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

REGIONAL BENCH-COURT NO. 3

CUSTOMS APPEAL NO. 10943 of 2015-DB

[Arising out of Order-in-Original/Appeal No JMN-000-APP-335-14-15 dated 25.03.2015 passed by Commissioner of CUSTOMS-AHMEDABAD]

Pensla Steels P Ltd **...Appellant**

Backside Sodal Mandir Road,
4, Jagyasu Estate,
Jalandhar, Punjab -144004

VERSUS

C.C.-JAMNAGAR(PREV) **...Respondent**

Sharda House...Bedi Bandar Road,
Opp. Panchavati,
Jamnagar,Gujarat.

APPEARANCE:
Shri Amit Ladhdha, Advocate for the Appellant
Shri Prashant Tripathi, Superintendent (AR) for the Respondent

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

Final Order No. 12792/2024

DATE OF HEARING: 18.10.2024
DATE OF DECISION: 22.11.2024

RAJU

These appeal has been filed by M/s. Pensla Steels Private Limited.

2. Learned Counsel for the appellant pointed out that the appellant had filed shipping bill for export of goods has declared as " Hand Tools Digging Spade With Handle " classifying the same under CTH No. 82011000 and claimed the benefit of DEPB Scheme @ 6% without value cap in a terms of Serial No. 196 Group Code 61 (Engineering Group) as per the Public Notice No. 102/2008 dated 05.11.2008 issued by DGFT. When goods were examined, it was found to contain items in the shape of a metal part and two types of wooden handles packed in PP bags. The revenue alleged that the said goods

are "Pick Mattock" falling under CTH No. 82013000 and not the "Digging Spade" falling under CTH 82011000 as claimed by the appellant. Sr. No. 196 of the DEPB schedule as per the Public Notice No. 102/2008 dated 05.11.2008 which reads as under :-

DEPB SCHEDULE			
Product Group: Engineering Products			
Product Code: 61			
Sl. No.	Description	DEPB Rate	Value Cap
196	Shovels/ Spades made of Iron and/or steel, with or without handle, irrespective of what material the handle may have been made of	6	

2.1. The Entry 73 of the DEPB Schedule reads as under :-

DEPB SCHEDULE			
Product Group: Engineering Products			
Product Code: 61			
Sl. No.	Description	DEPB Rate	Value Cap
73	Powrah/Hoe/Pickaxe/Kudali/Pick Mattock/ Cutter Mattock/ Trowel/ Transplantor /Fork/Cultivator/Weeder made of Iron and/or steel	5	Rs.40/ Kg.

2.2. On the allegation that goods were mis-declared as "Pick Mattock" to claim higher DEPB benefit to maintain the department seized goods under Section 110 of the Customs Act, 1962.

2.3. The allegations made were following

(a) The goods are "Pick Mattock" and not "Digging Spade"

(b) While declared quantity was 21000 pieces of metal part and 21000 pieces of wooden handles, the actual quantity found was 20808 number of metal parts and 17425 pieces of wooden handles. Accordingly, there was shortage of 3383 wooden handle and 192 pieces of metal parts.

(c) The valuation of the product was incorrect. While revenue alleged that the market value of goods is Rs. 225/- per piece, the appellant had declared the export price as Rs. 402.30 per piece to claim higher DEPB.

The show cause notice issued by revenue was confirmed by the lower authority and hence, the appellants are in appeal before the Tribunal.

2.4. Learned Counsel pointed out that the goods are examined by Chartered Engineer Shri O.S.Nagar who has certified that the impugned goods are "Digging Spade". The revenue has later sent a questionnaire to Shri Nagar, Chartered Engineer. Shri Nagar in his reply has categorically stated that certificate was issued after examining of goods and after study on the internet.

2.5. He pointed out that Shri Arvind Gupta Authorized Representative of the appellant has in his statement categorically stated that the goods are "Digging Spade" and not "Pick Mattock". As regards quantity declared in the shipping bill the appellants contended that 2430 PP packages of goods were sent in two trucks for the purpose of export. He pointed out that at the time of Panchnama made on 20.08.2011, the 2431 packages were found and there was no shortage in total quantity. Shri Sachin Garg General Manager of M/s. Contrans Logistic Private Limited in his statement dated 14.11.2011, he stated that individual pieces in each package were not counted at the time of receipt and all the cargo received was made available with CFS. Shri Arvind Gupta in his statement stated that they purchased full quantity as declared in the shipping bill, invoice and packing list.

2.6. Learned Counsel submitted that the "Digging Spade" without handle was purchased from M/s. JSR International at Rs. 260/- per piece and the handle was purchased separately at the rate of Rs. 17.75/- per piece . The appellant had also paid polishing charges of Rs. 24/- per piece. The appellant submitted following calculation to substantiate the valuation :-

Description	Price (in Rs.)
Cost of Goods	260
Wooden Handle	18
Polishing	24
Commission	30 (10% of Purchase order)
Charges of credit Period	23
Polish Inspection charge	20
Freight	10
Miscellaneous Expenses like office and administration expenses, exchange difference, Banking charges etc.	15
Total	**400**

2.7. Learned Counsel pointed out that the issue of classification is matter of interpretation and there cannot be any intention to defraud the exchequer. He further argued that even valuation is arrived at on the basis of cost structure as detailed above. In these circumstances imposition of penalty is a totally unwarranted.

3. Learned AR relies on the impugned order. He produced extracts from Wikipedia showing pictures of Pick Mattock and Digging Spade. He pointed out that they had availed the services of Shri Deepak Shah Chartered Engineer

/Government Registered Valuer, who had affirmed, after examining and a piece weighing approximately 1.380 K.g. piece sent to him that it was Pick Mattock.

3.1. He had certified that such goods were sold per piece in the market. He has further certified that such goods Pick Mattock (Trikam) having general used for the purpose of digging only. He clarified that the goods were capable of being used for digging of soil , etc. and was produced from base metal iron and steel. Accordingly to him cost of Pick Mattock of Rs. 150/- per piece. He further clarified that the smaller type of handle was probably handle of Pick Mattock (Trikam) but does not fit in the Pick Mattock.as the size was different. He further stated that the other type of handle was not used in the declared goods.

3.2. Learned AR further pointed out that revenue had conducted market survey with some dealers of such goods namely M/s. Maruti Hardware, M/s. Surya Hardware, M/s. Radheshyam Hardware of Rajkot. They opined that the market price of goods would be ranging between Rs. 210/- to Rs. 225/- Piece.

4. We have considered rival submissions. We find that the dispute relates to goods described as 'Digging Spade' by the exporter and as 'Pick Mattock' by the revenue. The goods are described as consisting of two parts, one metal part and one wooden handle. The appellants have submitted a certificate of Chartered Engineer Shri O.S.Nagar describing it as digging spade. The notice alleges that as per examination report the goods are found to be Pick Mattock. The notice does not define what a 'Pick Mattock' is and how the revenue comes to a conclusion that it is a 'Pick Mattock'.

4.1. The Revenue sent a questionnaire to the Shri O.S.Nagar the Chartered Engineer who had given his certificate in favour of appellant. He clarified that the term 'Digging Spade' and 'Pick Mattock' are used interchangeably. He also clarified that he had given his opinion only after examining the goods.

4.2. The sample was also sent to CRCL Kandla who opined that the sample is pointed metallic article without handle and it is composed of metallic steel." Opinion of another Chartered Engineer Shri Deepak Shah was sought by revenue. He described the goods as 'Pick Mattock' used for digging. He also called as 'Trikam'.

4.3. Thus, it is seen that both the Chartered Engineers have opined that the tool is used for digging. CRCL Kandla, in its opinion has not given any name to product. The word 'Pick Mattock' has not been defined anywhere in the proceedings. Shri Nagar, Chartered Engineer in reply to questionnaire had described that the words 'Digging Spade' and 'Pick Mattock' are used interchangeably.

4.4. The Google defines a spade as "a tool that you use for digging". Since, both the Chartered Engineers have stated that the item is used for digging it can be called a 'Spade'. We find no evidence is produced by revenue to establish that the goods are not 'Spade' falling under Sr. No. 196 of DEPB schedule.

4.5. Another issue raised is that there was a mismatch between the quantity declared and the quantity good. It was alleged that while 21000 pieces of metallic part and 21000 pieces of wooden handles were declared, the actual quantity good was 20808 pieces of metallic part and 17425 pieces wooden handle. The appellant have produced the copy of invoice of J.S.R international date 21.06.2011 for 21000 pieces of metal part and invoice of M/s. wood craft Ind. dated 14.06.2011 of 21000 pieces of wooden handle. The CHA had contended that a total of 2430 packages were received in two trucks on 15.06.2011 & 17.06.2011. The cargo was shifted and stocked on 19/20 August, 2011 and total number of packages was 2430. The panchnama also records the total number of packages as 2431. It has been argued by appellants that the goods had come against order of 21000 pieces each of metal and wooden part. The physical counting was not done by the exporters or the CHA as that was not deemed necessary. We find that the declaration made in the documents was based on the order placed by the exporter. Physical counting of 21000 pieces would require opening of all packages. Moreover, it is stated that there was a delay in carting of second truck in the part by two days which necessitated the carting of cargo from the warehouse to open. The pictures of the cargo available in the file show that the goods were loosely packed in bags. In these circumstances the exporter cannot be blamed for some mismatch in quantity. As it is the benefit depends on value of foreign currency earned and not on the number of places exported.

4.6. Now, we examine the valuation of goods. The revenue has sought to estimate the market value of goods from various sources. The report of dealers from the Rajkot market is identically worded with only the market price being different. The market price declared is without examination of the composition of the metal in the metal part. Moreover, the exporter has produced invoice of purchases of both items. There is no evidence that the market price indicated by dealers is of identical goods as nothing except approximate weight of metal part is mentioned. There is no reference to the composition. Moreover, it is not necessary to export the goods has to be done at the domestic market price. The exporter can get a better price due to his marketing skills as well. The revenue also recognizes that market price of goods is not the export value of goods. Circular No. 34/2005-Cus dated 05.08.2005 in Para 2.2 as Prescribed as follows :-

CIRCULAR NO. 34 /2005-Cus. *dated 5th August, 2005*

F.NO.609/132/2004-DBK

Government of India

Ministry of Finance

Department of Revenue

"2.2. Exports under DEPB Scheme

> *The declarations being abolished are those relating to not claiming the benefits- under Engineering Products Export (Replenishment of Iron and Steel Intermediates) Scheme and duty drawback, of conversion of DEPB Shipping Bill into Drawback/DEEC Shipping Bill and of credit in respect of additional duty debited from DEPB, the fact of goods being exported under DEPB Scheme, the present market value of goods, DEPB benefits being claimed not exceeding 50% of the present market value of export goods, usage of preservatives in export products and export products having been obtained from aqua culture sources. The above declarations are presently listed at Sl. Nos. 2-7, 11, 12, 14 & 15 of Annexure-F as DEPB declaration."*

4.7. It is apparent that the only administrative restriction is that the DEPB claimed should not exceed 50% of the market value. Thus, the CBEC also recognizes that FOB value can be much higher than market value. In these circumstances we do not find any merit in this objection as well.

5. The Impugned ordered is set aside and the appeal is allowed.

(Pronounced in the open court on 22.11.2024 *)*

RAMESH NAIR
MEMBER (JUDICIAL)

RAJU
MEMBER (TECHNICAL)

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