# CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
# BANGALORE

REGIONAL BENCH - COURT No.-2

## Customs Appeal No.20180 of 2023

(Arising out of Order-in-Appeal No.COC-CUSTM-000-APP-31/2022-23 dated 14/03/2023 passed by Commissioner (Appeals) Customs, Cochin)

**M/s P & P Metalloys & Engineering Company,**
**…..Appellant**
No.39, Kalyani Industrial Estate, Vanagarram Road,
Ambattur, Chennai-600058

*VERSUS*

**Commissioner of Customs, Cochin ….Respondent**
Customs House, Willingdon Island,
Cochin-682009

**APPEARANCE:**

Shri M. Balagopal, Advocate for the Appellant
Shri K. A. Jathin, Authorised Representative for the Respondent

**CORAM:**
**HON'BLE MR. P.A. AUGUSTIAN, MEMBER (JUDICIAL)**
**HON'BLE MRS. R. BHAGYA DEVI, MEMBER (TECHNICAL)**

**FINAL ORDER NO.20987/2023**

DATE OF HEARING : 11.08.2023
DATE OF DECISION : 10.10.2023

**PER: P.A. AUGUSTIAN**

The issue in the present appeal is regarding classification of imported items. The appellant had filed Bill of Entry on 03.09.2022 for clearance of 'Golden Star Chafing Dish Fuel Wick' and 'Liquid Chafing Fuel wick

Plant' under CTH 36061000. The imported goods are meant for warming food in restaurant etc. To verify whether the goods falls under explosive CATEGORY for which compliance of Rule 7,14, 15 and 45 of the Explosive Rules, 2008 is applicable, clarifications were sought and appellant vide letter dated 12.09.2022 submitted that the goods imported are for food warming purpose, the liquid ingredient is Di-ethylene Glycol and the container is made up of Polypropylene. Hence the liquid is not explosive. After considering the submissions made by the appellant, the goods were subject to detailed examination and found that the goods are not falling under the category of explosive as alleged. However, the material filled in the container of Liquid Chafing Fuel wick is Di-ethylene Glycol and it is listed at serial number 197, Schedule-I Part-II of the Manufacture, Storage and Import of Hazardous Chemical Rules, 1989 notified under the provisions of the Environment (Protection) Act, 1989. Thus alleging that for import of same, importer is liable to intimate DGFT and State/Central Pollution Control Board regarding its import, a show cause notice was issued directing the appellant to show cause as why the goods should not be classified under CTH 84198190, held liable for confiscation and penalty should not be imposed under Section 112(a) of the Customs Act, 1962. In reply to show cause notice, appellant denied allegations and requested for release of goods as declared.

2. However Adjudication Authority vide Order-In-Original reclassified the goods and ordered absolute confiscation of the goods and imposed penalty of Rs.40,000/-. Aggrieved by the said order, an appeal was filed before the learned Appellate Authority. The Appellate Authority also upheld order-in Original. The classification under Chapter 8419 is upheld on the ground as mentioned below:-

> *"17. I find that, the impugned goods cannot be considered as a machinery or as a plant, but I certainly find the impugned item to be an equipment falling well within the ambit of Chapter 8419. I also find that, there is no specific Tariff item for the impugned goods, which is basically and equipment incorporating a fuel and a wick for heating/warming food. In this regard, Rule 4 of the General Rules for the interpretation states that goods which cannot be classified in accordance with Rules 2 and Rules 3 shall be classified under the heading appropriate to the goods to which they are most akin. And in the instant case, the impugned goods being an equipment for heating/warming good is most akin to the goods falling under the Tariff Item 84198190 I therefore find that the impugned goods have been rightly re-classified under CTI 84198190."*

3. Aggrieved by the said order, present appeal is filed. Learned Counsel appearing on behalf of the appellant submits that the allegations are unsustainable. Regarding alleged violation of Manufacture, Storage and Import of Hazardous Chemical Rules, 1989, the alleged omissions are rectifiable errors as per Rule 19 of said Rules and they have produced the copy of the letter dated 28.10.2022 intimating the details of import to Kerala State Pollution Control Board regarding import under Rule 3(h) of the Plastic Waste Management (Amendment) Rules, 2022. The appellant produced EPR certificate issued by Central Pollution Control Board and as per the Order-In-Original, the Adjudication Authority itself admitted compliance of the provisions of Plastic Waste Management (Amendment) Rules, 2022.

4. Regarding classification, The learned counsel for the appellant submitted that the product imported by the appellant is used for maintaining temperature of the food by placing it below the vessel and cannot be termed as 'Food Warmer' under CTH 8419 as alleged. Learned counsel for the appellant draw our attention to CTH 8419 as reproduced below:-

| **(1)** | **(2)** | **(3)** | **(4)** | **(5)** |
|---|---|---|---|---|
| **8419** | MACHINERY, PLANT OR LABORATORY EQUIPMENT, WHETHER OR NOT | | | |

| | | | | |
|---|---|---|---|---|
| | ELECTRICALLY HEATED (EXCLUDING FURNACES, OVENS AND OTHER EQUIPMENT OF HEADING 8514), FOR THE TREATMENT OF MATERIALS BY A PROCESS INVOLVING A CHANGE OF TEMPERATURE SUCH AS HEATING, COOKING, ROASTING, DISTILLING, RECTIFYING, STERILISING, PASTEURISING, STEAMING, DRYING, EVAPORATING, VAPORISING, CONDENSING OR COOLING, OTHER THAN MACHINERY OR PLANT OF A KIND USED FOR DOMESTIC PURPOSES; INSTANTANEOUS OR STORAGE WATER HEATERS, NON-ELECTRIC - Instantaneous or storage water heaters, nonelectric : | | | |
| **8419 81** | Other machinery, plant and equipment: | | | |

| | | | | |
|---|---|---|---|---|
| | For making hot drinks or for cooking or heating food : | | | |
| **8419 81 90** | Other | **u** | **10%** | |

5. Thus to classify any goods under the category of CTH 8419 it should be 'Machinery, Plant or Laboratory Equipment' and not the 'Chafing Dish Fuel Wick' imported by the appellant. Learned counsel for the appellant also draw our attention to the definition of CTH 3606 which covered liquid or liquefied gas in containers. He further submitted that Heading 3606 would read as follows;

| **(1)** | **(2)** | **(3)** | **(4)** | **(5)** |
|---|---|---|---|---|
| **3606** | FERRO-CERIUM AND OTHER PYROPHORIC ALLOYS IN ALL FORMS; ARTICLES OF COMBUSTIBLE MATERIALS AS SPECIFIED IN NOTE 2 TO THIS CHAPTER | | | |
| **3606 10 00** | Liquid or liquefied-gas fuels in containers of a kind used for filling or refilling cigarette or similar lighters and of a capacity not exceeding 300 cm3 | Kg. | 10% | **-** |

6. It is further submitted that same goods are traded all over the world by classifying the same under CTH 3606 1000. The Ld Counsel also draw our attention to Bill of Entry No.2593641 dated 01.02.2021 were similar goods cleared under CTH 36061000 in Nhava Sheva port and Bill of Entry No.4125573 dated 11.01.2023 were very same goods cleared through Chennai under CTH 3606. The Ld Counsel also draw our attention to Customs import documents from Dubai, UAE and Customs export documents from Sri Lanka and submitted that the goods are classifiable under the Heading as claimed by the appellant. It is also submitted that there cannot be different classifications for one product by different countries. Hence goods are rightly classifiable under CTH 3606 1000. Learned counsel for the appellant relied on following judgments: -

(i) Commissioner of Customs, Mumbai V,s Toyo Engineering India Ltd. (2006 (201) E.L.T. 513 (S.C.)

(ii) Commissioner of C.EX., Ludhiana V/s Nav Bharat Engg. (2004 (163) E.L.T. 83 (Tri.-Del.)

(iii) Collector of C.Ex., Bombay V/s Neoluxe India Pvt. Ltd. (2001 (128) E.L.T. 298 (Tri.Del.)

(iv) Warner Hindustan Ltd. V/s Collector of Central Excise, Hyderabad (1999 (113) E.L.T. 24 (S.C.)

(iv) Hindustan Aeronautics Ltd. V/s Commissioner of Customs, Bangalore (2019 (370) E.L.T. 699 (Tri. –Bang.)

(v) Carborandum Universal Ltd. V/s Commissioner of C.Ex., Chennai (2007 (211) E.L.T. 105 (Tri.-Chennai)

7. Regarding alleged violation of the Hazardous Chemical Rules, 1989 and order of absolute confiscation, it is submitted that said Rules would apply only in cases where chemicals listed in the Schedules of above Rules are imported and not when imported as a finished product "Chafing Dish Fuel Wick". It is further submits that when a finished product is imported, the same need to be classified as that finished product and the restrictions or prohibitions imposed if any on such classification shall only apply to such goods. In other words, Customs cannot object clearance of the goods by resorting to a contention that the fuel used inside the finished product is a restricted item. In the present case there is no restriction or prohibition on the finished product and therefore the Department cannot deny the clearance for the reason that the fuel used in the imported product is a restricted one.

8. The learned D.R. appearing on behalf of the respondents submitted that chapter 36 does not cover separate chemically defined compounds other than those

described in Note 2(a) or 2(b). Learned DR. also produced the Tariff classification and submitted that as per the classification in Wikipedia, Wick Food Warming Fuel from Ecuador was considered as classifiable under subheading 2905.39.9000. Also relied on the Final Order issued by the Tribunal in the case of **Pioma Chemicals V/s Commissioner of Customs, Nhava Sheva-I reported in 2019 (370) E.L.T. 301 (Tri.-Mumbai).** The Tribunal in this case has held that rulings of U.S. Customs and Kenya Customs may not be binding but definitely have great persuasive value.

9. We have gone through the submissions made by both the sides, grounds of appeal and findings given by the Adjudication Authority and the Appellate Authority. Regarding classification of goods under CTH 36061000 and on claiming the benefit of Exemption Notification No. 26 of 2000, as per HSN 3606 10 00**,** Liquid or liquefied-gas fuels in containers of a kind used for filling or refilling cigarette or similar lighters and of a capacity not exceeding 300 cm3 will fall under said category. Moreover, as evident from the documents relied by appellant, same goods are traded by classifying the same under CTH 3606 1000 and allowed to clear under CTH 36061000 through Nhava Sheva port and Chennai port. On the other hand, while rejecting the above said classification, department considered the proper

adjustment as falling under Chapter 8419 which lies to plant and machinery. Even as per the impugned order, Appellate Authority held that "*impugned goods cannot be considered as a machinery or as a plant. I also find that there is no specific Tariff item for the impugned goods, which is basically and equipment incorporating a fuel and a wick for heating/warming food.*" Hence goods are classifiable under CTH 36061000 and appellant is entitled for the benefit of Exemption Notification No. 26 of 2000 as claimed.

10. Regarding confiscation of goods, the goods were imported by the appellant claiming classification under CTH 36061000 and also by claiming the benefit of Exemption Notification No. 26 of 2000. While detaining the goods, various allegations were made initially which includes violation of the Hazardous Chemical Rules, 1989, Plastic Waste Management (Amendment) Rules, 2022 etc. On production of the EPR Certificate, Adjudication Authority itself dropped the allegation regarding violation of Plastic Waste Management (Amendment) Rules, 2022. Regarding violation of the provisions of Manufacture, Storage and Import of Hazardous Chemical Rules, 1989, said Rules would apply only in cases where chemicals listed in the Schedules of above Rules are imported and not when imported as a finished product "Chafing Dish Fuel Wick". Moreover, fuel

in the imported containers is less than 300 Cm3 and as per the definition it is clear that if liquid or liquefied-gas fuels in containers of a kind used for filling or refilling cigarette or similar lighters of a capacity not exceeding 300 cm3, it is to be treated as different category. Thus confiscation of goods on the alleged violation of the provisions of Manufacture, Storage and Import of Hazardous Chemical Rules, 1989 is unsustainable.

11. Regarding prayer for waiver of demurrage charge, there is no finding in impugned order. However considering the order of absolute confiscation, appellant if approach respondent for issuing detention certificate, same will be considered in accordance with law.

12. The appeal is allowed. Classification of goods under Tariff item 8419 8190 and penalty imposed on appellant are set aside.

(Order pronounced in the Open Court on **10.10.2023**)

**(P.A. AUGUSTIAN)**
**MEMBER (JUDICIAL)**

**(R. BHAGYA DEVI)**
**MEMBER (TECHNICAL)**

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