

LEVY OF AND EXEMPTIONS FROM CUSTOMS DUTY

Question 1

ABC imported a vessel 'Waterloo' for the purpose of breaking from XYZ Ltd. of U.K. A memorandum of understanding was signed between the buyer and seller on 2.6.2010 and ABC took delivery of the vessel on 4.6.2010. Vessel drifted and landed in the yard of B in a damaged condition on 9.6.2010. On 24.6.2010, ABC filed application to concerned Assistant Commissioner for extension of time to file bill of entry, which was granted on 12.8.2010. ABC paid ₹ 24 crores to XYZ Ltd. towards the purchase price of the vessel. Thereafter, ABC sold the vessel to B for ₹ 12 crores and B filed bill of entry on 12.9.2010. Assessing authority assessed the ship taking the value as ₹ 24 crores and ship was taken over by B after assessment order was passed. 'B' argues that assessable value should be taken as ₹ 12 crores since the vessel was damaged because of the storm which made the vessel drift during appellate proceedings. No application for abatement of duty was made before the assessing authority by ABC or B. Examine whether benefit of relief under section 22 of the Customs Act, 1962 to reduce the value and thereby duty can be extended to B under the above circumstances. The assessment order in respect of bill of entry was passed on 23.12.2010.

(5 Marks) (June 2009)

Answer

Supreme Court in the case of *Udayani Ship Breakers Ltd. v. Commissioner of Custom & Excise 2006(195)E.L.T.3(SC)* held that in order to claim the benefit of the abatement under section 22, the party claiming the abatement has to satisfy the Assessing Authority that a case has been made out under section 22 for abatement of duty on damaged or deteriorated goods. In the absence of any claim made under section 22 in writing to the Assessing Authority, the appellant (B) could not claim the abatement under section 22 and the Assessing Authority did not record rightly to its satisfaction that the appellant was entitled to the abatement of duty.

In this case, damage occurred in Indian shore. Importer sought extension of time to file bill of entry. But, thereafter remitted the purchase price and sold the vessel to B. B in turn filed the bill of entry and the vessel was assessed. No application was made by the buyers i.e.,

importer (ABC) to the Assistant Commissioner for any abatement of duty on damaged goods.

The transaction between the importer (ABC) and the appellant (B) cannot be described as the transaction of purchase and sale during the course of international trade. Any sale of goods carried out, after the act of 'import' within the meaning of the Act is over, can only be described as a sale in the course of domestic trade and not a sale in the course of international trade. Therefore, the appellant i.e., buyer (B) who had purchased the vessel in the course of domestic trade was not entitled to seek any abatement of duty under section 22 of the Customs Act, 1962 on the ground on which it claimed before the Appellate Authority.

Hence, in the light of above discussion, it can be inferred that the assessable value of the ship would be the transaction value, which the importer (ABC) paid at the time of importation i.e., ₹ 24 crores.

Question 2

Explain briefly, legal provisions relating to pilfered goods under the Customs Act, 1962.

(2 Marks) (June 2009)

Answer

Section 13 provides that if imported goods are pilfered after unloading thereof but before the proper officer has made an order for clearance for home consumption or deposit in a warehouse, no duty is payable on the goods, unless the pilfered goods are restored to importer. The importer does not have to prove pilferage. However, the loss must be only due to pilferage. Section 13 is not applicable for warehoused goods.