CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL AHMEDABAD

REGIONAL BENCH, COURT NO. 1

CUSTOMS APPEAL NO. 10682 OF 2023

[Arising out of OIA-MUN-CUSTM-000-APP-39-42-23-24 dated 14/07/2023 passed by Commissioner of Customs, Central excise & Service Tax-AHMEDABAD]

RAJAT INTERNATIONAL **Appellant**
H No. 1776/F, Mohalla Rampura,
Hisar, Haryana-125001

Vs.

COMMISSIONER OF CUSTOMS-MUNDRA CUSTOMS **Respondent**
Commissioner of Customs, Custom House,
Mundra, Gujarat-370421

WITH

i. **Customs Appeal No. 10683 of 2023 (Rajat International)**
ii. **Customs Appeal No. 10684 of 2023 (Rajat International)**
iii. **Customs Appeal No. 10685 of 2023 (Rajat International)**

[Arising out of OIA-MUN-CUSTM-000-APP-39-42-23-24 dated 14/07/2023 passed by Commissioner of CUSTOMS, Central excise & Service Tax-AHMEDABAD]

Appearance:
Present for the Appellant : Shri Naveen Bindal and Ms. Nikita Jaju, Advocates
Present for the Respondent: Shri Girish Nair, Assistant Commissioner (AR)

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

FINAL ORDER NO. 11097-11100 /2024

Date of Hearing: 22.02.2024
Date of Hearing: 17.05.2024

RAJU

This appeal has been filed by M/s. Rajat International against confirmation of demand of Customs duty, interest and penalty.

2. Learned counsel for the appellant pointed out that the appellant had imported broom sticks which were classified by the appellant under customs tariff heading 9603 1000. The appellant claimed IGST exemption under Sr. no. 144 of Notification No. 02/2017 dated 28.06.2017 prescribing NIL IGST rate under Sr. no. 144 of the notification.

2.1. The revenue was of the opinion that the said goods should be classified under Customs Tariff heading 9603 1000 under Sr. no. 260 of Notification No. 01/2017 dated 28.06.2017 attracting 5% IGST. SR no. 144 of Notification No. 02/2017-IGST dated 28.06.2017 reads as follows:

Sr. No.	Chapter / Heading / Sub-heading / Tariff item	Description of Goods
144	9603	Muddhas made of sarkanda and phool bahari jhadoo

In terms of above notification Muddhas made of sarkanda and phool bahari jhadoo are chargeable to NIL IGST. The revenue is seeking to classify the same under Sr. No. 260 of Notification No. 1/2017 integrated tax which reads as follows:

Sr. No.	Chapter / Heading / Sub-heading / Tariff item	Description of Goods
260	9603 10 00	Broomsticks

Vide notification no. 28/2017-Central tax rate dated 22.09.2017, the description in the entry at Sr. no. 144 was substituted with following:

> *"Muddhas made of sarkanda, Brooms or brushes, consisting of twigs or other vegetable materials, bound together, with or without handles"*

The dispute in the impugned case is if the product imported by the appellant falls under the category of Muddhas made of sarkanda, Brooms or brushes, consisting of twigs or other vegetable materials, bound together, with or without handles or not.

2.2 Learned counsel pointed out that the department had finally assessed the bills of entry filed by them. If the department was aggrieved with the said assessment they should filed an appeal before Commissioner (Appeals). She argued that the department failed to challenge the assessment order and therefore the said assessment has attained finality. In absence of any challenged assessment the department cannot reopen the assessment under section 28 of the Act. She relied on the decision of Hon'ble Apex Court in case of ITC Limited 2019 (368) ELT 216 (SC).

2.3 Learned Counsel further argued that the proceedings have been initiated against the appellant in the course of audit conducted by Customs revenue audit. On the basis of said audit notice was issued to the appellant raising demand of duty, interest and imposition of penalty. Learned counsel further relied on section 99A of the Customs Act, 1962 with relates to the audit. The said section reads as follows:

> *"Section 99A. Audit -*
>
> *The proper officer may carry out the audit of assessment of imported goods or export goods or of an auditee under this Act either in his office or in the premises of the auditee in such manner as may be prescribed.*
>
> *Explanation: For the purposes of this section, "auditee" means a person who is subject to an audit under this Section and includes an importer or exporter or custodian approved under Section 45 or licensee of a warehouse and any other person concerned directly or indirectly in clearing, forwarding, stocking, carrying, selling, or purchasing of imported goods or export goods or dutiable goods."*

2.4 She argued that the audit can be carried out only in respect of imported goods, exports goods or dutiable goods. She argued that the goods in question id neither imported nor dutiable goods. She argued that the audit proceedings in respect of goods already clear is not sustainable. She pointed out that the appellant imported broomsticks in pack of 50 kg each. In sight the pack, broomsticks were further bound together. She pointed out that the appellant were aware that broomsticks which were bound together with or without handle are allegeable for exemption under notification no. 2/2017. She pointed out that although the description in the bill of entry was 'broom sticks' but the same were bound together. She argued that the appellant were of the opinion that unless and until the goods acted the shape of broom. The same have to be referred to as broom sticks. She argued that at the time of examination the goods were found to be bound together and therefore the exemption was granted.

2.5 She also relied on the clarification issued by CBEC Mitra Helpdesk. According to this opinion broom sticks in bound condition do not attract IGST.

2.6 Learned counsel argued that they were under bonafide belief that exemption benefit is available and therefore the claim thus same. She argued that in these circumstances penalty under section 114A cannot be imposed.

3. Learned AR relied on the impugned order.

4. We have considered rival submissions. We find that it is a fact that the product was described as broom sticks in the bill of entry. It is notice that the Commissioner (Appeals) in his order has recorded the entry 260 of Notification no. 1/2017-integrated tax dated 28.06.2017 and Sr. no. 144 of Notification no. 2/2017-integrated tax dated 28.06.2017, as part of the asseesse submissions. Thereafter, the Commissioner (Appeals) has recorded as follows:-

> *5.2 I find that that the appellant in their appeal memorandum have not contested the classification of the goods imported by them against Sr. No. 260 of Schedule-I of Notification No. 1/2017-Integrated Tax (Rate) dated 28.06.2017. They have merely stated that they were under bonafide belief that the exemption was available to them and accordingly they had filed Bills of Entry in question. determination are as under: Therefore, in the present appeal, the issues before me for determination are as under:*
>
> *i. Whether department can initiate proceedings under Section 28 of the Customs Act, 1962, without challenging the assessment made under the Bills of Entry.*
>
> *11. Whether extended period of limitation is invokable and whether the appellant is liable for penalty under Section 117 or 114A of the Customs Act, 1962, as the case may be, in the facts and circumstances of the case.*

4.1 It is seen that the Commissioner (Appeals) has not dealt with the primary issue, if the goods imported by the appellant are also covered by Sr. no. 144 of Notification no. 2/2017 or only by Sr. no. 260 of Notification no. 1/2017. The two entries are reproduced below:-

Schedule-I of Notification No.01/2017-Integrated Tax (Rate) dated 28.06.2017

Sr. No.	*Chapter/Heading/Subheading/Tariff Item*	*Description of goods*
260	*9603 01 00*	*Broomsticks*

Schedule of Notification No.02/2017-Intergrated Tax (Rate) dated 28.06.2017

Sr. No.	*Chapter/Heading/Subheading/Tariff Item*	*Description of goods*
144	9603	Muddhas made of sarkanda and phool bahari jhadoo

Entry 144 was further amended as follows:

Sr. No.	Chapter / Heading / Sub-heading / Tariff item	Description of Goods
144	9603	Muddhas made of sarkanda, Brooms or brushes, consisting of twigs or other vegetable materials, bound together, with or without handles

In this background, we find the impugned order does not take care of the primary claim of the appellant that the goods are also classifiable under the description.

> *"Muddhas made of sarkanda, Brooms or brushes, consisting of twigs or other vegetable materials, bound together, with or without handles"*

Form the above, it is apparent that the main issue has not been dealt with by the Commissioner (Appeals) In this circumstances, we alert with no option but set aside the impugned order and remand the matter back to Commissioner (Appeals) to decide a fresh.

4.2 The first issue to be decided the appellant is, if the goods fall under the category of Muddhas made of sarkanda, Brooms or brushes, consisting of twigs or other vegetable materials, bound together, with or without handles or not .

5. All other issues arrived only after this issue is decided.

(RAJU)
MEMBER (TECHNICAL)

<u>SOMESH ARORA</u>

6. I have the benefit of going through the order given by my Learned Brother. I find myself totally in concurrence with him both on the point of need for remand and deciding of classification before deciding other issues

including on limitation and re-assessment by the party. However, I would like to elaborate on the need of 'classification first' pointed out in his order. Learned brother has correctly pointed out various tariff entries and tax notifications that were existing during the impugned period. It is to be noted that party had sought benefit of Notification No. 2/2017-integrated tax (Rate) dated 28.06.2017 which prescribed 'Nil' rate of duty' for the goods. While, the department treating all the Broomsticks as taxable imported during the relevant period (without deciding the classification placed the same under Serial No. 260 of Chapter Heading 96030100 of Schedule -1 of Notification No. 01/2017-integrated rate dated 28.06.2017, which covered 'broomsticks' without excepting any . It is to be noted that Entry No. 260 of Notification No. 01/2017 dated 28.06.2017 was further amended vide Notification No. 27/2017 on 22nd September, 2017 to mention as follows:

"260	9603 [other than 9603 10 00]	Broomsticks [other than brooms consisting of twigs or other vegetable materials bound together, with or without handles]"

6.1 It is to be considered that Broomsticks are known to be primarily of two types, one where cleaning part consists of usually stiff fibers made of plastic material framed with a long handle and other Broomsticks made by using twigs or other vegetable materials which are Broomsticks made with vegetable material. Illustrative photos of two types of Broomsticks are placed below:

Coconut Broomstick

Plastic Broomstick

6.2 It appears from the notification reproduced above that initially all Broomsticks were classified under Serial No. 260 of Notification No. 01/2017 w.e.f 28 June, 2017 up to 22nd September, 2017 i.e. the date by Notification No. 27/2017 with effect from this date under Serial No. 260, Chapter Heading No. 9603 in the numeric portion of the notification from the Tariff Heading No. 9603 (other than 96031000 came to be mentioned). And in the descriptive portion instead of "Broomsticks", "Broomsticks" other than brooms consisting of twigs for other vegetable materials bound together, with or without handles" came to be mentioned. Simultaneously, vide Rs. No. 144 of Notification No. 28/2017-CT Rate dated 22nd September, 2017 (reproduced supra) Serial No. 144 of Notification No. 02/2017-CT dated 28 January, 2017 came to be amended to read as follows:-

> *"(xii) in S.No 144, for the entry in column (3), the entry "Muddhas made of sarkanda, Brooms or brushes, consisting of twigs or other vegetable materials, bound together, with or without handles,", shall be substituted."*

Thus, it is clear that from 22nd September, 2017 brooms were divided into two categories, and term "Broomsticks" also came to be divided into two categories i.e. "Brooms or brushes consisting of twigs or other vegetable material bound together with or without handles" and brooms and Broomsticks which were other types i.e. material other than vegetative materials etc. In which category, the plastic brooms will normally get included. On this points, I am persuaded by the decision as reported in 2019

(22) GSTL 139 (A.A.R.-GST), In RE : ARISTOPLAST PRODUCTS PVT LTD. The observations which are relevant for the purpose of deciding classification are as follows:

> *"**6.1** We note that Broom stick is a cleaning tool consisting of usually stiff fibres (made of materials such as plastic) attached to, and roughly parallel to, a cylindrical handle, The broomstick is thus a variety of brush with a long handle. It is commonly used in combination with a dustpan for cleaning floors etc.*
>
> ***6.2** We further find in the GST Tariff that the heading 9603 which seems to be closer of the product in question, read as -*
>
> *Brooms, Brushes (Including Brushes Constituting Parts of Machines, Appliances Or Vehicles), Hand Operated Mechanical Floor Sweepers, Not Motorised, Mops And Feather Dusters, Prepared Knots And Tufts For Broom Or Brush Making; Paint Pads And Rollers; Squeegees (other than roller squeegees).*
>
> ***6.2.1** Therefore, it is very much dear from the reading of the main heading that the major heading for the classification of the plastics broom-stick is 9603.*
>
> ***6.3** We note that there are separate classification :- one for Broom-sticks made from twigs or other vegetables materials and second category which is not made from twigs or vegetable materials. Since the product in question i.e. Broom-Sticks is made from plastics, hence, it is very much clear that it should be classified as Brooms other than brooms consisting of twigs or other vegetable materials bound together, with or without handle. Thus brooms made from plastics are other than brooms classifiable under Heading 9603 10 00. Therefore, we held that the correct classification of the Plastic Broom-Stick is under Heading 9603 29 00 and classifiable as "Others".*

6.3 It is thus clear that Broomsticks which are made up of plastic and do not use a vegetable material alone are taxable w.e.f 22.09.2017 in Notification No. 01/2017 since after amendment, the Broomsticks fall under Serial No. 260 of Notification No. 01/ 2017 have to be of other than Chapter Heading No. 96031000 and therefore have to be Broomsticks of other than twigs and such vegetable materials. Since, the show cause notice has not taken note of development through above stated amendments, therefore in the instant case, learned Commissioner (Appeals) while deciding classification should keep above discussion in mind while working into demand period and related statutory changes. It should first decide about the nature of Broomsticks/brooms and its classification with statutory changes.

Matter is accordingly remanded back to decide the nature of goods. Party in any case shall be free to raise any other point on merits, limitation if desired.

7. Appeal allowed by way of remand.

(Order pronounced in the open Court on 17.05.2024)

(SOMESH ARORA)
MEMBER (JUDICIAL)

Dharmi