TARIFF AUTHORITY FOR MAJOR PORTS

NOTIFICATION

No.TAMP/72/99-CHPT - In exercise of the powers conferred by Sections 49 and 50 of the Major Port Trusts Act, 1963 (38 of 1963), the Tariff Authority for Major Ports hereby disposes of a representation received from M/s. Sreedhar Clearing Services Private Limited about classification of their import of Pilot Fermentation Plant for assessment of wharfage charges in the CHPT Scale of Rates as in the Order appended hereto.

Case No.TAMP/72/99-CHPT

M/s. Sreedhar Clearing Services Pvt. Ltd. . . .
. .
Applicant

Vs.

The Chennai Port Trust . . .
. .
Respondent

ORDER

(Passed on this 10th day of April 2000 )

This case relates to a representation received from M/s. Sreedhar Clearing Services Private Limited about classification of their imports of Pilot Fermentation Plant for assessment of wharfage charges. It has been argued that the CHPT has collected wharfage @ 0.44% under the Heading No.95-B of its scale of rates which relates to ‘goods not covered elsewhere’ instead of against item No.50 which relates to “plant and machinery with parts” attracting a wharfage charge @ 0.11%.

2. M/s. Sreedhar Clearing Services Private Limited have made the following submissions in support of their arguments:

   (i). M/s. Orchid Chemicals and Pharmaceuticals Limited have imported three Pilot Fermentation plants used in the manufacture of drugs. The machinery consists of the following parts:

      (a). 1KL, 0.3KL and 0.05KL Reactors with jacket and Insulation.
(b). Mixing Machine.
(c). Liquid and Air Filters
(d). Pressure and Solenoid Valves.
(e). Heat Exchangers.

(ii). All the parts are assembled together and imported as one unit and the invoice also carries one value only.

(iii). The Customs Authorities have assessed the consignment under the Chapter Heading ‘machinery, plant and laboratory equipment, other than machinery or plant of a kind used for domestic purposes’.

3. As the importers wanted the machinery urgently, the clearing agents got the consignment cleared by paying wharfage @ 0.44% at the first instance, as demanded by the CHPT; and, subsequently, approached the Port Trust for refund of the excess amount by reclassifying the import under item 50 of the Scale of Rates of the CHPT. However, their request has not been agreed to by the CHPT.

4. Comments were called for from the CHPT as well as the Madras Chamber of Commerce and Industry (MCCI).

5. The MCCI have made the following submissions:

(i). The CHPT Scale of Rates provides a distinct heading under item No.50 of Scale-A, General, Chapter II, ‘Wharfage’ which covers “Machinery of all kinds and Parts thereof”. That being so, the classification should have been done under item No.50 attracting a wharfage of 0.11%.

(ii). The Customs have classified the item under Custom Tariff 8419.89 which covers ‘machinery, plant or laboratory equipment’. The Customs have accepted the imported item as single unit of machinery.

(iii). Classification of the item by the CHPT under serial No.95-B -- ‘goods not elsewhere specified’ and collecting a wharfage at 0.44% is not correct, when there is a specific heading under S.No.50 for “Machinery of all kinds and parts thereof”.

6. The CHPT in their reply have justified their stand on the following grounds:
(i). The description as given in the Bill of Entry is ‘Spares Equipments for Pilot Fermentation Plant with Spares and Accessories’. Although the party has claimed the imported cargo as machinery in reality as per the shipping documents it is Spares Equipments, Spares Accessories, Pipes and instrumentation for the Pilot Fermentation Plant and nowhere the description “Mixing Machine” is found in the shipping documents or the invoice.

(ii). Plant and machinery do not mean one and the same thing. Though the plant may comprise besides other things machinery by itself, the word Plant does not connote machinery.

(iii). The decision has been taken to classify the item under 95-B because of variations in definitions between Plant and Machinery and the directions given by the Accountant General (Audit) and the Government. Whenever there is scope for interpretation, it is the prerogative of the Port Trust to interpret classification of an item in a manner which is beneficial to its revenue.

(iv). The CHPT Scale of Rates does not have a separate classification for ‘Plant’. The Port has therefore classified the item under 95-B - ‘goods not otherwise specified’ for the purpose of wharfage assessment.

(v). If the claim of the party that Plant and Machinery are one and the same is accepted, it may lead to a piquant situation where even ‘vehicles’ can be classified as machinery attracting lower wharfage.

7. M/s. Sreedhar Clearing Services Private Limited have responded to the submissions made by the CHPT as under:

(i). The Indian Customs follow internationally accepted Harmonised System of Nomenclature (HSN), as a signatory to WTO and WCO. Classification of any imported item is crucial as it affects tax, duty on the import, etc., and for this purpose the Customs have qualified officers, specialising in classification of various items of import.

(ii). The Customs have accepted the import as “machinery”.

(iii). The present import is ‘spare equipment’ for Pilot Fermentation Plant and is not Plant by itself.
(iv). When the import is an equipment of machinery and when there is a specific heading for machinery in the port Scale of Rates under item No.50, applying a different classification is incorrect.

(v). The Port is a service provider and a service industry. It must apply the right tariff instead of charging at the highest rate.

8. A joint hearing in this case was held at the CHPT. During the joint hearing the following arguments were advanced:

M/s. Sreedhar Clearing Services Private Limited

(i). What we imported was machinery. The explanation given in this regard was accepted by the Customs. However, the CHPT has not accepted it.

(ii). We have followed the international practice of invoicing for which we shall not be penalised.

(iii). There is no question of ambiguous classification to reduce Customs duty – We have paid the highest duty.

(iv). Customs manuals are voluminous and their classifications are based on a thorough scrutiny.

(v). Unless Customs are satisfied in detail, they will not even release the goods.

The Madras Chamber of Commerce and Industry

(i). What is necessary is to be clear about whether it is a machinery or not?

(ii). Even a part of machinery should go under item 50 and not 95 - B.

(iii). This is a case of import of a composite unit of machinery. The CHPT cannot insist on itemisation.

(iv). It is a Custom built item. There is no product brochure.

(v). Importer has given a description of the process and also a diagram.

(vi). The CHPT must not go by maximisation of revenue. It must apply the correct tariff.
(vii). The CHPT’s argument that ‘plant’ is mentioned in invoice is incorrect. It only says, spares for a plant.

(viii). This is not a case of heterogeneous items. This is an integrated item. Sl. No. 18 of the CHPT scale of rates is, therefore, not relevant. If the CHPT contention is accepted, then, all imports will go under item 95 – B.

(ix). Chapter 84 of Customs Tariff is relevant. Internationally it is taken as a classification only for machinery. Accordingly, it has adopted the Harmonised System of Nomenclature. CHPT also must adopt it and abide by it.

(x). Greater harmony between the Port and the Customs is required in such matters. Two public bodies cannot be allowed to adopt different approaches in such basic matters. There were such unacceptable differences in the matter of definition of ‘coastal vessels’ also. The TAMP had to resolve it. Likewise, TAMP may take a larger view in this case also and resolve the dispute.

There can be no objection for the CHPT to adopt the same Harmonised System of Nomenclature for purposes of classification of cargo. The Port can always have a set of tariffs relevant to its position. But, the cargo classification shall not be arbitrary or discordant; it shall be harmonious.

**The Chennai Port Trust**

(i). The CHPT is not bound by Customs classification. They have only one type of rating. The CHPT go either by *ad valorem* or by weight.

(ii). The importer says, ‘this is not plant’, possibly, because the Customs rate is higher for a plant.

9. With reference to the totality of information collected during the processing of this case and the facts given above, the following position emerges:

(i). This case relates to a dispute about classification by the CHPT of the cargo imported by the Applicant-Firm. In view of urgency reported by the importer, the Applicant-Firm of Clearing Agents paid the wharfage according to the (allegedly) wrong classification done and cleared the consignment. Subsequently, with reference to the decision taken by the Customs Authorities in the matter, they approached CHPT with a request for re-classification and refund of the excess wharfage collected. The CHPT rejected the request. Hence this case.
The CHPT says, there is ambiguity about the description and, therefore, the cargo has to go under the residuary item 95-B i.e., ‘goods not covered elsewhere’.

The Applicant-Firm has vehemently contested this contention; and, has pleaded for the cargo being classified under Item 50 viz., ‘Plant and Machinery with parts’.

According to the CHPT, the shipping documents are so worded as to render it impossible for classifying the cargo as ‘machinery’.

The Applicant-Firm has argued that it has followed the international practice of invoicing and should not be penalised for doing that.

The CHPT claims that the import is described as ‘Plant’ in the invoice; and, ‘Plant’ and ‘Machinery’ are not the same.

This claim of the CHPT has been contested by the Applicant-Firm who point out that the invoice does not describe the import as a ‘Plant’ but as ‘spares for a Plant’.

The CHPT is also reported to have taken recourse to a reference item No.18 under Scale-B, General, Chapter II Wharfage, for treating the consignment as a package of more than one variety of articles carrying different rates of wharfage so as to apply the highest rate.

The Applicant-Firm has contested the contention that this is a case of import of heterogeneous items. According to them, this is a case of import of an integrated item i.e., of a composite unit of machinery. That being so, reference to item No.18 will not be relevant at all.

The CHPT has observed that the shipping documents have, possibly, been deliberately confusingly worded so as to prevent any classification of the consignment as a ‘Plant’ which may attract a higher Duty.

The Applicant-Firm has discounted this allegation with the observation that there has been no attempt to reduce Customs Duty by wrong description; actually, Customs Duty has been paid at the highest rate.

The CHPT has apparently been impelled to classify the consignment under the residuary category because of audit objections earlier in similar cases.

Citing an earlier audit observation on the subject (received through the Ministry of Surface Transport) and a Court ruling about classification of cargo being the prerogative of the Port Trust, the CHPT has claimed that it is the
prerogative of the Port, in cases of ambiguity, to classify the cargo in a manner most beneficial to its revenues.

The Applicant-Firm has contested this observation with the plea that the CHPT, as a service-organisation, must apply the correct tariff and not be guided by motivations for maximising revenues.

(viii). While it may not be disputed that the shipping documents in this case lend scope for different interpretations, and while undeniably the CHPT may have the prerogative to classify cargo in cases of ambiguity, it has to be seen whether this is one such case in which the Port will be required to exercise its prerogative. Ordinarily, a Public Trust, and a service-organisation at that, will be expected to resort to exercise of such discretion only as a last resort. In this case, evidently, a resort was available to remove the ambiguity before exercising the ultimate prerogative. The Customs Authority, with the help of its vast experience and voluminous manuals, had classified the consignment as ‘machinery’. There was, perhaps, therefore, no need for the CHPT to take recourse to exercise its prerogative of last resort.

It is relevant here to recognise that the Customs Authority has been making use of the internationally standardised Harmonised System of Nomenclature for purposes of classifying cargo for levy of Customs Duty.

It is noteworthy that the Customs Authority has long-standing experience in this work and has also a vast retinue of experienced, qualified and specialist staff to conduct a thoroughgoing scrutiny in such cases.

Significantly, while a Port Trust is a service-organisation levying ‘a fee for service provided’, the Customs Authority is an agency collecting a tax by way of revenue. If there was scope, because of any ambiguity in this case, to classify the consignment in reference as anything other than ‘machinery’, they would surely have done that. That being so, the classification of cargo done by such an agency cannot be lightly dismissed. It cannot but be said to provide a reliable guidance for proper classification of the cargo. Even if the Port had already collected wharfage, because of the confusion that governed the case, based on the Applicant-Firm’s request for a re-classification, the CHPT should have amended its classification with retrospective effect.

(ix). In fact, in the matter of classification of cargo, at the port-level, there has to be complete harmony between the approaches adopted by the Port Trust and the Customs Authority, both of whom are instrumentalities of the same Government. This Authority had an occasion to deal with this issue earlier when it gave a commonly acceptable definition of what is a ‘coastal vessel’ and what is a ‘foreign-going vessel’. This case has done well to bring up this issue in sharper focus. And, the representative of the INSA who attended the joint hearing, has
rightly urged that the TAMP must take a larger view in this case and resolve the
dispute comprehensively.

There can be no objection for a Port Trust to adopt the same Harmonised
System of Nomenclature for purposes of classification of cargo. A Port Trust can
always have a set of tariffs relevant to its position. But, the cargo classification
need not be arbitrary or discordant; it shall be harmonious.

(x). In this backdrop, the CHPT argument that whereas the Customs Authority
has only one type of rating, a Port Trust has many types – value-based, weight-
based, unit-based, volume-based – has no particular significance. What is relevant
is appropriate ‘classification’. The port can collect its revenues as per the rates
notified but with reference to the ‘appropriate classification’.

10. In the result, and for the reasons stated above, the Authority
decides as follows:

(i). The approach adopted by the CHPT in this case is not justified, as there is
no case of irreconcilable ambiguity.

(ii). The refusal by the CHPT to be guided by the decision taken by the
Customs Authority is not reasonable.

(iii). The request of the Applicant-Firm for a re-classification of the cargo and
refund of the excess wharfage collected is acceptable.

(iv). The Authority shall take steps to introduce harmony between the systems
adopted by the Port Trusts and the Customs Authority for classification of cargoes.

11. Accordingly, the CHPT is directed to reclassify the cargo in
reference under item No.50B of its Scale of Rates and levy a wharfage only
@ 0.11%.

S.SATHYAM, Chairman

[Advt./III/IV/Exty./143/2000]

[ List of Ports | List of Orders]