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

REGIONAL BENCH- COURT NO.3

CUSTOMS Appeal No. 10102 of 2024

(Arising out of OIO-AHM-CUSTM-000-PR-COM-22-2023-24 dated 15/12/2023 passed by Principal Commissioner of CUSTOMS-Ahmedabad)

TULSI IMPEX PVT LTD **......Appellant**
107, 1st Floor, Panlee Complex,
Opp-Sardar Patel Seva Samaj Hall,
Near Mithakhali Six Lanes, Ellisbridge,
Ahmedabad-380 006

VERSUS

Principal Commissioner of CUSTOMS- Ahmedabad **......Respondent**
Seema Shulk Bhavan,
1st Floor, Near All India Radio,
Navrangpura, Ahmedabad-380 009.

APPEARANCE
Shri Manoj Lakhani Consultant for the Appellant
Shri R R Kurup, Superintendent (AR) for the Respondent

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

Final Order No. 10910/2024

DATE OF HEARING/ DECISION: 10.04.2024

RAMESH NAIR

This appeal is directed against the Order-In-Original No. AHM-CUSTM-000-PR-COM-22-2023-24 dated 15.12.2023 passed by the Principal Commissioner of Customs, Ahmedabad whereby the Ld. Commissioner imposed the penalty of Rs. 10,000/- under Regulation 18 of the CBLR, 2018 for failure to comply with the Regulation of CBLR, 2018. The background of the case is that the appellant being a Customs Broker has filed bill of entry on behalf of the importer M/s. Harsha Kilachand wherein goods namely Cake Stand made of plastic has been classified under CTH 3924. The case of the department is that the correct classification of such goods should be under CTH 94037000 and consequently there is a short payment of Custom duty amounting to Rs. 4,241/-. Since the appellant acted as a customs broker in filing the bill of entry it was alleged that the appellant have violated the CBLR Regulation and consequently a penalty of Rs. 10,000/- was imposed. Being aggrieved by Order-In-Original the appellant filed the present appeal.

2. Shri Manoj Lakhani Learned Consultant appearing on behalf of the appellant submits that firstly the issue relates to the classification of the

imported goods which is highly debatable involved interpretation. Therefore, there is no mala fide intention of the custom broker (appellant) for mis-classification of the goods.

2.1 He also referred to the Advisory No. 01/2022 dated 29.12.2022 issued by the Learned Principle Commissioner of Customs Zone-I to the Commissioner of Custom Audit wherein it was categorically clarified that in case of the dispute regarding classification, availing of exemption notification and valuation, the violation of provision of CBLR, 2018 should not be invoked. Therefore, this case being of classification of goods as per the said Advisory no action should have been taken against the appellant being a custom broker.

2.2 Without prejudice, he further submits that the goods i.e. Tableware made of plastic is specifically covered under CTH 3924 as Tableware whereas the proposed classification under CTH 94037000 bear the entry namely furniture of plastics. He submits that firstly cake stand is not a furniture, secondly the entry of furniture of plastic is general where as the Tableware is very specific entry under CTH 3924. Therefore, the specific entry prevails over the general entry as per the law on Interpretation of the Rule for classification. He also submits that the amount of duty involved is merely Rs. 4,241/-. Therefore, there cannot be any mala fide intention either on the part of the importer or on the part of the custom broker. For this reason also, penalty was wrongly imposed. In support of his submission, he placed reliance on the following judgments:-

- Overseas Air Cargo Services V. Commissioner of Customs- 2016 (340) ELT 119 (Del.)
- Indair Carrier Pvt. Ltd. V. Commissioner of Customs (General) – 2016 (337) ELT 41 (Del.)
- Him Logistics Pvt. Ltd. Vs. Commissioner of Customs (Airport & General)- 2023 (384) ELT 558 (Del.)

3. On the other hand Shri Rajesh R Kurup, Learned Superintendent (AR) appearing on behalf of the Revenue reiterates the finding of the impugned order.

4. I have carefully considered the submission made by both the sides and perused the records. I find that there is no allegation other than that of mis-classification of the goods in the bill of entry. On perusal the rival tariff entry i.e. 3924 as claimed by the appellant as against 94037000 as proposed by the Revenue. I find that the goods imported is cake stand which is used by placing it on the Table, kitchen /dining table and such cake stand is made of plastic. Therefore, in my prima facie view, the cake stand is classifiable under 3924. The entry under 94037000 is a general entry namely furniture of plastics. Accordingly, the classification declared under 3924 by the importer appears to be correct. However, at this stage, I am not incline to conclusively decide the classification of goods. However, since the issue involved is of strict interpretation of the classification of the goods. The customs broker cannot be held responsibility if there is any difference in the classification found by the custom while assessing the bill of entry. I find force in the submission of the Learned Consultant that as per the Advisory No. 01/2022 dated 29.11.2022 issued by the Principle Commissioner of Custom, Mumbai, Zone-I no action should have been taken against the custom broker, particularly for the case related to classification. The said Advisory is reproduced below:-

> *"The Officers involved in the Audit and subsequent preparation of Draft SCNs should be given suitable direction/advice not to invoke the violation of provisions of CBLR 2018 and make the CBs co-noticees in cases involving Interpretative disputes regarding classification, availing of the benefit of exemption notifications and valuation. Moreover, the involvement of retrospective interpretative issues in a case should not be made the basis to invoke the violation of provisions of CBLR, 2018".*

From the above advisory, it is clear that since the classification, exemption notification and valuation matters are related to the interpretation of the law. In such case the custom broker cannot be made responsible. Therefore, in view of the above advisory which is binding on the field formation no action should have taken against appellant being a custom broker. I also note that the total duty involvement is only Rs. 4241/- and for such a minuscule amount, there cannot be any mala fide intention either on the part of the importer or on the part of the appellant being a custom broker. Accordingly, the judgments cited by the appellant in their defense support their case.

5. As per my above discussion and findings, I am of the view that the appellant is not liable for penalty under Rule 18 of CBLR, 2018. Accordingly penalty is set aside, appeal is allowed.

(Dictated and pronounced in the open court)

(RAMESH NAIR)
MEMBER (JUDICIAL)

Raksha