
(2015) 11 SC CK 0003

In the Supreme Court Of India

Case No : Civil Appeal No. 5285 of 2007

Commissioner of Customs

APPELLANT

Vs

Arcadia Shipping Ltd.

RESPONDENT

Date of Decision : 04-11-2015

Acts Referred:

Citation : (2015) 326 ELT 21

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

Bench : Division Bench

Advocate : S/Shri K. Radhakrishnan, Senior Advocate, Ashok K. Srivastava, Subas C. Acharya, D.K. Srivastav, Ms. Sushma Manchanda and B. Krishna Prasad, Advocates, for the Appellant; Dr. Kailash Chand, S/Shri Sujay Kantawala, Yugandhara Jha, Ms. Keki Vajpai and Kunal Verma, Advocates, for the Respondent

Final Decision : Dismissed

Judgement

1. The respondents herein imported barge in India. It was brought with diving equipments. These diving equipments were welded onto the barge at Abu Dhabi (UAE) for the project work. It has come on record that this welding was necessary for diving operation to be conducted and was done in December, 1998 at Abu Dhabi prior to the import of the barge with the said equipment at Sikka port in India on 27-12-1998.

2. The respondents-assessee had filed Bill of Entry classifying the aforesaid barge under Chapter Heading 8901.90 and exemption was claimed under Notification No. 20/99-Cus., [dated] 28-2-1999. However, show cause notice dated 18-1-2000 was issued to the respondents by the Deputy Commissioner of Customs on the ground that no declaration in respect of diving equipments was made. The Commissioner charged the respondents on the suppression of facts on the aforesaid ground and on that basis, not only extended period of limitation as invoked but it was also stated in the show cause notice that Diving Equipments were liable to payment of duty and were also liable to confiscation under Section 111(d)(f) and (i) of the Customs Act, 1962 (hereinafter referred to as "Act").

3. After hearing the respondents, the Commissioner confirmed the demand made in the show cause notice by passing Order-in-Original dated 22-6-2000. Aggrieved by the said order, the respondents filed appeal before the Customs, Excise and Service Tax Appellate Tribunal (hereinafter referred to as "CESTAT"), which was allowed by the CESTAT vide order dated 23-2-2006 [2006 (201) E.L.T. 139 (Tri. - Mum.)]. The CESTAT, inter alia, held that definition of "Stores" under Section 2(38) of the Act would indicate a wide range of equipments for use in a vessel, whether fitted or not, and on that basis, held that since the diving equipment was used in a vessel, these shall be included in the definition of stores. It also held that definition of Stores does not stipulate ownership boundaries to be relevant and the test is "for use in a vessel" and not in the context of "used in the vessel".

4. The Department preferred the appeal against this order, which has been dismissed by the High Court vide impugned judgment dated 9-10-2006 [2008 (221) E.L.T. A151 (Guj.)] holding that no question of law arises.

5. Challenging that order, the present appeal is preferred by the Department.

6. After going through the records and on the facts of this case, we are of the opinion that it is not even necessary to go into the question raised, viz., whether the aforesaid diving equipments could be treated as part of Stores under Section 2(38) of the Act. The reason for saying so is that in the instant case, the barge was brought with diving equipments welded onto the barge when that arrived at Sikka port in India. The diving equipment remained welded to the barge and was only used insofar as the barge is concerned which was to be used at Sikka port. It was granted exemption and barge was working in Sikka port from 27-12-1998 to 27-8-1999 and thereafter, went back to Abu Dhabi (UAE) with diving equipments which remained welded on to the barge.

7. When we examine the matter on the aforesaid facts, the issuance of show cause notice was uncalled for. The appeal is, therefore, dismissed leaving the question open as to whether under normal circumstances, diving equipment would be treated as stores within the meaning of Section 2(38) of the Customs Act, 1962.