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

REGIONAL BENCH- COURT NO. 3

Customs Appeal No. 10802 of 2023-DB
(Arising out of Order No.AHM-CUSTM-000-COM-15-16-23-24Dated-19.09.2023passed by Commissioner of Customs-Ahmedabad)

Gfluro Coating Pvt. Ltd. **........Appellant**
205, Primate House P.. Gormoh Restaurant,
Judges Bungalow Road, Bodakdev,
Ahmedabad-Gujarat-380015

VERSUS

C.C. –Ahmedabad **........Respondent**
1st Floor, Custom House, Opp Old High Court,
Navrangpura, Ahmedabad, Gujarat-380009

WITH

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Navrangpura, Ahmedabad, Gujarat-380009

APPEARANCE:
Shri Amit Laddha, Advocate appearedfor the Appellant
Shri Girish Nair, Assistant Commissioner, (Authorized Representative) appeared for the Respondent

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

FINAL ORDER NO.___12585-12586 /2024

DATE OF HEARING:17.10.2024
DATE OF DECISION: 06.11.2024

RAMESH NAIR

The brief facts of the case are that the appellant filed various bills of entry at ICD Khodiyar through their CHA for claiming the goods namely, "G Type Tempered Glass Lid" classifying under chapter tariff heading 7010 9000 attracting basic custom duty @ 10%. After an enquiry by the Custom Authority, it was contended that the goods are correctly classifiable under Chapter Tariff Heading 7013 9900 and not 7010 9000 accordingly, the bills of entry filed by the appellant were reassessed by the department and the imported goods were reclassified under chapter tariff heading no. 7013 9900, the department confirmed the allegation vide order-in-original no. 26/ADC/VM/O&A/2022-23 dated 09.09.2022 passed by the Additional Commissioner of Customs, Ahmedabad. On such reclassification of the imported goods for bill of entry no. 9525393,scrutiny of the appellant for the goods imported for the past period was conducted wherein it was observed that similar items were imported by the appellant in the past by classifying the goods under chapter tariff heading No. 7010 9000 by filing bills of entry No. 9871652 dated 08.12.2020, 9871659 dated 08.12.2020 and 2108686 dated 25.12.2020 accordingly, a show cause notice No. VIII/10/29/Commr/O&A/2022-23 was issued by the respondent.The said show cause notice was adjudicated vide order-in-original No. AHM/CUSTM-000-COM-15-16-23-24 dated 19.09.2023 passed by the Commissioner of Customs, Ahmedabad, wherein he has rejected the declared classification of the imported goods under Custom Tariff Heading No. 7010 9000 and ordered to reclassify the imported goods under custom tariff heading no. 7013 9900 of the Schedule to the Custom Tariff Act, 1975. The learned Commissioner has confirmed the demand of differential duty of Rs. 59,03,044 and Rs. 3,41,543/- along with interest and imposed penalty. The order also provided an option to redeem the goods on payment of fine of Rs. 45,47,800/-. Being aggrieved by the said order-in-original dated 19.09.2023, the appellant preferred the present appeals.

2. Shri Amit Laddha, learned Counsel appearing on behalf of the appellants submits that they rightly classified the imported goods i.e. "G Type Tempered Glass Lid" under Chapter heading No. 7010 on the premise that the said chapter specifically deals with the product like stoppers lids and other closures of glass. Therefore, the department's allegation to classify the goods under Chapter 7013 is baseless and devoid of merits. He submits that Chapter tariff heading 7010 uses ";" after the terms Carboys, bottles, flasks, jars, pots, phials, ampoules and other container, of glass, of a kind used for the conveyance, or packing of goods; preserving jars of glass; stoppers, lids and other closures, of glass. Therefore, the department's allegation to classify the goods under chapter 7013 is baseless and devoid of merits. He submits that chapter tariff heading 7010 uses ";" after the term "Carboys, bottles, flasks, jars, pots, phials, ampoules and other container, of glass, of a kind used for the conveyance, or packing of goods; preserving jars of glass; stoppers, lids and other closures, of glass" and this clearly indicate that both the two terminology have to be read disjunctively and not conjunctively. He placed reliance on the judgment in the case of

Sunil Srivastava vs UOI 1984 (19) Taxman 29 (Patna) wherein it was held that where two clauses are separated by a semi-colon, they would be read disjunctively. He further submits that as per Rule 3(a) of General Rules of Interpretation where classification of a product is possible under two chapter heading one which has the specific entry will prevail over the general entry. On this principle the lids are clearly covered under 7010 and the same is not specifically mentioned in Chapter 7013. On this ground also the goods merits classification under 7010 and not 7013. He placed reliance on the following judgments.

- Ascent Meditech Ltd. vs CC [2014 (309) ELT 712 (Tri. Amd) upheld by Supreme Court 2015 (320) ELT A281 (SC)]
- Page Industries Ltd. 2022 (382) ELT 130 (Tri. Chennai)
- Moorco (India) Ltd. 1994 (74) ELT 5 (SC)
- ZymountrientsPvt Ltd. 2020 (372) ELT 458 (Tri.)

He also placed reliance on the judgments of Chendure Enterprises 2022 (381) ELT 82 (Tri.-Chennai) he further submits that supplier in the import documents also mentioned HSN Code 7010 therefore, Chapter 70 of Customs Tariff of China is similar to Customs Tariff India. Since the supplier has classified the goods under Chapter 70, the appellant has rightly classified the imported goods under Chapter 70. He further submits that this is a standard practice across industries to classify the "G Type Glass Lid" under Chapter 7010. He referred to sample documents containing certificate of origin of the Peoples Republic of China along with Bill of Entry and other import documents to show that the imported goods were classified under Chapter 7010 by the other importers which are enclosed along with the appeal. He also submits that they are imported "G-Type Tempered Glass Lid" from 2015 under Chapter 7010. The customs department has never raised any objection with respect to classification of imported goods till 2022 and all of sudden, the objection was raised regarding classification of the imported goods. The said practice adopted by the customs department is without having any evidence and it is the onus on Revenue to provide the reasons for such change in the classification of imported goods. In this regard, he placed reliance on following judgments:

- Hindustan Ferodo Ltd. 1997 (89) ELT 16 (SC)
- Madhu Wool Spinning Mills 1983 (14) ELT 2200 (Bom)
- Arya AbhushanBhandar 2002 (143) ELT 25 (SC)

- Puma Ayrvedic Herbal Pvt Ltd. 2006 (196) ELT 3 (SC)

He further submits that all the bills of entry involve in the present impugned order were assessed finally and the department has not challenged the assesement order of such bills of entry, therefore, the Show Cause Notice issued without challenging the assessment order of the bills of entry is illegal and incorrect. In this regard he placed reliance on the following judgments:

- Priya Blue Industries Ltd. 2004 (172) ELT 145 (SC)
- ITC Ltd. in Civil Appeal No. 293-294 of 2009 vide order dated 18.09.19

He submits that the issue involved is of interpretation in nature and there is no malafide on the part of the appellant in such case the penalty is not imposable in view of the following judgments:

- Tata Consultancy Services 2018 (18) GSTL 478
- Hindalco Industries Ltd. 2018 (10) TMI 392-CESTAT New Delhi
- Suntex Business Solutions 2017 (51) STR 446 (Tri. Bang.)
- Uni Ads Ltd. 2016 (42) STR 547 (Tri. Bang.)

As regard redemption fine, he submits that since the goods are not liable for confiscation therefore, the redemption fine is not imposable. He further submits that redemption fine cannot be imposed as the goods have been cleared from the custom control and was not available for confiscation. He placed reliance on the following judgments:

- Shiv KripaIspat Pvt. Ltd. 2009 (235) ELT 623 (Tri. LB) affirmed in 2015 (318) ELT A259
- CCE vs Premier PolyspinPvt Ltd.2010 (257) ELT 447 (T)
- Airport Authority of India 2015-TIOL-2059-CESTAT-MAD

He also submits that the goods are not liable for confiscation under the provision of section 111 of the Act, penalty cannot be imposed on the appellant under Section 112A of the Act.

He also placed reliance on the Hon'ble Supreme Court judgment in the case of CCE vs HMM Ltd. 1995 (76) ELT 497 (SC) followed in Coolade Beverages Ltd. 2004 (172) ELT 451 (All.)

3. Shri Girish Nair, Learned Assistant Commissioner (AR) appearing on behalf of the Revenue reiterates the findings of the impugned order. He submits that the lid imported by the appellant is of a kind used for tableware and kitchenware for which the proper tariff entry is provided

under heading 7013 whereas heading of 7010 is not for any goods of tableware or kitchenware. The goods classifiable under 7010 is in respect of a kind commonly used commercially for conveyance and packaging of liquids or of solids products, therefore, in the present case the imported goods namely, lids being made of glass it is useful for tableware, kitchenware will not be classified under 7010 whereas it will correctly classify under 7013. He placed reliance on the following judgments:

- Visteon Automotive Systems India Limited 2018 (9) GSTL 142 (Mad.)
- Midas FertchemImpex P Ltd. 2023 (4) Centax 73 (Tri. Del.)
- UOI vs Jain SHudh Vanaspati Ltd. 1996 (86) ELT 460 (SC)

4. We have carefully considered the submissions made by both the sides and perused the records. We find that in the present case the dispute to the classification of imported goods, namely "G Type Tempered Glass Lid" is whether the same is classifiable under Chapter Heading 7010 as claimed/ declared by the appellant or under Chapter Heading 7013 as claimed by the Respondent. For ease of reference and to understand the tariff entry both the rival tariff entries are reproduced below:

> ***<u>HS Codes of Heading 7010</u>*** *: Carboys, bottles, flasks, jars, pots, phials, ampoules and other containers, of glass, of a kind used for the conveyance or packing of goods;* ***preserving jars of glass; stoppers, lids and other closures, of glass.***
>
> - *7010 10 00-Ampoules*
> - *7010 20 00- Stoppers, lids and other closures.*
> - ***7010 90 00 - Others***
>
> ***<u>HS Codes of Heading 7013</u>*** *:*GLASSWARE OF A KIND USED FOR TABLE, KITCHEN, TOILET, OFFICE, INDOOR DECORATION OR SIMILAR PURPOSES (OTHER THAN THAT OF HEADING 7010 OR 7018)
>
> - *7013 10 00-Of Glass – Ceramics*
>   - *Stemware drinking glasses other than of glass ceramics;*
> - *7013 91 00- of lead crystal.*
>
> ***7013 99 00 – Others***

After carefully comparing both the tariff entry, it is observed that the Glass Lids are covered under the heading 7010 whereas the heading 7013 does not have a specific entry of Glass Lids. It is further observed that the description in heading 7010 namely stoppers, lids and other closures, of glass is provided independently and not conjunctively with the goods of the same entry like Carboys, bottles, flasks, jars, pots, phials, ampoules etc, therefore, the said description is independently disjunctive from other description of heading 7010 therefore, the contention of the Revenue is not correct that Stopper, lids and other closures, of glass are of the goods namely Carboys, bottles, flasks, jars, pots, phials, ampoules and other container, of glass, of a kind used for the conveyance, or packing of goods; preserving jars of glass; stoppers, lids and other closures, of glass of heading 7010 and accordingly the glass lids being a lid for tableware or kitchenware will not classify under 7010 but the same is classifiable under 7013. We do not find any substance in the said contention of the Revenue for the reason that in heading 7010, stoppers, lids and other closures of Glass is provided after ";" that means this description is independent to the other description such as Carboys, bottles, flasks, jars, pots, phials, ampoules and other container, of glass, of a kind used for the conveyance, or packing of goods; preserving jars of glass; therefore it cannot be contended that the stopper, lids and other closures of glass mentioned in 7010 are of the packaging material mentioned in 7010.

5. On the other hand, heading 7013 does not have any specific entry in respect of Glass Lids, therefore, irrespective of the use of lids if the same is made of glass, the lid is correctly classified under 7010. We find that on this particular issue recourse can be made to Rule 3(a) of General Rules of Interpretation which provides that specific heading has to be given preference to a general heading. In the facts of the present case, undisputedly the lids made of glass is specifically provided in heading No. 7010 and the same is not provided in 7013. Therefore, as per Rule 3(a) of General Rules of Interpretation also 'lids of glass' which is specifically provided under 7010, the same is correct classification. Tariff heading 7013 being a general tariff entry will not prevail over the specific entry. All the submissions made by learned department's authorised representative clearly fail in view of the above interpretation of the tariff entry made on the basis of not only Rule 3(a) but also the various judgments cited by the appellant which are as under:

- Ascent Meditech Ltd. vs CC [2014 (309) ELT 712 (Tri. Amd) upheld by Supreme Court 2015 (320) ELT A281 (SC)]
- Page Industries Ltd. 2022 (382) ELT 130 (Tri. Chennai)
- Moorco (India) Ltd. 1994 (74) ELT 5 (SC)
- Zymountrients Pvt Ltd. 2020 (372) ELT 458 (Tri.)

As per our above discussion, we are of the view that the appellant have correctly classified the goods namely, "G Type Tempered Glass Lids" under heading 7010. All other issues raised by both the sides are not addressed. As per our above discussion and finding, the impugned order is set aside.Appeals are allowed.

(Order pronounced in the open court on 06.11.2024)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

Neha