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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jan-02-2007

Reported in : (2007)(116)ECC202

Judge : J Balasundaram, Vice, A T K.K.

Appellant : Ocean Diving Centre Ltd.

Respondent : Commissioner of Customs

Judgement :

1. The appellants herein have filed Bill of Entry dated 10.12.2003 for clearance of a second -hand Pontoon upgraded to Accommodation Barge from Singapore and claimed classification under Customs Tariff sub-heading 89.01 which covers Cruise Ships, Excursion boats, Ferry boats, Cargo ships, Barges and similar vessel for the transport of persons or goods, as Barges for the transport of persons and goods together with the benefit of Sr.No. 352 of the Table annexed to Notification No. 21/02-Cus dated 1.3.02. The claim was rejected by the authorities below who held that the vessel in question fell for classification under CT sub-heading 89.05 which covers " Light vessels, fire floats, dredgers, floating cranes and other vessels, the navigability of which is subsidiary to their main function,... on the ground that the navigability of the vessel is subsidiary or incidental to its main function of accommodating persons in a stationary position near oil rigs or flatform etc. Hence this appeal.

2. We have heard both sides. The vessel in question does not have any engine for self propulsion. It required to be towed and was in fact towed from Singapore to Mumbai and even at present requires to be towed. It is fitted with pedestal crane (floating crane) heli-deck, container and housing (accommodation) for 150 persons. The vessel is fitted with Bed, Mattress, Pillows, Washing Machines, Dryers, Fridges and Freezers. Dining hall and Mess room are installed equipped with cooking utensils. Hi-Fi sets, Televisions, sofas, chairs and tables etc. are also placed therein. The Barge has eight moorings to enable it to remain stationary as seen from the survey report. The crane is used for transferring heavy goods and it has 140 feet long boom and 100 Ton lifting capacity. As per the contract, the service provided by the appellant is accommodation of personnel working at production/ platform on the Sea. Besides, the vessel can perform several diverse function like Scientific research vessel, hospital vessel, sub sea cable laying etc.

3. The scheme of classification of vessels under Chapter 89 of the Tariff is in accordance with their function and utility. Heading 89.01 covers - Cruise ships, Excusion boats, Ferry boats, cargo ships, Barges and Similar vessels for the transport of persons or goods.

fishing vessels, factory ships and other vessels for processing or preserving fishery products.

Yachts and other vessels for pleasure or sports, rowing boats and canoes.

Tugs and pusher craft which are vessels primarily designed for towing other craft or for pushing other craft.

Light-vessels, Fire-floats, Dredgers, Floating cranes and other vessels the navigability of which is subsidiary to their main function, floating docks, floating or submersible drilling or production platforms for special utility.

other Vessels, including warships and lifeboats other than rowing boats such as a. Ships designed for warfare, fitted with various offensive weapons and defensive weapons and incorporating protective shields against projectiles, b. Landing craft or certain fleet auxiliaries (for transporting ammunition or mines etc. troop-ships, c.

Submarines.

3. Lifeboats for placing on board ships, as well as those which are intended to be placed at certain points around the coast to help ships in distress. However, lifeboats propelled by oars fall in heading 89.03.

5. Vessels for the transportation and mooring of buoys; cable ships for laying underwater cables, eg. for telecommunications.

other floating structures (for example, rafts, tanks, coffer-dams, landing stages etc... certain floating structures not having the character of vessel.

5. The primary function of the vessel in question is to provide accommodation to personnel working on oil rigs in the sea. It is also used for loading and unloading goods for the machines by the floating crane. The navigability of the vessel is secondary to its main function. The definition of the expression "Navigate" as per Law Lexicon at page 1284 is "to direct, manage or steer a vessel to pass by water". Since the Barge is not self propelled, its navigability can only be considered to be subsidiary to its main function. HSN Explanatory Notes to Chapter 89.05 state that - This heading covers (A) Light-vessels, fire-floats, dredgers, floating cranes, and other vessels the navigability of which is subsidiary to their main function.

These normally perform their main function in a stationary position.

They include: light vessels; drill-ships; fire floats, dredgers of all kinds (e.g. grab or suction dredgers); salvage ships for the recovery of sunken vessels; permanently moored air-sea rescue floats; bathyscaphes, pontoons fitted with lifting or handling machines (e.g derricks, cranes, grain elevators) and pontoons clearly designed to serve as a base for these machines.

6. The vessel in question is akin to a house boat in the sense that it performs function by accommodatey personnel in a stationary position near oil rigs/platforms in the sea.

7. The argument that similar vessel 'Vasuda' imported by M/s. Hind Offshore Ltd. was classified under CTH 89.01 cannot lead to the conclusion that the present vessel should also be so classified for the reason that the Customs authorities are not estopped from taking a different view. There is no estoppel in fiscal statuekes.

8. The reliance placed by the appellants on the judgements of the Apex Court in UOI v. V.M. Salgaoncar & Bros (P) Ltd. 1998 (99) ELT 3 SC is misplaced as that decision is distinguishable from the facts of the present case. That case dealt with the issue of liability to examine in relation to capability of vessel sailing in the ocean and sea and the issue did not relate to classification which as we have seen from the scheme of Chapter 89, is on the basis of primary function.

9. In the light of our finding that the primary function of the vessel is that of accommodation of personnel and its navigability is subsidiary to the above function, we agree with the authorities below that it rightly falls under the parentage of CTH 89.05, uphold the impugned order and reject the appeal.