Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench At Ahmedabad

REGIONAL BENCH- COURT NO.3

Customs Appeal No.11974 of 2014

(Arising out of OIA-97-102/2014/CUS/COMMR-A-/AHD dated 19/02/2014 passed by Commissioner of CUSTOMS-AHMEDABAD)

C.C.-Ahmedabad **.........Appellant**
Custom House,
Near All India Radio Navrangpura,
Ahmedabad,
Gujarat

VERSUS

Cera Sanitaryware Ltd **.........Respondent**
9, Gidc Industrial Estate,
Kadi,
MEHSANA,
GUJARAT

WITH

i. **Customs Appeal No. 11975 of 2014 (Commr. Cus. Ahmd.-Cera Sanitaryware Ltd)**
ii. **Customs Appeal No. 11976 of 2014 (Commr. Cus. Ahmd.-Cera Sanitaryware Ltd)**
iii. **Customs Appeal No. 11977 of 2014 (Commr. Cus. Ahmd.-Cera Sanitaryware Ltd)**
iv. **Customs Appeal No. 11978 of 2014 (Commr. Cus. Ahmd.-Cera Sanitaryware Ltd)**
v. **Customs Appeal No. 11979 of 2014 (Commr. Cus. Ahmd.-Cera Sanitaryware Ltd)**
vi. **Customs Appeal No. 13184 of 2014 (Commr. Cus. Ahmd.-Cera Sanitaryware Ltd)**

APPEARANCE:
Sh. K. J Kinariwala, Advocate for the Appellant
Sh Sanjay Kumar, Superintendent (Authorized representative) for the Respondent

CORAM: **HON'BLE MEMBER (TECHNICAL), RAJU**
HON'BLE MEMBER (JUDICIAL), SOMESH ARORA

Final Order No. A/ 11181-11187 /2023

DATE OF HEARING: 05.06.2023
DATE OF DECISION:05.06.2023

RAJU

These appeals have been filed by Revenue seeking to change classification ordered by Commissioner (Appeals) in respect of following items:

Sr. No.	Name of Product	Appellant Contention for classification	Department's contention for classification
1	Shower head of steel	CTH- 84248990	CTH-73242900
2	Shower head/Hand shower of plastic	CTH-84248900	CTH-39249010
3	Shower panel	CTH-84818010	CTH-94060099
4	Shower head of Chrome plated brass	CTH-84248900	CTH-74182010
5	Sensor Faucet	CTH-84818010	CTH-74182010

2. From the order in appeal, it is seen the Commissioner (Appeals) given detailed reasoning for classifying the goods in the headings as indicated in table above.

> *"7.1 The first item which is subject to dispute is classification of different showers of steel, brass and plastic. I find that the appellant had sought Classification under CTH 84248990 as 'mechanical appliances' whereas the adjudicating authority assessed the goods under different headings, namely, "Shower Heads of Steel" under CTH 73242900, "Shower Heads/ Hand Showers of ABS" under CTH 39249010 and "Shower Head of Chrome plated brass" under CTH 74182010. This classification by the adjudicating authority brought the goods under Notification No. 49/2008 CE (NT) dated 24.12.2008 issued under Section 4A of the Central Excise Act, 1944 for assessment of additional duties of customs levied under section 3 of the Customs Tariff Act, 1975 (colloquially referred to as CVD). I have noticed that the adjudicating authority vide letter dated 03.02.2014 has submitted that the goods do not find any other use except being used in bathroom/toilets: that the goods are devoid of any mechanical system and are merely required attachment to pipe with a proper valve so as to control the flow of water; that the goods, therefore, cannot be classified under CTH 84248990, but classified as sanitary ware under CTH 7324, 3924 & 7418, as the case may be. While, the appellant contends that shower is an accessory to bath-room fittings especially faucets and can be considered as mechanical appliance which regulates flow of water and at the same time, it projects,*

disperses and sprays liquid water, that just because an item is meant for use in the bathroom, it will not become sanitary ware: the shower is an attachment or extension of faucet and its function is to direct/project the flow of water and to disperse/spray water flowing through the pipe and therefore, it is correctly classifiable under 84248990 inespective of material it is made from.

7.2 In this regard, it would be beneficial to examine the entries which have been ordered by the adjudicating authority for classification:

(i) 7324 ***SANITARY WARE AND PARTS THEREOF OF IRON OR STEEL***

7324 1000- Sinks and wash basins, of stainless steel

-Baths:

7324 21:00- Of cast iron, whether or not enamelled
7324 29 00--Other

(ii)3924 ***TABLEWARE, KITCHENWARE, OTHER HOUSEHOLD ARTICLES AND HYGIENIC OR TOILET ARTICLES OF PLASTICS***

3924 10 - Tableware and kitchenware:

3924 10 10-Insulated ware

3924 90- Other:

3924 90 10 ***-Toilet articles***

*(ii)****7418*** ***TABLE, KITCHEN, OR OTHER HOUSEHOLD AND PARTS THEREOF, OF COPPER: POT SCOURERS AND SCOURING OR POLISHING PADS, GLOVES AND THE LIKE, OF COPPER: SANITARY WARE AND PARTS THEREOF OF COPPER***

7418 20 - Sanitary ware and parts thereof:

7418 20 10-Sanitary ware

7418 20 20-Parts of sanitary ware

7.3 The appellant has vehemently argued that the goods in question here cannot be called sanitary ware at all. The appellant further contended that for what reason the shower heads are considered as other sanitary ware and how the shower heads and hand showers of ABS Plastics are considered as Toilet Articles of Plastics is not made clear while assessing the goods under CTH 7324 and CTH 3924. It is settled position of law that classification of the goods and burden of proof of classification of the goods is on the Department. The appellant relied in the cases of (i) Garware Nylons Ltd, 1996 (87) ELT 12 (SC) Nanya imports & Exports Enterprises 2006 (1971 LT 154 (SC) (A) HPL Chemicaly Ltd. 2006 (197) ELT 324 (sc) (iv) Adani Wilmar Ltd. 2012-TIOL-483 (v) Kapadia Enterprises 2001 (131) ELT 494 and (vi) Shine Star Oxides & Paints pvt. Ltd. 2012 (278) ELT 500. On their side they have argued that shower head/hand shower is an *'accessory to bath-room fittings especially faucets and can be considered as mechanical appliance which regulates flow of water and at the same time projects/disperses/sprays liquid water, Sanitaryware means things connected with keeping places clean and healthy to live, especially by removing hurman waste. Accordingly, sanitaryware would cover only those items which are connected with sanitary functions and are normally ceramic wares found in bathroom/toilet and include WCs, Sinks, washbasin, Urinals and Bathtubs. The sanitaryware has to be the class of the item, as described in the Explanatory HSN Notes, which are connected with sanitary functions. The appellant contended that in the light of above, shower head/hand shower cannot be considered as other Sanitaryware, Just because an item is meant for use in the bathroom, it would not become sanitary ware. Factually, shower head/hand shower is an attachment or extension of faucet and its function is to direct/project the flow of water and to disperse/spray water flowing through the pipe and therefore shower head/hand shower are correctly classifiable under CTH 84248990 irrespective of the material it is made from. To examine the appellant's argument objectively, I have perused the* ***Explanatory Note to HSN of Sanitary ware, which includes "articles such as baths, bidets, hip-baths, foot-baths, sinks, wash basins, toilet sets, soap dishes and sponge baskets, douche cans, sanitary pails, urinals, bedpans, chamber-pots, water closet pans and flushing cisterns whether or not equipped with their mechanisms, spilfoons, loilet paper holders****". These items are one which do not have any mechanical functions imbedded in themselves, except flushing cisterns which is classifiable here, whether or not equipped with their mechanisms. The shower heads, faucets, taps etc. are not the type of goods which have been mentioned here, and thus, even if we hold that the aforesaid elaboration, preceded by the expression such as cannot bel taken to be an exhaustive list. it cannot be concluded that the goods in question here (shower head/hand shower) would be classified here. Thus, the stand of the adjudicating authority to classify shower head/hand shower under 7324, 3924 and 7424 is not appropriate.*

7.4 Now I turn to the appellant's claim and reasons adduced to justify her daim. They have sought to treat the goods as mechanical appliance which regulates flow of water and further it dispenses or sprays liquid water. They have claimed classification under CTH 84249000 under the sub-head 'Other' specified as single dash (-). Hance, have reproduced the relevant Tariff entry of sub-heading 84.24 which is as under :-

> ***"Mechanical appliances (whether or not hand operated) for projecting, dispersing or spraying liquids or powders: fire extinguishers, whether or not charged; spray guns and similar appliances; steam or sand blasting machines and similar jet projecting machines."***
>
> *………………*
> *………………*
>
> *8424 89 ---Other:*
> *8424 89 10---- Painting equipment, including electrostatic phosphating and powder coating equipment*

8424 89 20 ----- Industrial bellows 8424 89 90

8424 89 90 ---- Other
*8424 90 00-- **Parts***

Evidently, for goods to be classified under the heading 8424, it should be, inter alia, mechanical appliance (whether or not hand operated), for projecting, dispersing or spraying liquids or powders, or should be parts of such article/appliance. Hence, the 'parts', covered under CTSH 84249000 need not be themselves mechanical appliances, but these must necessarily be part of such mechanical appliances which are classifiable under CTH 8424. In this regard, I find force on the contention of the appellant that shower head/hand shower is an attachment or extension of faucet or a mechanism for regulating low of water and its function is to direct, project, disperse or spray water.

*7.5 Now the question is whether the bathroom showers (the complete System) merits classification under CTH 8424 or otherwise? I find that it would be Justifiable to classify the shower under sub-heading 84.24 as it is designed to regulate flow of water. In support of my observation, rely upon the case of **Commissioner of Customs, Mumbai Vs. 8. Nichlani Investment Pvt. Ltd. reported in 2004 (167) ELT 99 (Tri. Mumbai)** in which the Tribunal has held that "......the Impugned goods namely the <u>hand shower</u> is not an appliance similar to a spray gun which can merit classification under 8424.20. <u>However, it seems appropriate to classify the same under sub-heading 8424.89 which covers all un-specified appliances used for dispersing liquid which in the case of hand shower is water".</u> Indeed, the Tribunal was deciding the matter between two sub-sub heading within the same heading 8424, there was no issue raised that the shower heads would be classified under any other head than 8424. Indeed, the position would change of goods such as shower panel' containing not just showers. but tops/faucet), cocks and other control system is presented for classification. Further, I have examined the contention of the respondent-department that in case of **Prayag Polymers Pvt. Ltd. V/s. CCE. Meerut**, the Tribunal held that 'showers used for shower bath are classifiable under CTH 392490, I have examined this decision and find that there is discussion whatsoever as to why 'showers used for shower bath' should be classifiable under CTH 392490. Simply a list has been provided, where 'showers used for shower bath appears one of the 17 items against which classification is mentioned. I am unable to fathom the back ground and legal basis applied for this decision. On the meanwhile. I find that in a subsequent decision. the same goods have been classified differently, I am, therefore, guided by another decision in the case of **SWIL Ltd. Vs. Commissioner of C. Ex, Calcutta-IV reported in 2001 (128) ELT 498 (Tri. Cal) and SWIL Ltd. Vs. Commissioner of C. Ex, Calcutta-IV reported in 2001 (133) ELT 719 (Tri. Cal**), where, the Hon'ble Tribunal has held that the correct the classification of 'shower is under CTH 8424. In the former case, dispute involved I was correct classification of float wash, water shower and water filter. **Water shower** was classified by the appellant under heading 8424.10 and the other two products were claimed to be falling under heading 84.21. The Department on the other hand had held that as these products are used by them in the factory manufacturing paper, the same would be classifiable as parts of paper making machinery under heading*

8439.90. The Hon'ble Tribunal held that correct the classification of 'shower' is under CTH 8424. The relevant portion of the order elucidates the reasons for holding this stand:

> *"5. We find apart from the fact that the goods are not part of the paper making machinery used in the said machinery directly for manufacture of paper, the same have been specifically mentioned by name as against headings 84.24 and 84.21. Section Note 2 of Section XVI is to the effect that parts of the machines have to be classified according to Rule 2(a) to (c) enumerated therein. Rule 2(a) of Chapter Note 2 is to the effect that "Parts which are goods included in any of the headings of Chapter 84 or Chapter 85 are in all cases to be classified in their respective heading/headings". As such. Section Note 2(c) would get precedence and inasmuch as the goods are specifically covered by headings 84.21 and 84.24, the same would be classifiable under respective headings."*

7.6 Taking both decisions together, it can be reasonably held that while shower system as a whole is classifiable under CTSH 84248900 las double dash Other'], its parts such as shower heads/hand shower, in terms of Rule 2(a) of Chapter Note 2, which provides that "Parts which are goods included in any of the headings of Chapter 84 or Chapter 85 are in all cases to be classified in their respective heading/headings" would fall under CTSH 84249000. Following the spirit and doctrine of judicial discipline, I have no reason to traverse beyond these judicial decisions and thus. I hold that the classification claimed by the appellant has merit and hence, the assessment order is liable to be set aside on this count.

8.1 In respect of shower panel, the adjudicating authority has emphasized that as shower panel is complete and ready to use, it merits classification under CTH 94060099; that the panel is such that it is just installed as such, without carrying out any further assembling on it; the usage is exclusively for bathroom/toilets and not like a tap and its usage is not limited to bathroom/toilets and therefore, panel is correctly classified as prefabricated building under CTH 94060099. However, the appellant has contended that it is nothing but cluster of body jets, multiple shower heads, valve and spout arranged on a single structure with a pre-defined inlet for water. Thus, it can be considered as mixture of more than two products mainly Valve and Shower heads and is classifiable under CTH 84818010 as Taps, Cocks and similar appliances of Iron and Steel. have considered the submissions of the appellant and the decision of the adjudicating authority. The rival Headings reads as under:

8481.00 Taps, Cocks, Valves and similar appliance of Iron and Steel

(Appellant's claim)

9406.00 Pre-fabricated buildings"

(Assessing/adjudicating officer's stand)

8.2 I find that the tarifl heading of pre-fabricated building has to be read with Chapter Note 4 of Chapter 94 which is as follows:-

> *"4. For the purposes of Heading No. 94.06, the expression "prefabricated buildings' means buildings which are finished in the factory or put up as elements, cleared together, to be assembled on site, such as housing or work site accommodation, offices, schools, shops, sheds, garages or similar buildings".*

*8.3 To decide the maller, I take resort to the HSN Explanatory Note under Chapter Heading 94.06. considering that in the case of **Commissioner CCE, Goa v/s Phil Corporation Ltd. 2008 (223) ELT. 9 (S.C),** the Hon'ble Apex Court has observed and held that HSN is a sale guide for deciding issue of classification. The explanatory note of Tariff Heading 94.06 reads as under:*

> ***"94.06- PREFABRICATED BUILDINGS"***
> *This heading covers prefabricated building also known as "Industrialized buildings" of all materials.*
>
> *These buildings, which can be designed for a variety of uses, such as housing, worksite accommodation, offices, schools, shops. sheds, garages and greenhouse are generally presented in the form of:*
>
> *-complete buildings, fully assembled, ready for use*
>
> *-complete buildings, unassembled:*
>
> *incomplete buildings, whether or not assembled having the essential character of prefabricated buildings.*
>
> *In the case of buildings presented unassembled, the necessary elements may be presented partially assembled (for example, walls, trusses) or cut to size (beams, joists, in particular) or, in some cases in indeterminate or random lengths for cuffing on the site (sills, insulation, etc.).*
>
> *The buildings of this heading may or may not be equipped. However, only built in equipment normally supplied is to be classified with the buildings. This includes electrical fittings (wiring, sockets, switches, circuit breakers, bells, etc.), heating and air conditioning equipment (boilers, radiators, air conditioners, etc.). sanitary equipment (baths, showers, water heaters, etc.), kitchen equipment (sinks, hoods, cookers, etc.) and items of furniture which are built in or designed to be built in (cupboards, etc.).*
>
> *Material for the assembly or finishing of prefabricated buildings (e.g. nails, glues, plaster, mortar, electric wire and cables, tubes and pipes, paints, wallpaper, carpeting) is to be classified with the buildings, provided it is presented there with in appropriate quantities.*
>
> *Presented separately, parts of buildings and equipment whether or not identifiable as intended for these buildings, are excluded from the heading and are in all cases classified in their own appropriate headings."*

8.4 It is evident that the goods in question, being shower panel, by any stretch of imagination, cannot be called 'building. In any case, if adjudicating authority imagined it to be fitted in a building, this is just an appliance/equipment having shower, mixers, jets, faps, cocks etc. las claimed by appellant. It is a cluster of body jets, multiple shower heads, valve and spout arranged on a single structure with a pre-defined inlet for water) and in terms of the last portion of the note above, to reiterate, "presented separately, parts of buildings and equipment whether or not identifiable as intended for these buildings, are excluded from the heading and are in all cases classified in their own appropriate headings. I observe that every structure is not necessarily a building. In any case, in my view, the goods in question here (shower panel) cannot find place under Heading 94.06 which applies to "Pre-fabricated buildings. I have perused Explanatory Notes of HSN below Heading 84.81, which includes ***"taps, cocks, valves and similar appliances, used on or in pipes, tanks, vats or the like to regulate the flow (for supply, discharge etc.) of fluids (liquid, viscous or gaseous), or, in certain cases, of solids (e.g. sand). The heading includes such devices designed to regulate the pressure or the flow velocity of a liquid or a gas".*** *In view of this, I hold that the shower panel is not pre-fabricated buildings but on appliance having mix of shower, mixers, jets, taps, cocks, if the material used is iron and steel, which fact has not been controverted by the respondent-department while replying to the appeal memo. I hold that the shower panels would ment classification under CTSH 84818010. Though it also appears that shower panel could be classified under CTSH 84248900. I find for the reason that its entire function would not be akin to merely shower or other jet diffusions, because its other important character comes from set of different taps/cocks as well, and therefore, putting it under CISH 84248900 like other shower will also be not appropriate. Considering that we have reached a dilemma where we can equally classify shower panel under CISH 84248900 as well as 84818010. it would be necessary to resort to General Rules for Interpretation to reach one appropriate heading/sub-heading under the Customs Tariff Act. 1975. If goods are classifiable under two or more headings. Rule 3 of the General Rules for Interpretation of the First Schedule lo the Customs Tariff Act, 1975, has to be applied. Rule 3 for Interpretation reads as under:*

> *"When by application of rule 2(b) or for any other reason, goods are, prima facie, classifiable under two or more headings classification shall be effected as follows:*
>
> *(a) The heading which provides the most specific description shall be prefered 29 to headings providing a more general description However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale. those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods.*
>
> *(b) Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for refall sale, which cannot be classified by reference to (a), shall be classified as if they consisted of*

> *the material or component which gives them their essential character, in so far as this criterion is applicable.*
>
> *(c) When goods cannot be classified by reference to (a) or (b), they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration*

Here, both 3(a) and 3(b) are not applicable, considering the nature of shower panel. Whether shower should be given precedence for giving a more ffon more Giocate description or taps/jets be given precedence for giving a more complete description etc. would be difficult to decide, hence rule 3(a) is not applicable. Even the essential character rule would not apply here as both shower and taps/jets provide essential character. In other words, as mentioned earlier, shower panel is classifiable both CTSH 84248900 as well as 84818010. Hence, I hold that we have to apply rule 3(c). In view of this Rule, which provided that when goods cannot be classified by reference to (a) or (b), they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration. I find that in the instant case. the classification of the impugned goods falling under sub heading 84818010, as claimed by the appellant would prevail. In this regard, I have also noticed that the Certificate of Origin No. C13470ZC39831917 submitted in the appeal memoranda mentioned classification of shower panel as 8481. Hence, find no force in the decision of the adjudicating authority that the shower panel is pre- fabricated building and thus hold that shower panel shall be classified under CTSH 84818010 as taps, cocks, valve, and similar appliance if made up of ferrous metal and under CTSH 84818010 as taps, cocks, valve, and similar appliance if made up of non-ferrous metal. Since the constituent of shower panel has not been unambiguously presented before me, the adjudicating authority, while undertaking reassessment, shall ascertain whether shower panel is made of predominantly ferrous (e.g. SS. steel alloy etc.) or non-ferrous (Al alloy, brass zinc alloy etc.) material. He will finalize classification either under CTSH 84818010 or 84818020, depending upon the predominant constituent.

9. In respect of "faucet, the adjudicating authority has classified it under 74182010 as Sanitaryware of Copper/Brass without giving any justification, In this regard, he vide letter dated 03.02.2014 commented on shower and panel whereas he is conspicuously silent on faucet. On the other hand, the appellant has contended that it is a device for regulating/controlling flow of a liquid (Water in the present case) from a pipe or the like by opening or closing an orifice: that synonyms of Faucet are Tap. Cock etc: that faucet cannot be considered as Sanitaryware, just because it is meant for use in the bathroom: that the faucet is an another name for lap/cock and its function is to control flow of water flowing through the pipe. I find merit in this argument. As already discussed earlier, the expression sanitaryware does not cover goods like faucet, taps, cocks etc: even if these are used in bathroom. In the case of ***Commissioner of C. Ex, Delhi-1 Vs. Prakash Brassware Industries reported in 2011 (274) ELT 80 (Tri. Del)*** *the Tribunal, while examining classification of bottle trap and waste used in wash bask, has mentioned that taps, cocks and valve and similar appliance used on or in pipes, tanks etc. to regulate flow of fluid is classifiable under CTH 8481.80. As the faucet is*

> *nothing but aesthetically designed tap or cock, having ditto mechanical device for controlling flow of it merits classification under 84818010 as taps, cocks, valve, and similar appliance if made up of ferrous metal and under 84818010 as taps, cocks, valve, and similar appliance if made up of non-ferrous metal. In the instant case, since faucets are made up of non-ferrous metal, I hold that the correct classification would be under CTSH 84818010.*
>
> *10. In view of the above, the impugned orders are liable to be set aside, whereupon the adjudicating authority shall reassess the respective Bills of Entry applying the correct classification, as directed above.*

We find that revenue has come up with following grounds of appeal:

> *"The adjudicating Authority has classified the items under chapter 39 (plastic). 73 (Steel) and 74 (Brass) based on the material of the imported goods. The appellate authority has classified the goods under chapter 84 which is primarily pertains to machines. The appellate authority has erred by classifying the goods in question under chapter 84 because these goods are not of the nature of machines/ industrial use.*
>
> *1. The relied upon cases do not seem to be applicable for the impugned goods for following reasons:*
>
> > *i. For example in case of SWIL Ltd., the items covered pertains to paper making machinery. While the impugned goods in the current B/E are not used in paper making industry. Hence not applicable.*
> >
> > *ii. In case of Commissioner, Mumbai vs. B. Nichlani, items are used for spraying paint of distemper, varnishes, oils, plastics, cements, metallic powder, textile dust etc. These items are different from the goods in question in current consignment. Hence not applicable.*
> >
> > *Iii In fact in the cited case of M/s. Prayag Polymers, goods are classified under Ch. 39 which is against classification under chapter 84."*

It is seen that the ground of appeal contains no argument whatsoever to counter the arguments given by the Commissioner (Appeals) except to assert that the case law cited does not apply. The onus of giving evidence of change of classification is on revenue. Revenue has failed to discharge the onus. The arguments given in the impugned order have not been countered in the grounds of appeal.

3. We find that the appeal has been filed without any reasonable grounds to challenge the arguments given in the order in Commissioner (Appeals). We also find by the grounds given by the Commissioner (Appeals) in his order are reasonable and justified. Therefore, we dismiss the appeals

(Dictated & Pronounced in the open court)

(RAJU)
MEMBER (TECHNICAL)

(SOMESH ARORA)
MEMBER (JUDICIAL)

Palak