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

REGIONAL BENCH, COURT NO. 1

Customs Misc. Application No. 10187 of 2024
(on behalf of Appellant)
in
Customs Appeal No. 10774 of 2023

[Arising out of AHM-CUSTM-000-COM-14-23-24 dated 04.09.2023 passed by Commissioner of Customs -Ahmedabad]

SHHIVTEK INDUSTRIES PRIVATE LIMITED **.....Appellant**
Formerly known as Shivtek Industries Private Limited
CH-1 & CH-2/C, GIDC, Dahej
Tehsil Vagra, Bharuch,
Gujarat-362130

VERSUS

COMMISSIONER OF CUSTOMS, CUSTOMS -AHMEDABAD **.....Respondent**
1st Floor, Customs House,
Opp. Old High Court, Navrangpura,
Ahmedabad,
Gujarat-380009

WITH

Customs Misc. Application No. 10188 of 2024
(on behalf of Appellant)
in
Customs Appeal No. 10775 of 2023

[Arising out of AHM-CUSTM-000-COM-14-23-24 dated 04.09.2023 passed by Commissioner of Customs - Ahmedabad]

SHIV KUMAR NENWANI **.....Appellant**
Formerly known as Shivtek Industries Private Limited
CH-1 & CH-2/C, GIDC, Dahej
Tehsil Vagra, Bharuch,
Gujarat-362130

VERSUS

COMMISSIONER OF CUSTOMS, CUSTOMS -AHMEDABAD **.....Respondent**
1st Floor, Customs House,
Opp. Old High Court, Navrangpura,
Ahmedabad,
Gujarat-380009

APPEARANCE:
Shri Y. Srinivasan Reddy, Advocate for the Appellant
Shri A. R. Kanani, Superintendent (Authorized Representative) for the Respondent

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

FINAL ORDER NO.A / 11101-11102 /2024

DATE OF HEARING: 04.04.2024
DATE OF DECISION: 17.04.2024

RAJU

This appeal has been filed by the M/s. Shhivtek Industries Private Limited against an order seeking to change the classification of the product imported by the appellant.

2. Learned counsel for the appellant pointed out that they were importing WAXSOL-911(A) grade. Learned counsel pointed out that they were seeking to classify the goods under the heading 2710. The DRI drew samples and obtained an opinion of chemical examiner regarding the composition of the product as well as on the classification. The chemical examiner gave an opinion that the goods are classified under 3405. He pointed out that similar matters have been examined by tribunal earlier wherein import of same item was involved. He pointed out that, after examining the arguments raised in the said case the tribunal remanded the matter for fresh adjudication.

2.1 Learned Counsel sought to place additional evidence on record to show that the goods are not waxes following under heading 3405 as claimed in the show cause notice but are classifiable under heading 2710. He further pointed out that the matter has been delayed very long. In the earlier order of tribunal dated 06.04.2023, there was a direction to the lower authorities to decide the matter within three months. He pointed out that the said matter is still pending.

3. Learned AR relied on the impugned order.

4. We have considered rival submissions, we find that the dispute involved in the instant case is identical to the dispute involved in the case decided vide order no. A/10806-10839/2023 dated 06.04.2023. In the said decision after examining the dispute the tribunal observed as follows:

> *27. We have gone through the rival submissions as well as various case law relied upon by the appellant as well as department. We find that the appellants initially claimed goods under Tariff Heading 2710 as classification of the product in their Bills of Entry, but after being*

confronted with various evidence during investigation by DRI made alternate submissions for the product to be appropriately classified under Tariff Heading 2712, on the ground that the product cannot be classified under Tariff Heading 3405. We find that TH 3405, pertains to various end products and excludes waxes of heading 3404. Also the product is an Industrial Raw Material for manufacturer of another Industrial Raw Material i.e. Chlorinated Paraffin Wax and cannot be covered under Tariff Heading 3405 and that even explanatory notes to CTH 3405 (2017 edition) as well as the finding of the learned adjudicating authority, in para 45.2 point to the effect that Waksol 911-A, Waksol 911-B, is not exclusively used for Chlorination and can also be used for other purposes like Polishes, cream and similar preparations for the maintenance of wooden furniture, floors for other wooden work. The findings therefore only show the possibility and do not conclusively decide the nature of the product or its classification as the product literature and material on record shows that Waksol products are used in Chlorination and therefore do not appears in the nature of product of Tariff Heading 3045. We find that simply some alternate usage existing of the product or the possibility of their being used as such, will not make the product of the nature specified in Tariff Heading 3405 specifically when product used and specified in Tariff Heading 3405 are in the nature of end products and not in the nature of raw-materials. The department has to conclusively bring on record the predominant usage of the product with evidence to discharge burden of classification. Further, in view of the trite law, learned adjudicating authority should have given his own findings on the classification sought and not relied on one given by the Chemical analyst. To justify classification under 3405 department will need to show that the product imported was not essentially in the nature of intermediate product or raw material and was not, often 'Put up for retail sale' as is the requirement laid down in HSN explanatory notes to CTH 3405 (2017 edition referred). The argument of the appellant that classification under chapter 3404 cannot be justified as the Fisher/Tropsch Technology was used and which excluded its classification under 3404 is a mutually accepted position and needs no discussion from us.

28. We are, therefore, of the view that a detailed examination about the nature of product, its usage and its proper classification based upon exclusion clauses of HSN explanatory note is warranted including of consideration of chapter 2712. In view of claim of product being in the nature of Slag wax, same needs elaborate discussion and findings from the authority below. The decisive usage required to be established by the department has to be predominant or common usage and not merely based on possibility as laid down by the apex court in 1996 (87) ELT 584 (S.C.) in CCE Vs. Hico Products (P) Ltd. We, therefore, allow the appeal by way of remand directing the adjudicating authority to determine the exact nature and usage of the product imported. While doing so, the rival claims shall be considered including that of chapter 2712, by not getting influenced in any way by the classification indicated by the chemical analyst. If reliance is placed on HSN explanatory notes, the same should be contemporaneous to the period of import and not of any earlier or later edition. It is expected that proper referencing specifically of edition of HSN explanatory note should be done by the adjudicating authority. The question of penalties on various appellants who are part of the bunch *are also likewise kept open and remanded to be consequent upon the outcome of classification decision and respective involvement. Appeals are allowed by way of remand with expectation to pass the decision in 3 months, considering the vintage of the dispute.*

29. Appeal allowed by remand.

4.1 It is seen that the matter was remanded to the original adjudicating authority for fresh adjudication on the ground that the adjudicating authority needs to give his own finding on the issue of classification and also various other issues mentioned in para 27 to 29 of the said order reproduce above.

4.2 In this background, it is felt that this matter should also be remanded back to the original adjudicating authority or identical terms as in order dated 06.04.2023 (supra) to be decided a fresh.

5. Learned counsel pointed out that they are suffering on account of delay in adjudication of these matters despite the direction given in the tribunal order dated 06.04.2023. In this background, we direct the adjudicating authority to decide this issue after giving due notice and following principals of natural justice within a period of 4 months from the date of issue of this order.

(Pronounced in the open court on 17.04.2024)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

Dharmi