

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL  
CHENNAI**

REGIONAL BENCH – COURT NO. III

**CUSTOMS APPEAL No.40161 of 2020**

(Arising out of Order-in-Appeal Seaport C.Cus.II No.715/2019 dated 13.12.2019  
passed by the Commissioner of Customs (Appeals-I), Chennai)

**M/s.E – Factor Adventure Tourism (P) Ltd.**

**Appellant**

101-A, Kundan Kutir, Hari Nagar,  
Ashram,  
New Delhi 110 014.

VERSUS

**The Commissioner of Customs**

**Respondent**

Custom House, No.60, Rajaji Salai,  
Chennai 600 001.

**APPEARANCE :**

Smt. Madhumitaa Bagchi, Advocate  
For the Appellant

Shri S. Balakumar, AC (AR)  
For the Respondent

**CORAM : HON'BLE MS. SULEKHA BEEVI, MEMBER (JUDICIAL)  
HON'BLE MR. P. ANJANI KUMAR, MEMBER(TECHNICAL)**

**DATE OF HEARING : 09.06.2022  
DATE OF PRNOUNCEMENT :13.06.2022**

**FINAL ORDER No. 40227 / 2022****PER: P. ANJANI KUMAR**

Brief facts of the case are that M/s. E-Factor Adventure Tourism (P) Ltd (appellants), imported two used motor boats describing the same as "Excursion Boats" and filed Bill of Entry No.4913901 dated 23.01.2018 and classified the same under CTH 89011030 and have availed exemption in terms of Sl.No.551 of Notification No.50/2017-Cus. dated 30.06.2017. The Bill of Entry was selected for first check examination and on the basis of examination of the report dated 31.01.2018 the department sought to classify the goods under CTH 89039200 and the provisional assessment was ordered to be finalized; differential duty of Rs.1,71,39,839/-, was confirmed, vide OIO dated 23.03.2019. The order passed by the original authority was upheld by the impugned order dated 13.12.2019. Hence, this appeal.

2. Smt. Madhumitaa Bagchi, Learned Counsel appearing for the appellants submits that the appellants are MSME and have been put to great financial difficulty due to the excessive action taken by the department. She submits that the impugned order did not consider the submissions by the appellants and the orders passed by the very same Commissioner in respect of some other importer in an identical case; the department erred in classifying the boat as pressure yacht. She submits

that the boat was purchased on the basis of the permission granted by the Andhra Pradesh Tourism Development Corporation to run in the coastal waters for the purpose of tourism only and not for use by any individual for pleasure.

3. Learned Authorized Representative Shri S. Balakumar reiterates the findings of the OIO and OIA and submits that the boat was classified as yacht as per the registration in the country of origin i.e. Britain and there was no registration by Mercantile Marine Department (MMD).

4. Heard both sides and perused the records of the case. We find that Merchant Shipping (Vessels in commercial use for sports and pleasure) 1998 defines pleasure vessel as:

“Pleasure Vessel” means –

- (a) Any vessel at the time it is being used is :
  - (i)
    - (aa) in the case of a vessel wholly owned by an individual or individuals, used only for the sport or pleasure of the owner or the immediate family or friends of the owner; or
    - (bb) in the case of a vessel owned by a body corporate, used only for sport or pleasure and on which the person on board are employees or officers of the body corporate, or their immediate family or friends; and
    - (ii) on a voyage or excursion which is one for which the owner does not receive money for or in connection with operating the vessel or carrying any person, other than as a contribution to direct expenses of the operation of the vessel incurred during the vessel incurred during the voyage or excursion; or
  - (b) Any vessel wholly owned by or on behalf of a members' club formed for the purpose of sport or pleasure which, at the time it is being used, is used only for the sport or pleasure of members of that club or their immediately family, and for the use of which any charges levied are paid into club funds and applied for the general use of the club; and
  - (c) In the case of any vessel referred to in paragraphs (a) or (b) above on other payments are made by or on behalf of users of the vessel, other than by the owner.

- (d) In this definition, “immediately family” means –
- (e) In relation to an individual, the spouse or civil partner of the individual, and “relative” means brother, sister, ancestor or lineal descendant;”

5. From the above, it can be seen that the boat to be considered as a pleasure vessel or boat is to be owned and used by an individual or a body corporate for themselves or a group of people who are duly authorized or permitted. Whereas in the instant case, the boat is used for tourism purposes. It can be seen that Government of Andhra Pradesh, Port Department, Kakinada have issued a provisional certificate of registration to the boats imported by the appellants. The Department of Tourism, Government of Andhra Pradesh, Visakhapatnam have certified that the boats are imported by the appellants for the purpose of creating excursions and itineraries in Vizag to facilitate development of promotion of tourism in adventure. This being the case, we find that it is not open for the department to consider the boats to be pleasure yachts to be used by a person or group of persons.

6. We further find that CTH 8901 categorises the “Excursion boats” as below:

**“89.01 – Cruise ships, excursion boats, ferry-boats, cargo ships, badges and similar vessels for the transport of persons or goods.**

- 8901.10 – Cruise ships, excursion boats and similar vessels principally designed for the transport of persons; ferry-boats of all kinds
- 8901.20 - Tankers
- 8901.30 - Refrigerated vessels, other than those of subheading 8901.20
- 8901.90 - Other vessels for the transport of goods and other vessels for the transport of both persons and goods.

This heading covers all vessels for the transport of persons or goods, other than vessels of heading 89.03 and lifeboats (other than rowing boats), troop-ships and hospital ships (heading 89.06); they may be for sea navigation or inland navigation (e.g., on lakes, canals, rivers, estuaries); The heading includes :

- (1) Cruise ships and excursion boats.
- (2) Ferry-boats of all kinds, including train-ferries, car-ferries and small river-ferries.
- (3) Tankers (petrol, methane, wine, etc.)
- (4) Refrigerated vessels for the transport of meat, fruit, etc.
- (5) Cargo vessels of all kinds (other than tankers and refrigerated vessels), whether or not specialised for the transport of specific goods. These include ore vessels and other bulk carriers (for the transport of, e.g., grain, coal), container ships, Ro-Ro (roll-on-roll-off) ships and LASH-type vessels.
- (6) Barges of various kinds, lighters and pontoons being flat-decked vessels used for the transport of goods and, sometimes, of persons.
- (7) Vessels of the hydroglider type, hydrofoils and hovercraft.”

7. From the above, it can be seen that the excursion boats are classifiable under 8901. Therefore, the classification arrived at by the Revenue cannot be sustained. Moreover, we find that learned Commissioner (Appeals) while dealing with the import of similar boats by M/s. Nanda Agency House Shipping Services Pvt. Ltd. vide Order-in-Appeal, Seaport Cus.II No.588/2019 dated 28.11.2019, held that

“9. The AA has classified the impugned Boat as “Yacht” citing that the imported vessel has been certified as per the European C.R Recreational Craft Directive 94/25/EC. He further recorded that the crafts specifically intended to be crewed and to carry passengers for commercial purposes are clearly excluded from the Directive. It is evident that this is a boat, which is being crewed and carries passengers; therefore, automatically it stands excluded by the above cited E.U. Directive. Therefore, the assessment of the AA is perverse and arbitrary. Accordingly, the classification done by him under CTH 8903 as a ‘yacht’ is to be rejected. Reliance is placed upon the case of Chimanlal Desai Vs Union of India AIR 1956 Cal. 542 wherein it has been

held that an assessee entitled to have the assessment made under the proper legal provision and that the assessing authority whether administrative or quasi-judicial cannot by an arbitrary decision transform the goods belonging to one category to another and confiscate the same.

8. Moreover, we find that the impugned order argues that boats or vessel are not registered with MMD. It is seen that in response to an application made by the appellants MMD inform that in terms of Merchant Shipping Act, 1958, the boats cannot be registered as they are more than 20-25 years old and are of less than 20 tonnage and as the area of operation is in Vizag, MMD Chennai cannot register them and they are to be registered locally only. We find that the boats are registered by the Port Authority at Kakinada. As submitted by the appellant, there is no report given by MMD that the impugned boats are yachts.

9. In view of the above, we are of the considered opinion that the impugned order, has erred in concluding that the imported boats are yachts classifiable under CTH 8903, cannot be sustained. In view of the discussion above, we hold that the same are classifiable under CTH 8901.

10. In the result, we set aside the impugned order and allow the appeal with consequential relief, if any, as per law.

(Pronounced in Court on 13.06.2022)

**(SULEKHA BEEVI C.S.)  
MEMBER (JUDICIAL)**

**(P. ANJANI KUMAR)  
MEMBER (TECHNICAL)**