

**IN THE SUPREME COURT OF INDIA**  
**CIVIL APPELLATE JURISDICTION**  
**CIVIL APPEAL NOS. 2691-2728 OF 2009**

COMMISSIONER OF CENTRAL EXCISE  
MANGALORE

.....APPELLANT(S)

VERSUS

M/S. MANGALORE REFINERY AND  
PETROCHEMICALS LIMITED

.....RESPONDENT(S)

**WITH**

**CIVIL APPEAL NO. 1454 OF 2011**

**ORDER**

**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 finalization 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 ₹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 09, 2003 was issued in this behalf, which resulted in passing of order dated March 07, 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 06, 2006 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) ELT 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) ELT 2021.
- 6) Following the aforesaid judgment, these appeals fail and are, accordingly, dismissed.

.....J.  
(A.K. SIKRI)

.....J.  
(ROHINTON FALI NARIMAN)

**NEW DELHI;  
AUGUST 27, 2015.**

ITEM NO.106

COURT NO.13

SECTION III

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

Civil Appeal No. 2753/2006

M/S. MANGALORE REF. & PETROCHEMICALS LTD

Appellant(s)

VERSUS

COMMNR. OF CUSTOM, MANAGALORE  
(With office report)

Respondent(s)

WITH

C.A. No. 1109/2007  
(With Office Report)

SLP(C) No. 1906-1943/2009  
(With Interim Relief and Office Report)

C.A. No. 2691-2728/2009  
(With Office Report)

C.A. No. 4738-4755/2010  
(With Office Report)

C.A. No. 4770-4806/2010  
(With Office Report)

C.A. No. 4808-4809/2010  
(With Office Report)

C.A. No. 5465-5562/2010  
(With Office Report)

C.A. No. 1454/2011  
(With Office Report)

C.A. No. 7774-7775/2011  
(With Office Report)

C.A. No. 11357/2011  
(With Office Report)

C.A. No. 8666-8667/2013  
(With Office Report)

C.A. No. 3628/2015  
(With appln.(s) for permission to file additional documents  
and Office Report)

C.A. No. 5074/2015

(With appln.(s) for permission to file additional documents and appln.(s) for stay and Office Report)

C.A. No. 5052/2015

(With appln.(s) for stay and appln.(s) for permission to file additional documents and Office Report)

Date : 27/08/2015

These matters were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE A.K. SIKRI

HON'BLE MR. JUSTICE ROHINTON FALI NARIMAN

For Parties

Mr. V. Lakshmikumaran, Adv.

Mr. M. P. Devanath, Adv.

Mr. Vivek Sharma, Adv.

Ms. Disha Jain, Adv.

Mr. Abhinav Jagnathan, Adv.

Mr. Rachit Jain, Adv.

Mr. Hemant Bajaj, Adv.

Mr. Anandh K., Adv.

Mr. S. Vasudevan, Adv.

Ms. L. Charanaya, Adv.

Ms. Pinky Anand, ASG.

Mr. A. K. Panda, Sr. Adv.

Mr. Arijit Prasad, Adv.

Ms. Sunita Rani Singh, Adv.

Mr. Karan Seth, Adv.

Mr. B. Krishna Prasad, Adv.

Mrs. Anil Katiyar, Adv.

Mr. Arvind Kumar Sharma, Adv.

UPON hearing the counsel the Court made the following

O R D E R

C.A. No. 2753/2006, C.A. No. 1109/2007,, C.A. No. 4738-4755/2010, C.A. No. 4770-4806/2010, C.A. No. 4808-4809/2010, C.A. No. 5465-5562/2010, C.A. No. 7774-7775/2011, C.A. No. 11357/2011, C.A. No. 8666-8667/2013, C.A. No. 3628/2015, C.A. No. 5074/2015, C.A. No. 5052/2015, SLP(C) No. 1906-1943/2009

Before the hearing in these matters started, learned counsel for both the parties informed that there are some more matters which raises the same issue. These are Civil Appeal Nos. 9279-83 of 2012 and Civil Appeal No. 4480-4486 of 2014.

A request is made by learned counsel for both the parties to take up these matters as well along with the matters listed today for hearing. Request is accepted. The aforesaid matters two matters viz., Civil Appeal Nos. 9279-83 of 2012 and Civil Appeal No. 4480-4486 of 2014 are taken on board.

Heard learned counsel for the parties.

Arguments concluded.

Judgment reserved.

Applications for permission to file additional documents are allowed.

C.A. No. 2691-2728/2009 and C.A. No. 1454/2011

The appeals are dismissed in terms of the signed order.

(Nidhi Ahuja)  
COURT MASTER

(Renu Diwan)  
COURT MASTER

[Signed order is placed on the file.]