IN THE CUSTOMS EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH, MUMBAI

Appeal No. C/820/2012

Arising out Order-in-Appeal No. 273/MCH/AC/0II/2012, Dated: 25.02.2012
Passed by the Commissioner of Customs (Appeals), Mumbai Zone I

Date of Hearing: 11.03.2019
Date of Decision: 11.03.2019

M/s PANAMA PETROCHEM LTD

Vs

COMMISSIONER OF CUSTOMS (IMPORT)
MUMBAI

Appellant Rep by: Ms Lakshmi Menon, Adv.
Respondent Rep by: Shri Bhushan Kamble, AC AR

CORAM: C J Mathew, Member (T)
Ajay Sharma, Member (J)

Cus - Assessee is in appeal against impugned order which upheld the confirmation of differential duty on finalization of assessment under section 18 of Customs Act, 1962, on imports covered by 124 bills of entry - The dispute pertains to the value to be adopted for assessment of liquid bulk cargo - The bills of entry were finalised by levying duty on value in the invoice which reflects the quantity loaded at the port of origin - The Supreme Court examined the several provisions in Customs Act, 1962 and, based on the legal position that levy of customs duty is restricted to goods that are brought into India, that the taxable event is the import of goods, that import duty is not leviable on goods that are lost, pilfered or destroyed, and that the measure of value of imported goods cannot be delinked from the contextual of time and place of import, has held that the duty liability is to be ascertained only on the quantity received in the shore tank - The effect of judgement is to nullify the circular relied upon by lower authorities - Consequently, the impugned order is set aside: CESTAT

Appeal allowed

Case laws cited:

Mangalore Refinery & Petrochemicals Ltd v. Commissioner of Customs, Mangalore - 2015-TIOL-199-SC-CUS... Para 1

Acalmar Oils & Fats Ltd v. Commissioner of Customs, Vijayawada [2017 (351) ELT 335 (Tri-Hyd.)]... Para 1

FINAL ORDER NO. A/85479/2019

Per: C J Mathew:

M/s Panama Petrochem Ltd is in appeal against order-in-appeal no. 273/MCH/AC/0II/2012 dated 25th February 2012 of Commissioner of Customs (Appeals), Mumbai Zone I which upheld the confirmation of differential duty on finalization of assessment, under section 18 of Customs Act, 1962, on imports covered by 124 bills of entry. For long, the issue of the quantity of liquid bulk that, upon imports into India, are to be saddled with duties of customs has been dogged by controversy. While customs authorities insisted that the load port quantity, evidenced by bill of lading, should be the basis, importers would invariably seek to discharge liability on the quantity received as ascertained from the 'shore tank receipt' reports. The Central Board of Excise and Customs, in circular no. 96/2002-Customs dated 27th December 2002, directed that shore tank quantity should determine levy at the effective rate of duty. Thereafter, upon consideration of the issue afresh, Central Board of Excise and Customs by circular no. 6/2006-Customs dated 12th January 2006 distinguished the 'liquid bulk' imports chargeable on specific rate and ad valorem rates and, while retaining the stand for the former, directed that, where rate of duty was ad valorem, the quantity being immaterial, the invoice price, representing transaction value, would be subject to duty liability with no provision for loss on board. The lower authorities proceeded to finalise the provisional assessments and, hence, this appeal against the confirmation of the finalised provisional assessment.

1. According to Learned Counsel for the appellant, the dispute has since been settled by the decision of the Hon'ble Supreme Court in *Mangalore Refinery & Petrochemicals Ltd v. Commissioner of Customs, Mangalore [2015 (323) ELT 433 (SC)]* = *2015-TIOL-199-SC-CUS* wherein it has been held that

'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.) = 2002-TIOL-19-SC-CUS-LB 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] =2002-TIOL-366-SC-CUS-LB 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.'

and that the Tribunal has followed this judgement in *Acalmar Oils & Fats Ltd v. Commissioner of Customs, Vijayawada [2017 (351) ELT 335 (Tri-Hyd.)]*.

2. Learned Authorised Representative submits that the lower authorities, being bound by the circular of the Central Board of Excise & Customs referred to in the impugned order, were not in error.

3. The dispute pertains to the value to be adopted for assessment of liquid bulk cargo. The bills of entry were finalised by levying duty on the value in the invoice which reflects the quantity loaded at the port of origin. The Hon'ble Supreme Court examined the several provisions in Customs Act, 1962 and, based on the legal position that levy of customs duty is restricted to goods that are brought into India, that the taxable event is the import of goods, that import duty is not leviable on goods that are lost, pilfered or destroyed, and that the measure of value of imported goods cannot be delinked from the contextual of time and place of import, has held that the duty liability is to be ascertained only on the quantity received in the shore tank. The effect of the judgement is to nullify the circular relied upon by the lower authorities. Consequently, the impugned order is set aside and appeal allowed.