

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE
TRIBUNAL
BANGALORE**

REGIONAL BENCH - COURT NO. 1

Customs Appeal No. 22628 of 2014

(Arising out of Order-in-Appeal No. COC-CUSTOM-000-APP-136-14-15
dated 25.06.2014 passed by the Commissioner of Customs
(Appeals), Cochin.)

M/s. Philips Carbon Black Ltd.

Karimugal,
Brahmapuram, P.O,
Cochin – 682 303.

Appellant(s)

VERSUS

The Commissioner of Customs

Customs House,
Cochin – 682 009.

Respondent(s)

WITH

Customs Appeal No. 20548 of 2016

(Arising out of Order-in-Appeal No. COC-CUSTOM-000-APP-337/2015-
16 dated 31.12.2015 passed by the Commissioner of Customs
(Appeals), Cochin.)

The Commissioner of Customs

Customs House,
Cochin – 682 009.

Appellant(s)

VERSUS

M/s. Philips Carbon Black Ltd.

Karimugal,
Brahmapuram, P.O,
Cochin – 682 303.

Respondent(s)

APPEARANCE:

None for the Assessee.

Shri Neeraj Kumar, Superintendent (AR) for the Revenue.

**CORAM: HON'BLE DR. D.M. MISRA, MEMBER (JUDICIAL)
HON'BLE MRS. R. BHAGYA DEVI, MEMBER
(TECHNICAL)**

FINAL ORDER NO. 21335 - 21336 /2024

DATE OF HEARING: 13.12.2024

DATE OF DECISION: 13.12.2024

PER: D.M. MISRA

These two appeals are filed, one by the appellant and another by the Revenue, involving common issues; hence, these are taken up together for hearing and disposal.

2. Briefly stated the facts of the case are that the appellant had imported Carbon Black Feed Stock Oil through Cochin Port against Bill of Entry No.5049262 dated 31.10.2011 (Appeal No. C/22628/2014) declaring the total imported quantity as 10000 MTS; and in Bill of Entry No.169492 dated 21.11.2005 as 8364.53 MTS (Appeal No.C/20548/2016). The assessee was issued with a letter for discharging differential duty on the value of the quantity received on which duty was paid and the transaction value of the quantity shown in the respective invoices. Consequently, demand of Rs.25,077/- and Rs.66,851/- were confirmed. The contention of the assessee all along was that there was short-receipt of the imported goods in their shore tank; accordingly, the value has been arrived at on the said quantity and duty was paid. Aggrieved by these orders, assessee preferred appeals before the learned Commissioner (A), who in turn rejected the Orde-in-Original No.47/2012, hence, assessee is in appeal (Appeal No. C/22628/2014) and the Order-in-Original No.67/2013 dated 08.05.2013 was rejected by the learned Commissioner (A); hence, Revenue is in appeal (Appeal No. C/20548/2016).

3. None appeared for the assessee. Heard learned Authorised Representative for the Revenue.

4. We find that the issue is no more *res integra* and is covered by the judgment of the Hon'ble Supreme Court in the case of Mangalore Refinery & Petrochemicals Ltd. vs. CC, Mangalore: 2015 (323) ELT 433 (SC). Their Lordships observed as follows:

"15. We are afraid that each one of the reasons given by the Tribunal is incorrect in law. The Tribunal has lost sight of the following first principles when it arrived at the aforesaid conclusion. First, it has lost sight of the fact that a levy in the context of import duty can only be on imported goods, that is, on goods brought into India from a place outside of India. Till that is done, there is no charge to tax. This Court in *Garden Silk Mills Ltd. v. Union of India*, 1999 (8) SCC 744 = 1999 (113) E.L.T. 358 (S.C.), stated that this takes place, as follows :-

"It was further submitted that in the case of Apar (P) Ltd. [(1999) 6 SCC 117 = JT (1999) 5 SC 161] this Court was concerned with Sections 14 and 15 but here we have to construe the word "imported" occurring in Section 12 and this can only mean that the moment goods have entered the territorial waters the import is complete. We do not agree with the submission. This Court in its opinion in Bill to Amend Section 20 of the Sea Customs Act, 1878 and Section 3 of the Central Excises and Salt Act, 1944, Re [AIR 1963 SC 1760 = (1964) 3 SCR 787 sub nom Sea Customs Act (1878), S. 20(2), Re] SCR at p. 823 observed as follows :

"Truly speaking, the imposition of an import duty, by and large, results in a condition which must be fulfilled before the goods can be brought inside the customs barriers, i.e., before they form part of the mass of goods within the country."

It would appear to us that the import of goods into India would commence when the same cross into the territorial waters but continues and is completed when the goods become part of the mass of goods

within the country; the taxable event being reached at the time when the goods reach the customs barriers and the bill of entry for home consumption is filed.” [at paras 17 and 18]

16. Secondly, the taxable event in the case of imported goods, as has been stated earlier, is “import”. The taxable event in the case of a purchase tax is the purchase of goods. The quantity of goods stated in a bill of lading would perhaps reflect the quantity of goods in the purchase transaction between the parties, but would not reflect the quantity of goods at the time and place of importation. A bill of lading quantity therefore could only be validly looked at in the case of a purchase tax but not in the case of an import duty. Thirdly, Sections 13 and 23 of the Customs Act have been wholly lost sight of. Where goods which are imported are lost, pilfered or destroyed, no import duty is leviable thereon until they are out of customs and come into the hands of the importer. It is clear therefore, that it is only at this stage that the quantity of the goods imported is to be looked at for the purposes of valuation. Fourthly, the basis of the judgment of the Tribunal is on a complete misreading of Section 14 of the Customs Act. First and foremost, the said Section is a section which affords the measure for the levy of customs duty which is to be found in Section 12 of the said Act. Even when the measure talks of value of imported goods, it does so at the time and place of importation, which again is lost sight of by the Tribunal. And last but not the least, “transaction value” which occurs in the Customs Valuation Rules has to be read under Rules 4 and 9 as reflecting the aforesaid statutory position, namely, that valuation of imported goods is only at the time and place of importation.

17. The Tribunal’s reasoning that somehow when customs duty is *ad valorem* the basis for arriving at the quantity of goods imported changes, is wholly unsustainable. Whether customs duty is at a specific rate or is *ad valorem* makes not the least difference to the above statutory scheme. Customs duty whether at a specific rate or *ad valorem* is not leviable on goods that are pilfered, lost or destroyed until a bill of entry for home consumption is made or an order to warehouse the goods is made. This, as has been stated above, is for the reason that the import is not

complete until what has been stated above has happened. The circular dated 12th January, 2006 on which strong reliance is placed by the revenue is contrary to law. When the Tribunal has held that a demand or duty on transaction value would be leviable in spite of "ocean loss", it flies in the face of Section 23 of the Customs Act in particular, the general statutory scheme and Rules 4 and 9 of the Customs Valuation Rules.

18. We therefore, set aside the Tribunal's judgment and declare that the quantity of crude oil actually received into a shore tank in a port in India should be the basis for payment of customs duty. Consequential action, in accordance with this declaration of law, be carried out by the customs authorities in accordance with law. All the aforesaid appeals are disposed of in accordance with this judgment."

5. Following the aforesaid judgment, we do not see any merit in the Appeal No. C/22628/2014 filed by the Revenue and the impugned order rejecting the contentions of the appellant by the learned Commissioner (Appeals), cannot be sustained. Consequently, the Revenue's appeal is dismissed and the appeal filed by the assessee is allowed.

6. Appeals are disposed of on above terms.

(Order pronounced and dictated in Open Court.)

(D.M. MISRA)
MEMBER (JUDICIAL)

(R. BHAGYA DEVI)
MEMBER (TECHNICAL)

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