

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,
REGIONAL BENCH : ALLAHABAD**

C/70706/2017-CU[DB]

(Arising out of Order-in-Original No.KNP-EXCUS-000-COM-001-17-18 dated 30.06.2017 passed by Commissioner, Customs, Central Excise & Service Tax, Kanpur.)

Commissioner of Customs, Kanpur

...APPELLANT(S)

VERSUS

M/s.Nabroco Tools & Technologies Pvt.Ltd.

RESPONDENT (S)

APPEARANCE

Shri Gyanendra Kumar Tripathi (A.C.) (A.R.) for the Revenue
Shri Amit Awasthi (Advocate) for the Respondent

CORAM:

MRS. ARCHANA WADHWA, HON'BLE MEMBER(JUDICIAL)
SHRI ANIL G. SHAKKARWAR, HON'BLE MEMBER(TECHNICAL)

DATE OF HEARING/DATE OF DECISION : 05.12.2018

FINAL ORDER NO.72784/2018

Per Mrs.Archana Wadhwa :

The issue in the present appeal of the Revenue, which is against the order passed by the Commissioner of Central Excise, Kanpur, is the correct classification of the 'Faceted Glass Beads' imported by the respondent. Whereas the importer has claimed the classification as 'Faceted Glass Beads' under Tariff Item 7018 10 20 leviable to nil rate of duty, the Revenue sought to classify the same under Tariff Item No. 7018 10 90 of the Customs Tariff Act, 1975.

2. While adjudicating on the proceedings initiated against the appellant, learned Commissioner held in favour of the assessee by observing as under:-

"34. Now, from the discussions above, the one fact which has emerged is that the item 'chaton' does not find specific mention in the Tariff Sub-Heading no.701810, then the question that requires to be answered is that what shall be actual Tariff sub-heading or Chapter sub-heading under which the item 'chatons' can be classified. To find the answer, one shall be required to consider the judicial findings, which consistently have held that the "chatons" are also a type of bead irrespective of the fact that they are not pierced or find a hole across the diameter. Thus, in light of the said findings recorded by various judicial forums, it can be said that the item "chaton" shall also be considered as beads and shall be placed under the Chapter sub-heading no.70181020 and not under chapter 70181090, as has been alleged by the department. This classification of 'chatons' has also been confirmed by the Apex Court in a decision in the case of Commissioner v. VMB Impex (supra), wherein the appeal filed by the Department against the Final order of Hon'ble CESTAT has been dismissed and classification confirmed under Chapter sub-heading no.70181020 has been and upheld. One more fact, which I would certainly like to mention, is that in the case of VMB Impex (supra), the samples were sent to Indian Institute of Gemology, New Delhi, which in my opinion is an established authority to give opinion on the products. Thus, there is no reason to dismiss the party's plea. Similarly, in the other cases relied upon by the party i.e. Starlite (supra), Rajan Kumar & Bros (Impex) (P) Ltd. (supra) and Art Beads (P) Ltd. (supra), the judicial forums have classified the product 'Chatons' under Chapter Sub-Heading No.70181020 only on the basis of opinions given by certified authorities like Deputy Chief Chemist of Customs House and ISIS specifications, which cannot be disregarded at any cost. Thus, from the facts discussed above, I do not differ with the proposal of the department to the extent of considering the items covered under Bill of Entry No.9848040 dated 09.07.2015, as 'Chatons' but, regarding classification, I certainly differ from the proposal made by the department, in as much as, the discussions above clearly establish that the goods imported under Bill of Entry No.9848040 dated 09.07.2015 are classifiable under the Chapter sub-heading no.70181020, the commodity description of which has been shown as 'beads'. Therefore, partially agreeing to the department, I hold that the goods under consideration are 'Chatons' and at the same time partially agreeing with the party, I hold that the goods in question shall be classified under the Chapter sub-heading no.70181020 and not under the Chapter sub-heading no.70181090, as has been alleged by the department. I further hold that since, the classification of the imported items has been confirmed under Chapter sub-heading no.70181020, then said item imported by the party shall

not attract Countervailing Duty equivalent to Central Excise duty, as the item 'Beads' did not attract Central Excise duty at the material time, the tariff rate being 'NIL'."

2. Being aggrieved with the said order vide which the Commissioner has dropped the proceedings against the respondents, the present appeal stands filed by the Revenue.

3. We have seen the various Tribunal's orders which stand referred to and relied upon by the adjudicating authority. It stands held in the decision of the Tribunal in the case of Starlite Corporation, Bombay v. Union of India [1989 (39) E.L.T. 538 (Bom.)] that 'chatons' are classifiable as glass beads and eligible for exemption. To the similar effect is the Tribunal's decision in the case of Rajan Kumar & Bros. (Impex) Pvt.Ltd. v. Collector of Customs [1992 (62) E.L.T. 142 (Tribunal)], VMB Impex v. Commissioner of C.Ex., Cus. & Service Tax [2015 (321) E.L.T. 522 (Tri.-Bang.)], Art Beads Pvt.Ltd. v. Commissioner of Cus. (Import), Mumbai-II [2013 (292) E.L.T. 472 (Tri.-Mumbai)]. The Tribunal's decision in the case of VMB Impex stands confirmed by Hon'ble Supreme Court, when the appeal filed by the Revenue was rejected as reported in 2015 (321) E.L.T. A 202 (S.C.).

4. Inasmuch as the issue stands decided, we find no reasons to interfere in the impugned order. Accordingly Revenue's appeal is rejected.

(Operative part of the order was pronounced in the open Court.)

SD/
(ANIL G. SHAKKARWAR)
MEMBER(TECHNICAL)

SD/
(ARCHANA WADHWA)
MEMBER (JUDICIAL)

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