

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL  
MUMBAI**

**WEST ZONAL BENCH**

**EXCISE APPEAL NO: 86759 of 2016**

**WITH**

**EXCISE CROSS-OBJECTION NO: 91116 of 2016**

[Arising out of Order-in-Original No: GOA-EXCUS-000-COM-021-15-16 dated 31<sup>st</sup> March 2016 passed by the Commissioner of Central Excise & Service Tax, Goa.]

Commissioner of Central Excise  
B-14 Kossambe Building, Swatantra Path, Vasco  
Goa

*... Appellant*

*versus*

1. Vijai Marine Services  
B-14 Kossambe Building, Swatantra Path, Vasco,  
Goa
2. Highstreet Cruises and Entertainment Pvt Ltd  
Fisheries Jetty, Fisheries Deptt. Building,  
DB Road, Panaji Goa.
3. Delta Corp Ltd  
109 Bayside Mall, 2<sup>nd</sup> Floor, Tardeo Road, Haji Ali  
Mumbai

*... Respondents*

**APPEARANCE:**

Shri Roopam Kapoor, Principal Commissioner (AR) for the appellant

Shri JH Motwani with Ms Nehal Parekh, Advocates for the respondents

**CORAM:**

**HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)  
HON'BLE DR SUVENDU KUMAR PATI, MEMBER (JUDICIAL)**

**FINAL ORDER NO: A/87160 / 2019**

DATE OF HEARING: 01/05/2019  
DATE OF DECISION: 01/11/2019

PER: C J MATHEW

In this appeal we are called upon to resolve the dispute in classification of 'MV Royale Floatal', a vessel manufactured by M/s Vijai Marine Services in which Revenue is aggrieved by order-in-original no. GOA-EXCUS-000-COM-021-15-16 dated 31<sup>st</sup> March 2016 of Commissioner of Central Excise & Service Tax, Goa and seeks re-classification of the goods under heading no. 8903 9990, instead of heading no. 8901 9000 accepted by the adjudicating authority, of the First Schedule to Central Excise Tariff Act, 1985. It is common ground that the vessel was transformed from out of a 'dumb barge' and 'other equipment' imported by M/s Highstreet Cruises and Entertainment Pvt Ltd, Goa in June 2009, a subsidiary of M/s Delta Corp Ltd, which was also the holding company of M/s Delta Pleasure Cruise Company Pvt Ltd. M/s Vijai Marine Services was contracted for the conversion into a self-propelled luxury floating hotel which, held in the impugned order to be amounting to manufacture, was taken up for classification in chapter 89 of First Schedule to the Central Excise Tariff Act, 1985. The clearance, at a declared value of ₹ 11.89 crores, had been effected at 'nil' rate of duty applicable to heading no. 8905 of the First Schedule to the Central Excise Tariff Act, 1985 with entitlement to exemption under notification no. 12/2013-CE dated 1<sup>st</sup> March 2013.

2. The show cause notice proposed recovery of undischarged duty liability on the ground that the vessel was intended for deployment as an 'offshore casino' to be operated on the Mandovi river in Goa and that, under the pretext of clearing the same as a 'conveyance', the true intent of use and actual design of the impugned goods had been concealed to avail the consequences of the claimed classification. It was alleged that the 'dumb barge', converted as a 'self-propelled floating hotel' as per contract with M/s Highstreet Cruises and Entertainment Pvt Ltd was, thereafter, handed over to M/s Delta Pleasure Cruise Company Pvt Ltd on 'bare boat charter' and that the latter was a known operator of floating casinos, including MV Casino Royale, at the same location in Goa.

3. The adjudicating authority came to the conclusion that, notwithstanding the subsequent 'bare boat charter' and ultimate deployment as a floating casino, the evidence on record did not advance the proposal in the notice and that the vessel failed classification, at the time of clearance, as anything other than as conveyance for persons. Relying upon the extensive correspondence with the Commissionerate, the inspection effected by the surveyor M/s Ericson and Richards (Goa), the photographs made available to the central excise authorities, it was concluded in the impugned order that the changes wrought after clearance by respondent herein would have no impact on the classification. Further reliance was placed by

the adjudicating authority on the registration of the vessel as 'passenger ship' under the Inland Vessels Act, 1917 and on the certificate issued by the Indian Register of Shipping as that of 'passenger vessel' which, according to the adjudicating authority, precluded description as 'pleasure boat' as held by the Tribunal in *Raj Shipping Agency Ltd v. Commissioner of Customs [2015-TIOL1405-CESTAT-MUM]*. Disinclined to rely upon 'no objection certificate' dated 5<sup>th</sup> June 2014 issued by the Directorate of Health Services, Goa, indicating it to be a casino vessel, the adjudicating authority has held that the said authority lacked the relevant technical expertise to assist in classification of the impugned goods. Taking note of the independent operations of the holding company and its two subsidiaries, the adjudicating authority did not find that relationship among them sufficed for concluding that the intent was for deployment as other than 'passenger vessel'. Likewise, the budgeting documents of the holding company, as well as the statements of the officials of the holding company, were found to be wanting in the face of other overwhelming evidence. The reliance placed on the decision of the Tribunal in *Commissioner of Central Excise, Goa v. Waterways Shipyard Pvt Ltd [2013 (297) ELT 77 (Tri.Mumbai)]*, which was also found to be surprisingly, unseemly, has been discarded on facts in the impugned order.

4. The classification proposed in the show cause notice, and now

sought for in this appeal, is the residuary entry under the description of 'yachts and other vessels for pleasure or sports; rowing boats and canoes'. The broad heading has been sub-divided as 'inflatable' and 'others', and the latter of which includes 'sail boats', with or without auxiliary motors, 'motorboats', other than outboard motorboats and 'others'. Within the proposed sub-heading, the options are restricted to 'canoes' and 'others'. In other words, the vessel is sought to be described as for pleasure or sports which are not inflatable and are sail boat, motor boat/ rowing boats/canoes. Following the decision of the Tribunal in *Ashok Khetrapal v. Commissioner of Customs, Jamnagar* [2014 (304) ELT 408 (Tri.Ahmd.)] and on the count that the *Explanatory Notes* to the *Harmonized System of Nomenclature* did, in heading no. 8903, enumerate various inclusions which enlighten on the meaning assignable to 'vessels for pleasure or sports', it was concluded by the adjudicating authority, that floating casinos are not 'vessels for pleasure or sports'. Taking recourse to The Merchant Shipping (Vessels in Commercial Use for Sports or Pleasure) Regulations, 1988, it was further observed that

*'5.4 A definition of 'Pleasure vessel' appears in The Merchant Shipping (Vessels in Commercial Use for Sports or Pleasure) Regulations, 1988, issued as per the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 as adjusted by the Protocol signed at Brussels on 17-5-1993. As per these Regulations,*

*"Pleasure Vessel" means -*

- (a) any vessel which 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 persons 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 the direct expenses of the operation of 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, it used only for the sport or pleasure of members of that club or their immediate 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 no other payments are made by or on behalf of users of the vessel, other than by the owner."*

5.5 Above definition of a pleasure vessel gives support to the argument made by the Advocate of the importer that a vessel for pleasure or sport should be meant for personal consumption/use of the person/owner of a vessel. It is evident from the facts on record that the vessel POG imported by the importer is not used for personal use of the owner for pleasure or sport but is used for commercial purposes as a 'Casino vessel'. There is thus force in the argument of the importer that when the appropriate authorities under Section 3(38) of the Merchant Shipping Act, 1958, by issuing required certificates, have opined POG to be a passenger ship or

*Special Trade Passenger Ship then there is no ground for the adjudicating authority to hold that POG is not a passenger ship designed to carry passengers when no contrary opinion of another competent authority is brought on record saying that POG is a vessel for pleasure or sport.*

*5.6 Temporary use of POG in a stationary position will not change the classification of POG when the same is capable of moving across the seas/oceans but has to be mostly made stationary due to the restrictions imposed by the local laws. It will be a strange situation to classify a vessel under CTH 8901 if used for making trips to open sea, with a night halt arrangement in the sea, but classify the same vessel under CTH 8903 if used in a predominantly stationary position. In view of the above observations, we are of the opinion that Casino vessel POG imported by the importer is principally designed to carry passengers and has been correctly assessed under CTH 8901.'*

5. The issue, therefore, appears to be that, in the view of officers of central excise, gambling gives pleasure and the inclusion of such expression in heading no. 8903 of First Schedule to Central Excise Tariff Act, 1985 would suffice for resorting to that classification. An examination of the headings in chapter 89 of the First Schedule to Central Excise Tariff Act, 1985, as well as the *Explanatory Notes*, does not throw light on an exhaustive enumeration of 'boats for pleasure or sport'. It is common ground that the vessel was described as a 'floating hotel'. A vessel, whether of the simplest and most rudimentary structure or as opulent as the Titanic, is a mode of transport/habitation that is capable of buoyancy in water. Even if such

floating structure were to include facilities for games of skill, games of pleasure and games of chance, the functionality, as a means of transport, does not undergo transformation. The fine line of distinction between opulence and pleasurable degeneracy may pose a dilemma for the moralist but, in the absence of such considerations in ascertainment of rate of duty in the First Schedule to Central Excise Tariff Act, 1985, insistence upon classification on perception or usage would be tantamount to insinuating personal values which, while permissible in Legislative enactments, is to be eschewed in tax enforcement. The characteristic of buoyancy and the capacity to move is relevant to the classification in the default category under heading no. 8901 of First Schedule to Customs Tariff Act, 1975. Further, specialized classification will be contingent upon strict conformity with description of the headings in consonance with the principles of classification.

6. The original authority has established that the impugned vessel was, at the time of clearance, not endowed with the wherewithal to operate as a casino. This aspect is also not seriously disputed by Revenue. The original authority has further gone on to identify, supported by appropriate judicial decisions, the group of vessels intended to be classified under heading no. 8903 of the First Schedule to the Central Excise Tariff Act, 1985. Mere moral indignation against this logical finding will not carry weight and it is only logical counters

that we are required to look to in resolving this dispute. In our opinion, too, the opulence of the vessel or facilities available on board should not metaphorically capsize the classification on the figurative iceberg of taxation. It is also surprising that the show cause notice has invoked judicial pronouncement to allege flaws in classification when case law as precedent gives support only to findings and cannot be the basis for determining tax liability which should be founded on nothing but deviation from the statute.

7. According to Learned Authorised Representative, negation of the decision of the Tribunal in *re Waterways Shipyard Pvt Ltd* is incorrect as that settled classification should prevail and it was pleaded that the reliance placed by the adjudicating authority on the agreement, instead of ascertaining the status of the goods upon clearance from the yard of the respondent herein, is questionable. We do not find much substance in these submissions as the investigations commenced only after the clearance and it is the documentary record, relied upon by the adjudicating authority as evidence of the lack of any intent to transform a floating hotel or into something even more exclusive as a floating casino, that can throw light on the nature of the vessel at the time of clearance. The submission, on behalf of Revenue, that the nature of the goods had not been gone into is not acceptable; more particularly as there is no evidence of such fitment on the vessel at the time of clearance, on the submission of Learned

Authorised Representative that the specific description as ‘casino vessel’ by one governmental authority should prevail over general parlance deployed in other certification, it is our view that the generality of descriptions, and the particularly obvious absence of ‘casino vessel’ as one of the alternatives in the said certificates, does not detract from the conveyancing capacity of the vessel or to adopt the description of an authority, which function under a different statute with different objectives, that as of a final expert. While the broad trend of approach in his arguments may be endorsed by tax authority, we take note that the adjudicating authority has merely drawn attention to the certifying authorities as exemplification. Placing emphasis and in our opinion, rightly so, on the condition of the goods at the time of clearance, the adjudicating authority has merely noted the absence of descriptions of a more specific ‘identity’, by the certifying authorities, to conclude that no intervention was warranted.

8. Considering the detailed discussion on the statements of various officials of the user organisations, the submission of the Learned Authorised Representative does not impress and we find no reason to entertain those as supportive of the proposal to re-classify the goods.

9. In *re Waterways Shipyard Pvt Ltd*, the vessel in dispute was cleared in February 2001 and reliance was placed upon the

classification of the vessel as ‘special trade passenger ship’ to conclude that

*‘16. The contention of the respondent is that their vessel cannot be categorized as a vessel meant for pleasure or sports as internationally known vessels of pleasure or sports as defined in U.K., Australia and Canada are only those vessels which are owned privately by the owners or body corporate for their personal use or use for their family and the employees of the body corporate. Since the vessel does not fall under this category this cannot be classified as vessel for pleasure or sports. We find that definition of the vessel for pleasure or sports has not been incorporated in the Indian Merchant Shipping Act, which governs the registration and movement of the vessels in India. On the other hand, the Merchant Shipping Act specially defines Special Trade Passenger Ship and present vessel in question has been categorized as special trade passenger ship. The present vessel is used for casino games for people who are transported by the ferry to the vessel by the owner/lessee of the vessel. These activities fall under the category of special trade as defined under the Indian Merchant Shipping Act and would therefore be taken as a activities for the purpose of casino games, which are meant for pleasure of the people. Therefore, this would bring the vessel more appropriately under the Heading 8903 of the Central Excise Tariff.’*

10. Furthermore, this decision placed reliance on an earlier decision of the Tribunal in *Urmila & Co Pvt Ltd v. Collector of Customs, Bombay [1998 (104) ELT 97 (Tribunal)]* to the effect that

*‘17. On the consideration of the examination report, the*

*characteristics and features of the vessel as on record, the Collector of Customs, Bombay, had referred to a number of facilities which led to the conclusion that the imported vessel was a vessel for pleasure. Para 14 from the impugned order-in-original is extracted below:*

*“14. From the above, I hold that there is overwhelming evidence to hold that the imported goods are classifiable under Heading 89.03 Schedule I CTA, 1975. I hold that to decide what is the nature of the import of goods it is necessary to go by the intention of the manufacturer, the purpose for which it has been designed, and whether such a design or character of vessel of the original manufacturer was subsequently substantially changed or altered in such a way as not to recognise its original design, structure or character for classification, or whether the effect of the changes if any, made on the boat have made substantial changes in its design, structure and other features to be considered as a survey vessel. I hold that the importer has not lead such specific or substantive evidence to accept their contention that the character of the vessel as built by the original builder had been permanently changed. Accordingly, I reject their contention to classify it as other than yacht. In view of my findings, I hold that based on its original design, manufacture intention, shipping registration and other features noticed on inspection and the data available on records, the imported vessel is correctly classifiable as a `Pleasure Yacht` under Heading 8903.99 Schedule I CTA, 1975.”*

*18. We have already referred to above that the vessel in question was designed and registered as a vessel for pleasure. Its fittings, fixtures and equipment indicated that it was usable not for carrying cargoes or passengers for commercial purposes but was for vacation, enjoyment etc. The items for survey which were not part of the basic design of the vessel could not change the character and classification of the vessel.’*

and taking this finding to its logical conclusion, the Tribunal had held that as it is possible to classify the vessel impugned therein under heading 8901 and 8903 of First Schedule to Central Excise Tariff Act,

1985, such tied classification required recourse to rule 3(c) of Rules for Interpretation of the Schedule.

11. The conclusion of the Tribunal therein is apt for in accordance with the 'Rules for Interpretation' of the Schedule classification, under both heading no. 8901 and 8903 did exist as equally viable alternatives and that consequence. However, from the records of that dispute it is not certain if the classification adopted by the adjudicating authority was the one sought by the assessee or was re-determined. In the present instance, the assessee had sought classification under heading 8905 of the First Schedule to the Central Excise Tariff Act, 1985 and, against the proposal in the show cause notice to classify it under heading no. 8903, the adjudicating authority found it appropriate that heading no. 8901 should be adopted. Therefore, the decision in *re Waterways Shipyard Pvt Ltd* does not apply to the present dispute. Likewise, in *re Urmila & Co Pvt Ltd*, on which reliance has been placed in the decision of the Tribunal in *re Waterways Shipyard Pvt Ltd*, it was held that

*'8. In the various communications relied upon by the appellants and referred to in support of their claim that the vessel imported was not a vessel for pleasure, the vessel had been referred to as Cabin Cruiser cum Speed Boat and Cabin Cruiser cum Survey Boat. In the communication dated 29-10-1986 from the Ministry of Shipping and Transport, Mercantile Marine Department, addressed to the Chief Controller of Imports and Exports, the vessel had been*

*referred to as the Cabin Cruiser cum Speed Boat. In the certificate dated 23-12-1986 given by the Managing Director of the Appellants' Company, the vessel had been referred to as Cabin Cruiser cum Speed Boat. Cabin Cruiser is a motor boat having a cabin and equipped with berths, cooking and other facilities for living on board. According to the World Book Dictionary, cruiser is a person who sails about, travels or vacations on a pleasure boat. Pleasure boat has been defined as a boat designed or used for pleasure. Boat is generally a vessel smaller than ship. Boating brings pleasure to the people. The boats meant for boating for pleasure do not carry cargoes or passengers for commercial purposes. The boats powered by motor, range in length from about 10 ft to over 120 ft. Boats longer than 30 ft are often called yachts. These large boats have such built in features as beds, galleys and heads (toilets). The speed boat is a motor boat built to go fast, especially for use on lakes and rivers.*

*9. Survey is a general term and connotes the process of determining, the position, extant, contour etc. of an area usually for the purpose of preparing a chart. There is no separate classification for boats used for survey. It is the basic design of the vessel that determines its classification. A pleasure boat will not cease to be a pleasure boat even when it is used for survey purposes.*

*10. Under the scheme of the Customs Tariff ships, boats and floating structures were covered by Chapter 89 of the Customs Tariff. From the reading of the Tariff entries, it is seen that it is the basic design providing for its essential character as to make it a vessel of a particular kind (keeping in view the main function which the vessel was required to discharge) that determines the classification of the particular vessel. At the time of the construction of the vessel, the main*

*function which it is required to discharge guides the design. The conception and design of the vessel rather than its use is the determining factor. The classification of a vessel may not generally change, unless structural changes are effected, by its use by a particular customer for a purpose other than the purpose for which it is designed.*

*11. Under Heading No. 89.03 of the Customs Tariff, yachts and other vessels for pleasure or sports; rowing boats and canoes were covered. Under Chapter 89 the vessels were to be classified on the basis of their basic design. Their essential character and main function had to be related to the design as to be of a particular kind (refer Chapter Note 1 of Chapter 89). There are vessels for the transport of persons or goods; there are fishing vessels, factory ships and vessels for processing or preserving fishery products, tugs and pusher craft etc. There is nothing like survey boats as such.'*

which discarded the claim of the importer that it was intended to be used as a 'survey vessel' and requiring classification under an appropriate heading. This reinforces the general principle that, under customs law, it is the form in which the goods are presented that is relevant for classification and, as on the date of import, there was no indication of any change to convert to that of survey vessel.

12. In *re Ashok Khetrapal*, an identical issue of import of vessel for the purpose of utilization as 'casino vessel' was before the Tribunal. A fresh look was had at the inclusion of such vessels in heading 8903 of First Schedule to Customs Tariff Act, 1985 as the principle laid down by the Hon'ble Supreme Court in *Union of India v. VM Salgaoncar &*

*Bros. (P) Ltd [1998 (99) 3 (SC)]* had not been brought to the notice of the Tribunal and in view of contrary decisions. Therein, it was held that the descriptions in heading no. 8903 of the First Schedule to the Customs Tariff Act, 1975 was intended to convey a different meaning to 'pleasure boats' therein and decided that

*'5.2 In the light of above law laid down by Apex Court and the conflicting judgment of CESTAT Mumbai in the case of CCE v. Waterways Shipyard Pvt. Ltd. (supra), CGU Logistics Ltd. v. CC (I), Mumbai (supra) and Hal Offshore Ltd v. CC, Mumbai (supra), it has to be seen as to what is the nature of vessel POG. Whether it is a 'Passenger Ship' or a 'Pleasure vessel'. The words 'Passenger', 'Passenger Ship' and 'Pleasure Vessel' have neither been defined under the Customs Tariff Act nor in the HSN explanatory notes. The words 'Passenger' and 'Passenger Ship' 'Special Trade Passenger' and 'Special Trade Passenger Ship' have been defined under Section 3(24) and 3(25), 3(47B) and 3(47C) of the Merchant Shipping Act, 1958 as follows :-*

*"3. Definitions. - In this Act, unless the context otherwise requires, -*

*(24) "Passenger" means any person carried on board a ship except -*

- (a) a person employed or engaged in any capacity on board the ship on the business of the ship;*
- (b) a person on board the ship either in pursuance of the obligations laid upon the master to carry shipwrecked, distressed or other persons or by reason of any circumstances which neither the master nor the character, if any, could have prevented or forestalled;*
- (c) a child under one year of age;*

*(25) "Passenger ship" means a ship carrying more than*

*twelve passengers;”*

*(47B) “Special trade passenger” means a passenger carried in special trade passenger ship in spaces on the weather deck or upper deck or between decks which accommodate more than eight passengers and includes a pilgrim or a person accompanying a pilgrim;*

*(47C) “Special trade passenger ship” means a mechanically propelled ship carrying more than thirty special trade passengers.”*

*From the above definitions, it is not necessary, as contended by the Revenue that a passenger has to be carried from one place to another in a ship in order to hold that a vessel is a “passenger ship”. A person taken on board a vessel will also be considered as a passenger as per the above definitions. Various certificates issued by the competent authorities in favour of POG, as per Section 3(38) of the Merchant Shipping Act, 1958, also convey that POG is a passenger ship. It is observed from Para 3 of the order passed by CESTAT Mumbai in the case of CGU Logistics Ltd v. CC (I), Mumbai [2011 (274) ELT 75 (Tri-Mum)] that similar certificates were considered for classifying a vessel as cargo ship of CTH 8901 when special equipments were fitting on it for doing special tasks and Revenue was claiming the classification under CTH 8905.*

*5.3 It is further observed from the HSN explanatory notes under Heading 89.03 that the notes talk of all vessels for pleasure or sport. However, while specifying the inclusions mainly the notes talk of small boats like rowing boats, canoes, sail boats, motor boats, dinghies, sports fishing vessels, inflatable craft and boats, lifeboats propelled by oars, Yachts, etc. At the same time, neither the Customs Tariff Act nor the HSN Explanatory Notes say that all Casino vessels are vessels for pleasure or sport.*

*5.4 A definition of ‘Pleasure vessel’ appears in The*

*Merchant Shipping (Vessels in Commercial Use for Sports or Pleasure) Regulations, 1988, issued as per the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 as adjusted by the Protocol signed at Brussels on 17-5-1993. As per these Regulations,*

*“Pleasure Vessel” means -*

*(a) any vessel which 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 persons 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 the direct expenses of the operation of 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, it used only for the sport or pleasure of members of that club or their immediate 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 no other payments are made by or on behalf of users of the vessel, other than by the owner.”*

*5.5 Above definition of a pleasure vessel gives support to the argument made by the Advocate of the importer that a vessel for pleasure or sport should be meant for personal consumption/use of the person/owner of a vessel. It is evident from the facts on record that the vessel POG imported by the importer is not used for personal use of the owner for pleasure or sport but is used for commercial purposes as a ‘Casino vessel’. There is thus force in the argument of the*

*importer that when the appropriate authorities under Section 3(38) of the Merchant Shipping Act, 1958, by issuing required certificates, have opined POG to be a passenger ship or Special Trade Passenger Ship then there is no ground for the adjudicating authority to hold that POG is not a passenger ship designed to carry passengers when no contrary opinion of another competent authority is brought on record saying that POG is a vessel for pleasure or sport.*

*5.6 Temporary use of POG in a stationary position will not change the classification of POG when the same is capable of moving across the seas/oceans but has to be mostly made stationary due to the restrictions imposed by the local laws. It will be a strange situation to classify a vessel under CTH 8901 if used for making trips to open sea, with a night halt arrangement in the sea, but classify the same vessel under CTH 8903 if used in a predominantly stationary position. In view of the above observations, we are of the opinion that Casino vessel POG imported by the importer is principally designed to carry passengers and has been correctly assessed under CTH 8901.*

13. In the context of this latter decision of the Tribunal, which has been relied upon in the impugned order no flaw can be ascribed to the impugned findings. The adjudicating authority is required to follow the decision of the Tribunal that is aptly conforms to the dispute as the decision in *re Waterways Shipyard Pvt Ltd* placed reliance on a dispute of 1987 in *re Urmila & Co Pvt Ltd*, we do not find that to be a precedent binding upon us for reasons aforesaid. In the absence of a specific description of ‘casino vessels’ and for the want of definition of ‘pleasure boats’, recourse to Rules for Interpretation of the

Schedule cannot be had, as held by the Tribunal in *Raj Shipping Agencies Pvt Ltd v. Commissioner of Customs (Import), Mumbai [2015 (329) ELT 913 (Tri.-Mumbai)]* that

*'6.7 The Commissioner has placed reliance on the Rules for Interpretation of the Schedule (to the customs tariff). Reading down the rules he finds that rule 3a and rule 3b are not applicable and therefore he resorts to rule 3c which states that where goods cannot be classified by reference to 3a or 3b, they shall be classified under the heading which occurs last in the numerical order among those which equally merit consideration. In our considered view and on the basis of the analysis above, we find that the Heading 8901 provides the more specific description. Therefore there is no doubt about the applicability of rule 3a which states that the heading which provides the most specific description shall be preferred. In the present case, the vessel is designed as a supply vessel for transport of persons as per the Certificate of Indian Registry. The case laws relied upon by the ld AR do not help the stand of Revenue, rather they strengthen our view that the classification under Heading 8904 is not correct. As the vessel in question is a supply vessel used for transport of persons and goods, the correct classification would be CTSH 8901 90 00 (which is rejected by the Commissioner in para 476) which covers "Other vessels for transport of the goods and other vessels for transport of both persons and goods." And the goods falling under CTH 8901 are exempted under Not. 21/2002 read with Notification No. 20/2006.'*

14. In the light of the decision in *re Ashok Khetrapal* and the absence of other binding precedent on the classification of 'casino vessels' as 'pleasure boats', we are not required to examine the other

submissions based on other decisions. We accordingly find no reason to interfere with the order of the adjudicating authority.

15. The appeal is dismissed.

*(Order pronounced in the open court on 01/11/2019)*

**(C J Mathew)**  
***Member (Technical)***

**(Dr. Suvendu Kumar Pati)**  
***Member (Judicial)***

*\*/as0509090111*