

SUPREME COURT OF INDIA

Commissioner of Customs (Prev.), Gujarat

Vs.

Atam Manohar Ship Breakers Ltd.

C.A.No.146 of 2004

(S.H. Kapadia and B. Sudershan Reddy JJ.)

11.11.2008

ORDER

1. The issue for consideration in this Civil Appeal concerns determination of the value of a ship imported by M/s. Atam Manohar Ship Breakers Ltd. (respondent herein).

2. On 13th April, 1999, a Memorandum of Agreement (MoA) was entered into between the respondent and the seller for importing the vessel for ship breaking. In the said MoA, the value indicated was USD 9,70,906.23. The ship arrived at Bhavnagar on 19th April, 1999. The Customs Officer boarded the ship for inspection on 20th April, 1999. On the same day, a Survey Report was prepared stating that the vessel was suitable to stay afloat at Alang anchorage. On 20th April, 1999, Entry Inward was given to the vessel. On 21st April, 1999, physical delivery was given by the Master to the respondent. The respondent filed its Bill of Entry on 29th April, 1999 in which there was a reference to the MoA dated 13th April, 1999. At this stage, it may be mentioned that, according to the respondent, on 29th April, 1999, an Addendum No.II came to be inserted in the MoA dated 13th April, 1999 which addendum existed on 29th April, 1999 when the Bill of Entry stood filed. By virtue of the said addendum, the price stood reduced from US\$ 9,70,960.23 to US\$ 8,70,960.23. To complete the chronology of events, it may be stated that on 28th May, 1999, a provisional assessment was made which was finalized by the Assessing Officer (AO) on 11th January, 2001 on the basis of the value of the vessel fixed at US\$ 9,70,960.23. The matter was carried in appeal by the respondent to the Commissioner who came to the conclusion, on the facts of the case, that since the price stood reduced prior to the filing of the Bill of Entry, that price constituted the value of the vessel. Accordingly, the Commissioner reversed the order of the AO holding that the value of the vessel was not US\$ 9,70,960.23 but US\$ 8,70,960.23. This decision was confirmed by the Tribunal. Hence, this Civil Appeal.

3. At the outset, we may state that we are concerned with the facts of the present case alone. We do not intend to lay down the law in this case. We have not examined the said question.

4. We may also point out that in this case we are basically concerned with the genuineness of the addendum to the MoA dated 13th April, 1999. If one looks at the said addendum, we find

that the date on which the said addendum stood executed is not given. Further, when did the addendum stand incorporated in the MoA. We do not find the date on which the clause stood inserted in the MoA. Further, the said addendum does not give any reason for reduction in the price from US\$ 9,70,960.23 to US\$ 8,70,960.23. Further, the most clinching factor to be seen is that the said addendum appears to have been executed at the request of the buyer. In our view, this is a self-serving document. In this connection, it may also be noted that the MoA dated 13th April, 1999 states that the vessel is bought on "as is where is" basis. If that be the case, we do not know on what basis the value of the vessel stood reduced from US\$ 9,70,960.23 to US\$ 8,70,960.23.

5. Lastly, it is stated on record that one of the items was not in a working condition and by way of damages, the price stood reduced. It is not so stated in the addendum. If it is the case of damages, then, surely it would have been so stated in the addendum.

6. For the afore-stated reasons, we set aside the impugned judgment and we allow this Civil Appeal of the Department with no order as to costs.