXL Ltd. v. CCE, Vadodara [2002 (145) E.L.T. 614] wherein the Tribunal held that the reduced price cannot be the transaction value. The respondents however contend that the Commissioner (Appeals) has rightly relied on the decision of the Tribunal in the case of CC, Ahmedabad v. Atam Manohar [2003 (156) E.L.T. 151] wherein the Tribunal held that valuation could not be insisted on the original price as what was imported was different to what was agreed upon.

5. We have gone through the rival contentions and the submissions made before us. We observe that the original MOA entered into between the respondents and the seller does not contain any clause for price reduction due to any discrepancy in the gear of the vessel. It only provides for arbitration proceedings in case of dispute between the buyer and seller. No such arbitration award has been given in this case. The respondents merely filed an addendum to the original MOA and on

that basis, seek reduction in price. The original authority has rightly rejected this claim on the part of the respondents. The Commissioner (Appeals) reliance on the decision of the Tribunal in Atam Manohar's case has to be rejected because he has not appreciated the facts in this case. In the present case, the terms of sale are very clear. The Commissioner should have gone by the terms in the original MOA instead of accepting the revised MOA where the price was alleged to have been reduced. Several instances have come to the notice of the department wherein the importers sought reduction of price after the vessel was imported without referring to the MOA agreed upon between the buyers and sellers. The Tribunal in the case of Guru Ashish cited supra and other cases rightly rejected the contentions of the importers in those cases. Following the ratio laid down by these decisions, we allow the appeal of the Revenue and set aside the order of the Commissioner (Appeals).

6. The respondents have also filed a cross-objection which is mostly in the nature of submissions against the Revenue's appeal. They were in fact not aggrieved by the Commissioner (Appeals)'s order. Therefore, the respondents' appeal cannot be termed as a cross-objection. We, therefore, reject the submissions made by the respondents in the form of a cross appeal.

7. In fine, we allow the appeal of the Revenue and set aside the order of the Commissioner (Appeals). We also reject the respondents' contentions contained in their so-called cross-objections.