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

REGIONAL BENCH- COURT NO.3

Customs Appeal No. 10105 of 2016

(Arising out of OIA-AHM-CUSTM-000-APP-152-15-16 dated 20/10/2015 passed by Commissioner of CUSTOMS-AHMEDABAD)

Shree Radhe Industries **......Appellant**
Plot No. 86(A), Gidc Alinda,
Savli, Vadodara, Gujarat

VERSUS

C.C.-Ahmedabad **......Respondent**
Custom House,
Near All India Radio Navrangpura,
Ahmedabad, Gujarat

APPEARANCE:

Shri Vivek Bapat, Advocate appeared for the Appellant
Shri R.P Parekh, Superintendent (AR) appeared for the Respondent

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

Final Order No . A/ 11333 /2022

DATE OF HEARING: 27.07.2022
DATE OF DECISION: 01.11.2022

RAMESH NAIR

The brief facts of the case are that the appellants are importing FRP rods and classifying the same under CTH 70022090. The case of the Revenue is that the said goods should be classified under CTH 70199090 and consequently the same is liable for payment of Anti Dumping Duty under Notification No 30/2011- CUS (ADD) dated 04.03.2011. The department had issued a query disputing the classification. The appellant have replied along with certificate documents. In response the adjudicating authority passed the adjudication order vide OIO No 181/DC/IMP/2015 dated 01.04.2014 whereby the FRP rods were re-classified under heading No 701990900 as other articles of glass fibre and held that the same is liable to Anti dumping duty under Notification No 30/2011- CUS (ADD) 04.03.2011. Being aggrieved by Order-In-Original, the appellant filed an appeal before the Commissioner (Appeals) who vide impugned order upheld the Order-In-Original and rejected the appeal of the appellant. Therefore, the present appeal.

2. Shri Vivek Bapat, Learned Advocate appearing on behalf of the appellant submits that the goods imported by the appellant is admittedly FRP rods which is made out of glass fibre and resin. Hence, the same is correctly classified under 70022090. He alternatively submits that in the light of Supreme court judgment in the case of Kemrock Industries & Exports Ltd Vs. CCE, Vadodara - 2007 (3) TMI 260 (SC) the product is not classifiable under CTH 701990900.

3. Shri R.P Parekh, Learned Superintendent (AR) appearing on behalf of the Revenue reiterates the finding of the impugned order.

4. We have carefully considered the submission made by both sides and perused the records. We find that the goods imported by the appellant is FRP rods which is not under dispute even by the department. The department sought to classify the said product under CTH 70199090. The entry is reproduced below:-

> *"7019 Glass fibres (including glass wool) and articles thereof (for example,yarn,woven fabrics)*
> *7019 9090 ----- Other "*

From the above entry it can be seen that the CTH 70199090 is in respect of the Glass Fibre. The product imported by the appellant is FRP rod and the CTH claimed by the appellant is CTH 70022090 the entry of the same is reproduced below:

> *"7002 Glass in balls (other than microspheres of heading 7018), rods or tubes unworked*
> *70022090 ---- Other"*

From the above entry it is clear that the CTH 7002 is meant for the product manufactured out of glass fibre. The glass fibre is raw material and product in question is final product. Hence, undoubtedly both items are entirely different and clearly classifiable under CTH 70022090. Since the FRP rods clearly specified against the Tariff entry of 7002 by any stretch of imagination the same cannot be classified under CTH 70199090 as held by the lower authority. Moreover, in the Hon'ble Supreme Court judgment held that the FRP rods are classifiable under chapter 39 since, it is nobody case in the present case that the product is classifiable under chapter 39 however, in view of the Hon'ble Supreme court judgment it is clear that under any situation the FRP rods cannot be classified under 70199090. If this so then the Anti dumping duty which is levied on goods falling under 70190900 is not applicable in the present case.

5. As per our above discussion and finding the impugned order is set aside. Appeal is allowed with consequential relief, if any, in accordance with law.

(Pronounced in the open court on 01.11.2022)

RAMESH NAIR
MEMBER (JUDICIAL)

RAJU
MEMBER (TECHNICAL)

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