

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 1961 OF 2011

M/S ORIENT(GOA) PVT. LTD.

Appellant(s)

VERSUS

THE COMMISSIONER OF INCOME TAX

Respondent(s)

O R D E R

This appeal takes exception to the judgment and order dated 16.10.2009 passed by the High Court of Bombay at Goa in Tax Appeal No.7 of 2005.

Briefly stated, the appellant is engaged in the business of export of ore from the State of Goa to foreign countries, like Japan. For transport of the same ore to the foreign country, the foreign buyer charters the ships from the country of origin to receive the ore loaded by the exporters into the ships and deliver the same to the foreign buyers. In the present case, the charterer is a foreign company by name Mitsui & Co. Ltd, Japan and admittedly it is a non-resident payee of tax.

In the present case, the assessment year is 1997-1998 (financial year 01.04.1996 to 31.03.1997). The Assessing Officer had invoked provisions of Section 172 read with

Section 40 of the Income Tax Act, 1961 (for short 'the Act') to fasten liability on the appellant for not deducting TDS from the amount paid by the appellant to foreign company towards demurrage charges. These transactions were effected prior to 31.03.1997 while the provision of Section 172 of the Act was construed to mean that carriage charges would not include demurrage charges.

For that reason, a specific amendment was brought into force by Finance Act, 1997 which received President's assent on 14.05.1997. Indeed, sub-section (8) in Section 172 of the Act has come into being vide amendment notified after President's assent on 14.05.1997 but is given retrospective effect from 01.04.1976 treating demurrage charges or handling charges as amount paid or payable on account of carriage, referred to in sub-section (2) of Section 172 of the Act.

However, indisputably, at the relevant time when the transactions in question were effected and completed the demurrage charges were not regarded as an amount payable towards carriage. If so, the appellant-assessee was not obliged to nor could have deducted TDS from the amount paid towards demurrage charges to the foreign entity.

Whereas, the responsibility of recovering taxes from the owner of the outgoing ship or charterer was plainly on the Assessing Officer before the port clearance was granted and the ship was allowed to leave the port, as predicated in Section 172 itself. That provision (Section 172) was understood by the department as a self-contained code.

Considering the above, the liability fastened on the appellant herein for not deducting the TDS amount from the amount paid towards demurrage charges to the foreign entity cannot be countenanced.

In the facts of the present case, therefore, we allow this appeal and set aside the impugned judgment of the High Court and instead uphold and restore the one rendered by the Income Tax Appellate Tribunal dated 02.12.2004. No order as to cost.

Pending applications, if any, stand disposed of.

.....J
(A.M. KHANWILKAR)

.....J
(DINESH MAHESHWARI)

New Delhi
January 16, 2020

ITEM NO.101

COURT NO.7

SECTION IX

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Civil Appeal No(s). 1961/2011

M/S ORIENT(GOA) PVT. LTD.

Appellant(s)

VERSUS

THE COMMISSIONER OF INCOME TAX

Respondent(s)

Date : 16-01-2020 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE A.M. KHANWILKAR
HON'BLE MR. JUSTICE DINESH MAHESHWARI

For Appellant(s)

Mr. Yashraj Singh Deora, Adv.
Ms. Sonal M., Adv.
M/S. Mitter & Mitter Co., AOR

For Respondent(s)

Mr. Arijit Prasad, Sr. Adv.
Mr. Rupesh Kumar, Adv.
Mr Dharmendra Gupta, Adv.
Mrs. Anil Katiyar, Adv.
Mr. B. V. Balaram Das, AOR
Mrs. Anil Katiyar, AOR

UPON hearing the counsel the Court made the following
O R D E R

The civil appeal is allowed in terms of the signed order.

Pending applications, if any, stand disposed of.

(DEEPAK SINGH)
COURT MASTER (SH)

(VIDYA NEGI)
COURT MASTER (NSH)

[Signed order is placed on the file]