

Customs, Excise and Gold Tribunal - Tamil Nadu

Chowgule Brothers vs Commissioner Of Customs on 23 February, 1996

Equivalent citations: 1996 (85) ELT 254 Tri Chennai

ORDER V.P. Gulati, Member (T)

1. This appeal is against the order of the Addl. Collector of Customs, Cochin. Under the impugned order, the appellants have been levied a penalty of Rs. 1,92,062 for the reason that the quantity of the liquid ammonia landed was found to be short as compared to the manifested quantity.

2. The learned Counsel pleaded that the learned lower authority has gone by the quantity certified by the jurisdictional officers as landed in the shore banks. He pleaded that when the vessel arrived a survey was carried out and the vessel was carrying a quantity of 13309 as against the manifested quantity of 13173.025. He pleaded that after the arrival at the first port of Cochin, the vessel discharged the manifested quantity meant for Cochin. Thereafter, it proceeded to Tuticorin where the balance of the manifested quantity was discharged for the three consignees. He has pleaded that the learned lower authority has not arrived at the shortage following the ratio of the Bombay High Court in the case of M/s. Shaw Wallace & Co. Ltd. v. Asstt. C.C. reported in 1986 (25) E.L.T. 948 (Bom.). He pleaded that if the method as has been held to be applicable by the Hon'ble Court in the present case, the appellant would be liable to duty in respect of shortage of 14.947 as against the shortage of 63.913 as held by the learned lower authority in the impugned order.

3. The learned SDR has no objection to the methodology as held applicable by the Hon'ble High Court to be applied in the present case for arriving at the shortage.

4. We observe that in the present case it has been brought to our notice that when the vessel arrived, a survey was carried out based on the ullage report and it was found out that the vessel was carrying a quantity shorter than it was shown as manifested and thereafter after discharge, another survey was done and again on the arrival at Tuticorin a survey was carried out. The ullage report, therefore, would be available for the vessel at the time of its arrival and after discharge both at Cochin and Tuticorin. The learned lower authority, therefore, in terms of the order of the Hon'ble High Court should have taken note of these ullage reports before arriving at any conclusion in regard to the shortage. In the present case, there is an admitted shortage of 14.947 as against the ullage shortage of 63.913. Before holding against the appellants for the higher figure of shortage, the learned lower authority should have adverted to the ullage reports as desired by the Hon'ble High Court. The findings of the learned lower authority in this regard is not proper. In regard to shortage of 14.947, the appellant is liable to penalty. In this view of the matter, we direct the learned lower authority to decide the matter de novo so far as the total quantum of shortage that may be there in the light of the above after affording the appellants an opportunity of hearing.