

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE
TRIBUNAL
BANGALORE**

REGIONAL BENCH - COURT NO. 1

Excise Appeal No. 21027 of 2019

(Arising out of Order-in-Original No. 34-42/2019 dt.
24.07.2019 passed by Commissioner Of Central Tax,
Bengaluru)

**Fowler Westrup (India) Pvt.
Ltd.,**

Plot No.61-63, KIADB Industrial Area,
IV Phase,
Malur Taluk, Kolar District,
Karnataka – 563 160.

Appellant(s)

VERSUS

**Commissioner of Central
Tax,**

GST Commissionerate, Bengaluru
East,
4th Floor, TTMC/BMTC Building,
Old Airport Road,
Domlur, Bangalore 560071.

Respondent(s)

AND

Excise Appeal No. 21028 of 2019

(Arising out of Order-in-Original No. 43 & 44/2019 dt.
25.07.2019 passed by Commissioner Of Central Tax,
Bengaluru)

**Fowler Westrup (India) Pvt.
Ltd.,**

Plot No.61-63, KIADB Industrial Area,
IV Phase,
Malur Taluk, Kolar District,
Karnataka – 563 160.

Appellant(s)

VERSUS

**Commissioner of Central
Tax,**

GST Commissionerate, Bengaluru
East,

Respondent(s)

4th Floor, TTMC/BMTC Building,
Old Airport Road,
Domlur, Bangalore 560071.

Excise Appeal No. 20075 of 2023

(Arising out of Order-in-Original No. 30/2023 dt. 18/01/2023
passed by Commissioner Of Central Tax, Bengaluru)

**Fowler Westrup (India) Pvt.
Ltd.,**

Plot No.61-63, KIADB Industrial Area,
IV Phase,
Malur Taluk, Kolar District,
Karnataka – 563 160.

Appellant(s)

VERSUS

**Commissioner of Central
Tax,**

GST Commissionerate, Bengaluru
East,
4th Floor, TTMC/BMTC Building,
Old Airport Road,
Domlur, Bangalore 560071.

Respondent(s)

APPEARANCE:

Mr. Rajeev D Waglay, Advocate for the appellant.

Mr. Rajesh Shastry, Superintendent(AR) for the respondent.

CORAM:

HON'BLE Dr. D.M. MISRA, MEMBER (JUDICIAL)

**HON'BLE Mr. PULLELA NAGESWARA RAO,
MEMBER (TECHNICAL)**

Final Order No. 20756 to 20758 / 2023

Date of Hearing: 21/07/2023

Date of Decision: 21/07/2023

Per : DR. D.M.MISRA

These three appeals are filed against respective
Orders-in-Original. Since issue involved is common, the appeals
are taken up together for hearing and disposal.

2. Briefly stated the facts of the case are that the appellant are engaged in the manufacture of Transformer Oil Filter machines falling under Chapter 8421 29 00 and Seed Processing machinery falling under Chapter 8437 80 90 and also Silos. The Revenue disputed the classification of Silos alleging that these are silos for storing ensilage; hence classifiable under Chapter sub-heading 9406 00 93 whereas the appellant claimed its classification under Chapter 8437 10 00 of CETA, 1985. Periodical show-cause notices were issued demanding duty under Chapter 94 for the period from June 2006 to December 2014 (Appeal No.E/21027/2019) amounting to Rs.12,70,50,945/-; from October 2015 to March, 2017 and April 2017 to June 2017 (Appeal No.E/21028/2019) amounting to Rs.2,89,33,530/- and from January 2015 to September, 2015 (Appeal No.E/20075/2023) amounting to Rs.1,51,67,812/-. The demand notices were adjudicated and the same were confirmed with interest and penalty under the respective orders. Hence, the present appeals.

3. At the outset, the learned advocate for the appellant submits that this is the 3rd round of litigation before this Tribunal. In the earlier rounds, the Tribunal directed to examine the implications of the claim of classification under Chapter 84 of CETA, 1985, taking note of all samples, purchase orders, brochures etc.; however, the Commissioner continued to classify the same under Chapter sub-heading 9406 00 93 of CETA, 1985.

Also the Commissioner in the impugned orders referring to the classification of B.G. Shirke Construction Technology Pvt. Ltd. held that the classification of the present product should be under the same Chapter sub-heading 9406 00 93. He submits that the issue is no more res integra and the Mumbai Bench of the Tribunal taking note of the HSN notes developed from time to time, implication of the 8 digit classification and the opinions of the Department along with the brochures / pamphlets circulated by the appellant finally held that the goods are to be considered not a simple silos classifiable under sub-heading 94 06 but classifiable under Chapter heading 84 37 of CETA, 1985. He submits that since the machineries / Silos manufactured by them is identical to that of ***B.G. Shirke Construction Technology Pvt. Ltd.***, being referred to by the Commissioner in the impugned order while classifying the Silos manufactured by the appellant; therefore the said facts of the said case are similar to the facts of the present case. Learned counsel further submits that the order of the Tribunal at Mumbai has been accepted by the Revenue. In support, he has placed letter dt. 16/03/2023.

4. Learned AR reiterates the findings of the Commissioner.

5. Heard both sides and perused the records. We find that the short question involved in the present case is the classification of "Galvanized Silo Solution systems" which the

Revenue proposed to classify under 9406 00 93 and the claim of the appellant is under Chapter heading 8437 10 00. Periodical show-cause notices were issued to the appellant for demand of duty and confirmed the demands accordingly with interest and penalty. The Commissioner in the impugned orders, analysing the functions and implications of the relevant chapters of the sub-heading, came to the conclusion that it is classifiable under Chapter 94 and not Chapter 84 of CETA, 1985. Also, discussing in the impugned orders, the learned Commissioner also made a reference to the order of Commissioner, Pune about the classification of identical items by B.G. Shirke Construction Technology Pvt. Ltd. The Pune Commissionerate also classified the items manufactured by M/s. B.G. Shirke Construction Technology Pvt. Ltd., under Chapter sub-heading 9406 00 99 and the appeal was stated to be pending before the Tribunal of Mumbai Bench. We find that the Tribunal at Mumbai, after detailed discussion of the Silos functions, HSN etc. in its order dt. 25.11.2022 concluded that the classification of the said Silos would be under Chapter 8437 10 00 but not under Chapter sub-heading 9406 00 99 of CETA, 1985. The Tribunal while concluding the said classification held as under:

4.17. As per the above correspondence it is evident that Office of Chief Commissioner has agreed with the view as canvassed by the appellant while classifying the said goods under Heading 8437. We also take the note of the fact that this view has been expressed by the Chief Commissioner, under the scheme of eight digit classification code introduced by the Central excise Tariff Amendment Act, 2004. We also take note of the Shipping Bills filed by the appellant classifying the same goods under CTH 843709090 and assessed by the

Custom Authorities at Nhava Sheva under the said heading.

4.19. In view of the discussions as above we do not find any merits in the impugned order classifying the impugned goods cleared by the appellant under CETH 94060099 and demanding the duty accordingly.

4.20. When the issue was taken up and decided upto tribunal in 1995, all the facts were in the knowledge of the revenue since then. The amendment scheme of classification from 6 digit to 8 digit was introduced in 1995 and the Office of Chief Commissioner has rendered the opinion after examination of the issue on 9th January 2013, then it is not understood just for the change of opinion how can appellant be charged for suppression with intent to evade payment of duty subsequently for invoking extended period of limitation and for imposition of penalty under Section 11AC.

4.21. Since we are unable to sustain the order of demand of duty, the order for demand of interest too can't be sustained.

6. Following the aforesaid decision of the Tribunal which has been accepted by the Department, we do not see any merit in the impugned orders. Consequently, the same are set aside and the appeals are allowed with consequential relief, if any, as per law.

(Dictated and pronounced in open court)

(D.M. MISRA)
MEMBER (JUDICIAL)

(PULLELA NAGESWARA RAO)
MEMBER (TECHNICAL)

Raja...