CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT AHMEDABAD

REGIONAL BENCH – COURT NO. 03

CUSTOMS Appeal No. 10352 of 2015-DB

[Arising out of Order-in-Original/Appeal No AHM-CUSTM-000-APP-357-14-15 dated 10.12.2014 passed by Commissioner of CUSTOMS-AHMEDABAD]

Asia World Exports **...Appellant**
80, Aip Marg Banian Street, Salim Manzil, Phdhonie
Mumbai
Maharashtra-400003

VERSUS

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

APPEARANCE:
Shri Hardik Modh, Advocate for Intervener for the Appellant
Shri Ajay Kumar Samota, Superintendent (Authorized Representative) for the Respondent

CORAM: **HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR**
HON'BLE MEMBER (TECHNICAL), MR. RAJU

FINAL ORDER NO. 10063/2024

DATE OF HEARING:06.11.2023
DATE OF DECISION:05.01.2024

RAJU

This appeal has been filed by M/s. Asia World Exports, against change in classification of goods imported by them.

2. Learned Counsel for the appellant argued that they imported "Glass Beads Chatons" and sought classification under Heading 70181020. The goods were examined by Government approved valuer on 06.02.2014, and he certified the goods as "Glass Chatons" and described the goods as conical shaped stones resembling artificial diamonds without any piercing/ hole. This

according to the revenue was not confirming the definition of "Beads", but appeared to be confirming to the "Chatons". The Learned Counsel pointed out that revenue sought to classify the goods not as beads but as chatons. The revenue was of the opinion that for anything to be classified as beads it has to be pierced. It was argued that while glass beads classifiable under Heading 70181020, the chatons are classifiable under heading 70181090 in the category "others". Learned Counsel argued that Tribunal in the case of Art Beads Pvt Ltd had classified the said goods as beads. He argued that the said order was not changed by revenue and therefore is binding on revenue. He point out that in the said order the Tribunal had preferred to the HSN explanatory notes as well as letter F. No. 390/RTI/14-2011-JC dated 01.02.2011 of CBEC, wherein it was categorically stated that the said order of the Tribunal was accepted. Learned Counsel also relied on the decision of Supreme Court (2015) 321 ELT A202 (SC) in the case of M/s. VMB Impex - 2015 (321) ELT 522 (Tri.) was upheld. He pointed out that in the case of VMB Impex (Supra) reliance was placed in the decision of Tribunal in the case of Art Beads Pvt Ltd-2013 (292) ELT 472. In view of above learned Counsel sought relief.

3. Learned AR relied on the impugned order.

4. We have carefully considered the rival submissions. We find that the Heading 7018 of the Custom Tariff reads as follows:

7018	*Glass beads, imitation pearls, imitation precious or semi-precious stones and similar glass smallware, and articles thereof other than imitation jewellery, glass eyes other than prosthetic articles; statuettes and other ornaments of lamp-worked glass, other than imitation jewellery; glass microspheres not exceeding 1 mm in diameter*			
7018 10	• *Glass beads, imitation pearls, imitation precious or semi-precious stones and similar glass smallwares:*			
7018 10 10	*---Bangles..*	*Kg.*	*10%*	-
7018 10 20	*---Beads. . . . .*	*Kg.*	*10%*	-
7018 10 90	*---Other. . . . .*	*Kg.*	*10%*	-
7018 20 00	*-Glass microspheres not exceeding 1 mm in diameter . . .*	*Kg.*	*10%*	-
7018 90	*. . . .*			

7018 90 10 *7018 90 90*	*-Other:* *---Glass statues. . . . .* *---Other. . . . .*	*Kg.* *Kg.*	*10%* *10%*	- -

4.1 It is noticed that the Sub-heading 70181020 covers only "Beads". The HSN explanatory notes to Heading 7018 described Glass Beads as follows:

> *"(A) Glass beads (e.g., as used for necklaces, rosaries, imitation flowers, ornaments for graves, etc.; for decorating textile articles (trimmings, embroidery, etc.), handbags or the like; or for use as electrical insulators). These beads, whether or not coloured, <u>are in the form of small pierced balls</u>, more or less round in shape; they are obtained from tubes which are cut into sections of approximately equal length and diameter. The resulting small cylinders are then introduced, together with a mixture of powdery materials (charcoal, graphite, plaster, etc), into a metal drum revolving over a furnace. Heat softens the glass cylinders and friction given them a more or less spherical shape, while the powdery material prevents them from adhering to one another."*

4.2 Thus, it is seen that the Harmonised System of Nomenclature (HSN) explanatory notes clearly describes Glass Beads "small pierced balls". Therefore *prima facie* it is appears that the HSN explanatory notes clearly limits the definition of Beads only to those items which are pierced.

4.3 On the other hand the learned Counsel has relied on the decision of M/s. VMB Impex which were upheld by Hon'ble Apex Court. It is noticed that the decision in the case of M/s. VMB Impex primarily relies on the decision of Tribunal in the case of M/s. Art Beads Pvt Ltd (Supra) and on the case of Starlite Corporation (supra). In the said decision there is no discussion whatsoever on the HSN notes. It would appear that the HSN note were not brought to the knowledge of the Tribunal and therefore could not come to the attention of Hon'ble Apex Court. The decision in the case of M/s. Starlite corporation (Bom.) reported under 1989 (39) ELT 538 (Bom.) was for a period which was prior to introduction of the new Custom Tariff based on HSN notes. In the said decision reliance was placed on ISI specification to hold that piercing is not a necessary requirement for an items to be a beads. It would therefore appear that the facts in the case of M/s. Starlite were different in so much as it was dealing with the different custom tariff, wherein no definition of beads was provided and therefore the definition of beads had to be imported from other sources.

4.4 In the case of M/s. Art Beads Pvt Ltd, the decision was based on the decision of Hon'ble Bombay High Court in the decision of M/s. Starlite Corporation. This decision also fails to take note of HSN explanatory notes.

- Hon'ble Apex Court in the case of M/s. Hewlett Packard India Sales Pvt Ltd- 2023 (383) ELT 241 (SC) as observed as follows:

> ***"12.*** *While it appears well settled that the HSN is to be normally taken as a safe guide for classifying goods under the First Schedule because it is based on an internationally recognized 'harmonized nomenclature [Collector of Central Excise, Shillong v. Wood Craft Products Limited - (1995) 3 SCC 454 = 1995 (77) E.L.T. 23 (S.C.)], a bare reading of the explanatory note applicable to the sub-heading clearly lays out the fact that there is no mandatory condition for being operable without any external source of power. We are thus unable to agree with the Appellants that only ADPs with a built-in power source is necessarily required to be classified under 'Tariff Item 8471 30 10'. In other words, no element of 'functionality' is contemplated for the purpose of classifying the Concerned Goods as 'portable'."*

- In the case of M/s. Theremax Ltd- **2022 (382) ELT 442**

> ***6.*** *The definition of a product given in the HSN should be given due weightage in the classification of a product for the purpose of levying excise duty. This is because in the Statement of Objects and Reasons of the Bill leading to enactment of Central Excise Tariff Act, 1985, it was clearly stated that the pattern of tariff classification is broadly based on the system of classification derived from the International Convention on the Harmonised Commodity Description and Coding System (Harmonised System) with such contraction or modification thereto as are necessary, to fall within the scope of the levy of Central Excise duty. The tariff so suggested for the levy under the Indian Tariff Act is based on an internationally accepted nomenclature, in the formulation of which, all considerations, technical and legal, have been taken into account. This was*

done to reduce avoidable disputes on tariff classification. Besides, the tariff would be on the lines of the harmonized system. It was also borne in mind that the tariff on the lines of the harmonized system would bring about considerable alignment, between the Customs and Central Excise Tariffs, which in turn, would facilitate charging of additional customs duty on imports, equivalent of excise duty. It was therefore expressly stated in the Statement of Objects and Reasons that the Central Excise Tariff are based on the HSN and the internationally accepted nomenclature was as such taken into account, to reduce tariff classification disputes. Thus, it was suggested that a safe guide for classification is the internationally accepted nomenclature emerging from the HSN and in case of doubt, the HSN should be chosen advisory for ascertaining the true meaning of any expression used in the Tariff Act. In Wood Craft (supra), in the opinion written by Justice J.S. Verma, the following was pertinently opined in this context:

> *"12. … .. Accordingly, for resolving any dispute relating to tariff classification, a safe guide is the internationally accepted nomenclature emerging from the HSN. This being the expressly acknowledged basis of the structure of Central Excise Tariff in the Act and the tariff classification made therein, in case of any doubt the HSN is a safe guide for ascertaining the true meaning of any expression used in the Act. The ISI Glossary of Terms has a different purpose and, therefore, the specific purpose of tariff classification for which the internationally accepted nomenclature in HSN has been adopted, for enacting the Central Excise Tariff Act, 1985, must be preferred, in case of any difference between the meaning of the expression given in the HSN and the meaning of that term given in the Glossary of Terms of the ISI.*
>
> *xx xx xx*
>
> *18. We are of the view that the Tribunal as well as the High Court fell into the error of overlooking the fact that the structure of the Central Excise Tariff is based on the internationally accepted nomenclature found in the HSN and, therefore, any dispute relating to tariff classification must, as far as possible, be resolved with reference to the nomenclature indicated by the HSN unless there be an express different intention indicated by the Central Excise Tariff Act, 1985 itself. The definition of a term in the ISI Glossary, which has a different purpose, cannot, in case of a conflict, override the clear indication of the meaning of an identical expression in the same context in the HSN. In the HSN, block board is included within the meaning of the expression "similar laminated wood" in the same*

context of classification of block board. Since the Central Excise Tariff Act, 1985 is enacted on the basis and pattern of the HSN, the same expression used in the Act must, as far as practicable, be construed to have the meaning which is expressly given to it in the HSN when there is no indication in the Indian tariff of a different intention."

7. *Commenting on the importance of taking guidance from HSN Classification and how a taxing statute should be construed in consonance with their commonly accepted meanings in the trade and popular sense, Justice Sanjiv Khanna in D.L. Steels (supra) also so correctly observed as follows :-*

"9. The Harmonised System of Nomenclature[9], developed by the World Customs Organisation, has been adopted in India by way of the Customs Tariff Act, 1975, though there are certain entries in the Schedules to this Act which have not been assigned HSN codes. The Harmonised System is governed by the International Convention on Harmonised Commodity Description and Coding System, which was adopted in 1983, and enforced in January, 1988. This multipurpose international product nomenclature harmonises description, classification, and coding of goods. While the primary objective of the HSN is to facilitate and aid trade, the Code is also extensively used by governments, international organisations, and the private sector for other diverse purposes like internal taxes, monitoring import tariffs, quota controls, rules of origin, transport statistics, freight tariffs, compilation of national accounts, and economic research and analysis. In the present times, given the widespread adoption of the Harmonised System by over 200 countries, it would be extremely difficult to deal with an international trade issue involving commodities, without adverting to the Harmonised System. The Code is the bedrock of custom controls and procedures. The HSN consists of over 5000 commodities groups, which are structured into 21 Sections and 97 Chapters, which are further divided into four and six digit sub-headings. Many custom administrations, like India, use an eight or more digit commodity coding system, with the first six digits being the HSN code.

10. Classification under the Harmonised System is done by placing the goods under the most apt and fitting sub-heading. This is done by choosing the appropriate Chapter, Heading, and sub-heading respectively. To facilitate interpretation and classification, each of the 97 Chapters in the HSN contain corresponding Chapter Notes, General Notes, and Explanatory Notes applicable to the Headings and sub-headings within that Chapter. In

> *addition, there are six General Rules of Interpretation applicable to the Harmonised System as a whole.*
>
> *xx xx xx*
>
> *12. We would, at this stage, take on record the well-settled principle that words in a taxing statute must be construed in consonance with their commonly accepted meaning in the trade and their popular meaning. When a word is not explicitly defined, or there is ambiguity as to its meaning, it must be interpreted for the purpose of classification in the popular sense, which is the sense attributed to it by those people who are conversant with the subject matter that the statute is dealing with. This principle should commend to the authorities as it is a good fiscal policy not to put people in doubt or quandary about their tax liability. The common parlance test is an extension of the general principle of interpretation of statutes for deciphering the mind of the law-maker. However, the above rule is subject to certain exceptions, for example, when there is an artificial definition or special meaning attached to the word in a statute, then the ordinary sense approach would not be applicable."*

From the above, it is apparent that the custom tariff itself was different when decision of Tribunal in the case of M/s. Art Beads Pvt Ltd was given and the same was the condition when the decision of Hon'ble High Court of Bombay was given in the case of M/s Starlite Corporation. In both these cases the classification was not being examined under the new custom tariff and in both these cases the explanatory notes given in HSN were not brought to the knowledge of the Courts. In these circumstances, the decisions given in the context of new custom tariff purely relying on the decision of Tribunal in the case of M/s. Art Beads Pvt ltd and that of Hon'ble High Court of Bombay in the case of M/s. Starlite Corporation ignoring explanatory notes to the HSN on cannot be relied. In view of clear definition of beads provide in HSN, which is a most reliable guide for the purpose of classification under the custom tariff cannot be ignored. Thus, relying on the definition of the beads given in the HSN notes we hold that piercing is a necessary requirement for anything to be classified as beads. There is no disputes that the product imported by appellant is not pierced. Therefore, the same cannot be classified as beads.

5. In these circumstances, the appeal is dismissed.

(Pronounced in the open Court on 05.01.2024)

RAMESH NAIR
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

PALAK