

(2015) 08 SC CK 0020

In the Supreme Court Of India

Case No : Civil Appeal Nos. 2691-2728 of 2009 with C.A. No. 1454 of 2011

C.C.E., Mangalore

APPELLANT

Vs

Mangalore Refinery & Petrochemicals Ltd.

RESPONDENT

Date of Decision : 27-08-2015

Acts Referred:

Citation : (2015) 325 ELT 214 : (2016) 14 SCC 719

Hon'ble Judges : A.K. Sikri and Rohinton Fali Nariman, JJ.

Bench : Division Bench

Final Decision : Dismissed

Judgement

A.K. Sikri, J. - The short issue which is involved in these appeals is as to whether ship demurrage charges paid by the respondent/importer (hereinafter referred to as the "assessee") on the import of the goods are to be included in the assessable value of the goods imported for customs duty purposes. In order to decide this issue, facts can be taken from Civil Appeal Nos. 2691-2728 of 2009.

2. The assessee in these appeals is M/s. Mangalore Refinery and Petrochemicals Limited. It had imported 94204.425 MTs (ullage quantity measurement of vessel) of Crude Oil vide Bill of Entry No. 0924, dated May 23, 2001 and warehoused the same into their shore tanks. The same was cleared under provisional assessment by executing P.D. Bond, pending production of original documents by the assessee and reply to further queries by the Department. The provisional assessment was taken up for finalisation based on this Court's decision which upheld the order passed by the CEGAT in the case of M/s. HPCL and M/s. NOCIL, wherein it was held that customs duty should be levied on the quantity that is pumped into the shore tanks in terms of Board's Circular No. 96/2002, dated December 27, 2002. The shore tank quantity of Crude Oil is considered as the relevant quantity for the purpose of assessment. On scrutiny of the documents filed by the assessee, it was found that Bill of Lading quantity was taken as the Cost & Freight (FOB) component of the relevant value for assessment as per Section 14 of the Customs Act, 1962. Therefore, irrespective of the fact whether

there is shortage in the quantity received compared with the Bill of Lading quantity or not, the importer has to pay the duty on transaction value, i.e. the full value paid for the Bill of Lading quantity. On that basis, the customs authorities took the view that the declared shore tank quantity is to be corrected, which worked out to 93756.154 Mts.

3. We are not concerned with this aspect in the present appeals. That issue has been raised in other batch of appeals, which we have heard today and judgment is reserved.

4. Insofar as issue involved in these appeals is concerned, we may point out that during this period the goods could not be cleared and it was observed that the assessee had paid demurrage charges of Rs. 6,48,094.93 among other fees/charges. As per the Revenue/appellant, these demurrage charges were also to be included in the assessable value for the purpose of levy of duty of customs. Show-cause notice dated June 9, 2003 was issued in this behalf, which resulted in passing of order dated March 7, 2005 confirming the demand raised in the show-cause notice. The assessee filed appeal against the order of the Adjudicating Authority before the Commissioner of Customs (Appeals), which was however dismissed. The assessee, thereafter, approached the Customs, Excise and Service Tax Appellate Tribunal (for short, "CESTAT") and the CESTAT has passed order dated February 6, 2006 [2006 (205) E.L.T. 753 (Tri.-Bang.)] holding that the assessee should discharge duty liability on the transaction value, which is actually the amount paid on the Bill of Lading quantity. However, insofar as demurrage is concerned, it has held that the same is includible in the transaction value. In forming this opinion, the Tribunal relied upon its earlier order in the case of this very assessee, which is reported as 2002 (141) E.L.T. 247 (Tri.-Bang.).

5. We have heard the counsel for the parties at length. It is not even necessary to go into the various nuances of the matter as we are of the opinion that these appeals are bound to fail on one simple ground. The demurrage charges are admittedly incurred after the goods reached at Indian ports and, therefore, it is a post-importation event. Such charges, therefore, cannot form part of the transaction value. Issue in this behalf is settled by this very Bench in the case of Commissioner of Customs, Ahmedabad v. M/s. Essar Steel Ltd., 2015 (319) E.L.T. 202 (S.C.).

6. Following the aforesaid judgment, these appeals fail and are, accordingly, dismissed.