REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. 2753 OF 2006

M/S. MANGALORE REF. & PETROCHEMICALS LTD. …Appellant

Versus

COMMISSIONER OF CUSTOMS, MANGALORE …Respondent

WITH
CIVIL APPEAL NO. 1109 OF 2007
CIVIL APPEAL NOS. OF 2015
(ARISING OUT OF S.L.P. (C) NOS. 1906-1943 OF 2009)

CIVIL APPEAL NOS. 4738-4755 OF 2010
CIVIL APPEAL NOS. 4770-4806 OF 2010
CIVIL APPEAL NOS. 4808-4809 OF 2010
CIVIL APPEAL NOS. 5465-5562 OF 2010
CIVIL APPEAL NOS. 7774-7775 OF 2011
CIVIL APPEAL NO. 11357 OF 2011
CIVIL APPEAL NOS. 8666-8667 OF 2013
CIVIL APPEAL NO. 3628 OF 2015
CIVIL APPEAL NO. 5074 OF 2015
CIVIL APPEAL NO. 5052 OF 2015
CIVIL APPEAL NOS. 9279-9283 OF 2012
CIVIL APPEAL NOS. 4480-4486 OF 2014

J U D G M E N T

R.F. Nariman, J.

1. Leave granted in Special Leave Petition (Civil) Nos. 1906-1943 of 2009.

2. In this batch of appeals an interesting question arises on the import of crude oil by the appellants. We will take the facts contained in Civil Appeal No. 2753 of 2006 for the purpose of deciding these matters.

3. In the said Civil Appeal, during the period 13.01.1996 to 15.03.1998, crude oil was imported by the appellant by way 144 voyages of vessels, and 71 consignments out of the said 144 voyages were said to have escaped payment of full customs duty. As a result the total duty thus short paid for the 71 consignments out of the 144 voyages worked out to Rs.6,59,49,685/- (Basic Duty Rs.6,16,88,210/- and Special Customs Duty Rs.42,61,475/-) on the total differential assessable value of Rs.23,71,30,242/- for the period from 13.1.96 to 15.3.98. These figures were arrived at as revenue in its show cause notice dated 7th January, 2000 stated that the quantity of crude oil mentioned in the various bills of lading should be the basis for payment of duty, and not the quantity actually received into the shore tanks in India. This was stated on the basis that since duty was now levied on an *ad valorem* basis and not on a specific rate, the duty should be paid on the bill of

lading quantity based on the ullage obtained when the goods were loaded on the vessel in the country of export. On 14th April, 2000, the appellant submitted its reply to the show cause notice and stated that it makes no difference as to whether the basis for customs duty is at a specific rate or is *ad valorem*, inasmuch as under the various judgments of the Tribunal upheld by the Supreme Court, the quantity of goods at the time of import alone is to be looked at. This flows from a reading of the Customs Act, 1962 and the Customs Valuation (Determination of Price of Imported Goods) Rules, 1988 and therefore the show cause notice ought to be dropped.

4. On 24th July, 2002, the Commissioner of Customs passed a detailed order in which he held that since the basis of customs duty had changed into an *ad valorem* regime, "transaction value" would necessarily mean the value at which the goods were to be purchased from the foreign supplier. According to the learned Commissioner, full payment for the goods has to be made by the importer only on the basis of the quantity mentioned in the bill of lading. This being the case, therefore the "transaction value" of the said goods would only be as per the payment made of the amounts stated in the bill of lading and not the quantity received ultimately in the shore tanks at ports in India.

5. An appeal filed to CESTAT was dismissed on 6th February, 2006. The Tribunal accepted the Commissioner's reasoning.

6. Shri Lakshmikumaran, learned counsel appearing for the appellants in these appeals, urged before us that the Tribunal in the present case had lost sight of the fact that the taxable event is only when goods are imported, and that therefore valuation at the time of import alone has to be looked at. He further argued that the reasoning of the Tribunal was entirely fallacious, and that it misconstrued Section 14 of the Customs Act and did not give proper heed to Sections 12, 13 and 23 of the said Act. In any event, he argued that "transaction value" which is laid down under the Customs Valuation Rules cannot be read in such a manner that it would go contrary to the provisions of the parent statute.

7. Ms. Pinky Anand, learned Additional Solicitor General appearing on behalf of the revenue, supported the judgment of the Tribunal and argued that since the basis of customs duty has changed and since a circular dated 12th January, 2006 by the Government of India, Finance Department made it clear that import duty should be based only on the invoice price which is the price paid or payable for imported goods irrespective of the quantity ascertained through shore tank measurement, it is this

price alone that should be taken into account for valuation purposes. Further, according to her, "transaction value" would necessarily mean the price that is payable for goods when sold for export to India and that therefore such price would only be referable to the quantity of goods mentioned in the bill of lading.

8. Having heard learned counsel for the parties it is important to first set out the relevant provisions contained in the Customs Act as under:-

"Section 2. Definitions

(22) "goods" includes –
(a) vessels, aircrafts and vehicles;
(b) stores;
(c) baggage;
(d) currency and negotiable instruments; and
(e) any other kind of movable property;

2(23) "import", with its grammatical variations and cognate expressions, means bringing into India from a place outside India;
2(25) "imported goods" means any goods brought into India from a place outside India but does not include goods which have been cleared for home consumption;
Section 12. Dutiable goods. - (1) Except as otherwise provided in this Act, or any other law for the time being in force, duties of customs shall be levied at such rates as may be specified under the Customs Tariff Act, 1975 (51 of 1975), or any other law for the time being in force, on goods imported into, or exported from, India.

(2) The provisions of sub-section (1) shall apply in respect of all goods belonging to Government as they apply in respect of goods not belonging to Government.
Section 13. Duty on pilferred goods. - If any imported

goods are pilferred after the unloading thereof and before the proper officer has made an order for clearance for home consumption or deposit in a warehouse, the importer shall not be liable to pay the duty leviable on such goods except where such goods are restored to the importer after pilferage.

Section 23. Remission of duty on lost, destroyed or abandoned goods. –

(1) Without prejudice to the provisions of section 13, where it is shown to the satisfaction of the Assistant Commissioner of Customs or Deputy Commissioner of Customs that any imported goods have been lost otherwise than as a result of pilferage or destroyed, at any time before clearance for home consumption, the Assistant Commissioner of Custom or Deputy Commissioner of Customs shall remit the duty on such goods.

(2) The owner of any imported goods may, at any time before an order for clearance of goods for home consumption under section 47 or an order for permitting the deposit of goods in a warehouse under section 60 has been made, relinquish his title to the goods and thereupon he shall not be liable to pay the duty thereon.”

Section 47. Clearance of goods for home consumption.- (1) Where the proper officer is satisfied that any goods entered for home consumption are not prohibited goods and the importer has paid the import duty, if any, assessed thereon and any charges payable under this Act in respect of the same, the proper officer may make an order permitting clearance of the goods for home consumption.

(2) Where the importer fails to pay the import duty under sub-section (1) within two days, excluding holidays from the date on which the bill of entry is returned to him for payment of duty, he shall pay interest at such rate, not below ten per cent and not exceeding thirty-six per cent per annum, as is for the time being fixed by the Central Government, by

notification in the Official Gazette on such duty till the date of payment of said duty:

Provided that the Central Government may, by notification in the Official Gazette, specify the class or classes of importers who shall pay such duty electronically:

Provided further that where the bill of entry is returned for payment of duty before the commencement of the Customs (Amendment) Act, 1991 and the importer has not paid such duty before such commencement, the date of return of such bill of entry to him shall be deemed to be the date of such commencement for the purpose of this section:

Provided also that if the Board is satisfied that it is necessary in the public interest so to do, it may, by order for reasons to be recorded, waive the whole or part of any interest payable under this section."

9. Rules 2(1)(f) and 4(1) of the Customs Valuation (Determination of Price of Imported Goods) Rules, 1988 read as follows:-

"2. Definitions - (1) In these rules, unless the context otherwise requires:
(f) "transaction value" means the value determined in accordance with Rule 4 of these rules"

Rule 4. Transaction value. – (1) The transaction value of imported goods shall be the price actually paid or payable for the goods when sold for export to India, adjusted in accordance with the provisions of Rule 9 of these rules."

10. On a reading of the aforesaid provisions, it is clear that the levy of customs duty under Section 12 is only on goods imported into India. Goods are said to be imported into India when they are

brought into India from a place outside India. Unless such goods are brought into India, the act of importation which triggers the levy does not take place. If the goods are pilferred after they are unloaded or lost or destroyed at any time before clearance for home consumption or deposit in a warehouse, the importer is not liable to pay the duty leviable on such goods. This is for the reason that the import of goods does not take place until they become part of the land mass of India and until the act of importation is complete which under Sections 13 and 23 happens only after an order for clearance for home consumption is made and/or an order permitting the deposit of goods in a warehouse is made. Under Section 23(2) the owner of the imported goods may also at any time before such orders have been made relinquish his title to the goods and shall not be liable to pay any duty thereon. In short, he may abandon the said goods even after they have physically landed at any port in India but before any of the aforesaid orders have been made. This again is for the good reason that the act of importation is only complete when goods are in the hands of the importer after they have been cleared either for home consumption or for deposit in a warehouse. Further, as per Section 47 of the Customs Act, the importer has to pay import duty only on goods that are entered for home consumption. Obviously,

the quantity of goods imported will be the quantity of goods at the time they are entered for home consumption.

11. Even under Section 14 of the Customs Act, when goods are to be valued for the purpose of assessment, such valuation is only when the goods are ordinarily sold or offered for sale for delivery <u>at the time and place of importation</u> in the course of international trade. It is thus seen that under the Customs Act, the levy of import duty cannot take place until goods are imported, that is, brought into India. Obviously, therefore, it is the quantity of goods brought into India alone that attracts the levy of import duty.

12. The Customs Valuation Rules which defines "transaction value" also speaks of the price that is actually paid or payable only for "imported goods". Unless goods are imported, that is, "brought into India" no such price is actually paid or payable. Further, under Rule 4 of the Customs Valuation Rules, such transaction value must be adjusted in accordance with the provisions of Rule 9. Rule 9(2), the import of which has been missed by the Tribunal in the impugned judgment, states as follows:-

> "Rule 9(2) For the purposes of sub-section (1) and sub-section (1A) of Section 14 of the Customs Act, 1962 (52 of 1962) and these rules, the value of the imported goods shall be the value of such goods, for delivery at the time and place of importation and shall include –

(a) The cost of transport of the imported goods to the place of importation;
(b) loading, unloading and handling charges associated with the delivery of the imported goods at the place of importation; and
(c) the cost of insurance:

Provided that –
(i) where the cost of transport referred to in clause (a) is not ascertainable, such cost shall be twenty per cent of the free on board value of the goods;
(ii) the charges referred to in clause (b) shall be one per cent of the free on board value of the goods plus the cost of transport referred to in clause (a) plus the cost of insurance referred to in clause (c);
(iii) where the cost referred to in clause (c) is not ascertainable, such cost shall be 1.125% of free on board value of the goods;

Provided further that in the case of goods imported by air, where the cost referred to in clause (a) is ascertainable, such cost shall not exceed twenty per cent of free on board value of the goods:
Provided also that where the free on board value of the goods is not ascertainable, the costs referred to in clause (a) shall be twenty per cent of the free on board value of the goods plus cost of insurance for clause (i) above and the cost referred to in clause (c) shall be 1.125% of the free on board value of the goods plus cost of transport for clause (iii) above.
Provided also that in case of goods imported by sea stuffed in a container for clearance at an Inland Container Depot or Container Freight Station, the cost of freight incurred in the movement of container from the port of entry to the Inland Container Depot or Container freight Station shall not be included in the cost of transport referred to in clause (a).”

13. This Rule merely restates what is already stated in Section 14, namely, that the value of imported goods has to be the value of such goods for delivery only at the time and place of importation. Therefore, it is clear that even a reading of “transaction value”

under the Rules would necessarily arrive at the same result, namely, that the quantity of goods to be seen for purposes of valuation can only be after they are imported, that is, brought into India and have to be so at the time and place of importation.

14. The Tribunal's judgment dated 6th February, 2006 gives several reasons for arriving at the conclusion that the bill of lading quantity alone is to be looked at for the purpose of determining the value of goods imported. The first reason that it gives is that duty has to be on the total payment made by the assessee irrespective of the quantity received. The second reason given is that an *ad valorem* duty would necessarily lead to this result but duty levied at the specific rate would not, the quantity of goods in the latter case being only on the basis of the quantity of crude oil received in the shore tank. The third reason that it gives is that Section 14 kicks in when the duty is on an *ad valorem* basis and Sections 13 and 23 do not stand in the way because it is not the question of demanding duty on goods not received, but it is the demand of duty on the transaction value. In spite of the "ocean loss", the appellant has to make payment on the basis of the Bill of Lading quantity.

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, 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 pilferred, 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.

……….….………...J.
(A.K. Sikri)

……..….…………...J.
(R.F. Nariman)

New Delhi,
September 2, 2015.