CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
1st Floor, WTC Building, FKCCI Complex, K. G. Road,
BANGLORE-560009

<u>COURT-2</u>

Customs Appeal No. 20012 of 2015

[Arising out of the Order-in-Original No.BLR-CUSTM-000-COM-027-14-15 dated 14.10.2014 passed by the Commissioner of Customs, Bangalore.]

M/s. Ratnagiri Impex Pvt. Ltd. **....Appellant**
'Annapoorna House'
No.1/16, 7th Cross,
New Guddadahalli,
Mysore Road,
Bangalore – 560 026.

Vs.

The Commissioner of Customs **....Respondent**
C.R. Building, Queen's Road,
Bangalore – 560 001.

AND

Customs Appeal No. 20008 of 2015

[Arising out of the Order-in-Original No.BLR-CUSTM-000-COM-027-14-15 dated 14.10.2014 passed by the Commissioner of Customs, Bangalore.]

S.A. Gopalakrishna **....Appellant**
Director
M/s. Ratnagiri Impex Pvt. Ltd.
'Annapoorna House'
No.1/16, 7th Cross,
New Guddadahalli,
Mysore Road,
Bangalore – 560 026.

Vs.

The Commissioner of Customs **....Respondent**
C.R. Building, Queen's Road,
Bangalore – 560 001.

Appearance:

Mr. B. V. Kumar, Advocate **....For Appellant**

Mr. K. Vishwanath, AR **.... For Respondent**

CORAM:

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

Date of Hearing: 05/09/2023
Date of Decision: 29/02/2024

FINAL ORDER No. 20123 - 20124 of 2024

Per R. BHAGYA DEVI:

The appellant, M/s. Ratnagiri Impex Pvt. Ltd., are holders of IEC No. 0700009248 are mis-declaring 'Brush Cutters' as 'Power Weeders' and mis-classifying the goods under CTH 8432 2990 instead of appropriate classification under CTH 8467 8990 thereby evading duty. On investigation and examination of goods by the SIIB officers, it was found that the importer had filed Bill of Entry No.4172443 dated 24.12.2013 for clearance of 324 sets of Rotary Power weeders and claiming exemption under Notification No.12/2012 [Sl. No.399 (a)] and at 2.5% BCD and Nil rate of CVD. Appellant vide letter dated 2.1.2014 requested for provisional release of the goods and goods were provisionally released on 23.1.2014 on execution of Bond for an amount of Rs.40,58,791/- and Bank Guarantee of Rs.20,29,396/- and also entire duty demand of Rs.8,52,833/- was paid. On further detailed investigations, Appellants were issued show-cause notice dated 5.5.2014 demanding differential duty on the mis-declared imported goods. On adjudication of the show-cause notice, the original adjudicating authority rejected the classification claimed by the appellant and demanded differential duty of

Rs.4,30,14,978/- in terms of provisions of proviso to earlier Section 28(1) or Section 28(4) of the Customs Act, 1962 along with interest and penalty and imposed personal penalty on Shri S.A. Gopalakrishna, CEO and Director of the appellant-company under Section 112 & 114AA of the Customs Act, 1962 and also imposed redemption fine of Rs.1,50,00,000/- under Section 111(m) of the Customs Act, 1962. Aggrieved by this order, appellants are before us.

2. Shri B. V. Kumar, learned counsel for the appellant submits that the term 'weed' is a subjective one without any classification value. He further submits that imported goods are nothing but 'Weeder or Brush cutter' used to eradicate the weeds. He takes us through CTH 8467 to show that CTH 8432 and 8467 are poles apart; while CTH 8432 covers agricultural, horticultural and forestry equipment for soil preparation, the tools covered by 8467 are all for industrial use and use other than agriculture; hence it is clear and unambiguous that the classification of Power Weeders is covered under CTH 8432. He also refers to the Expert Opinion given by the Rubber Research Institute of India and the Department of Agricultural Engineering, Bangalore, Department of Agriculture, Kerala and Users Compendium on Small Agricultural Machinery and Implements and opinions of various other institutions have been obtained wherein it is unanimously held that Brush Cutter/Weed Cutter is an agricultural machinery / implement used as weed cutter. To substantiate his claim that the

Expert's Opinion cannot be easily brushed aside, relies on the following judgments:

- Bharat Textile Processing vs. CC, Tuticorin: 2004 (171) ELT 86 (T)
- Wipro GE Medical Systems Ltd. vs. CC: 2006 (206) ELT 400 (T)
- Intercontinental (India) Ltd. vs. UOI: 2003 (154) ELT 37 (Guj.)
- CCE, Nagpur vs. DCL Polyesters Ltd.: 2000 (122) ELT 911 (Tri.)
- CCE vs. Carrier Aircon Ltd.: 2006 (147) STC 421 (SC)

2.1 He submits that appellants are eligible for exemption Notification No.2/2002-Cus dated 1.3.2002 (Entry No.259A, List 32A (iii) and Notification No.12/2012-Cust [Sl. No.399(A)] dated 17.3.2012 covers all types of weeders falling in Chapter 84 or in any other chapter.

3. The learned Authorised Representative on behalf of the Revenue made the following submissions:

3.1 The detailed facts of the case and the well-reasoned findings in the impugned Order Order-in-Original No.BLR-CUSTM-000-COM-027-14-15 dated 14.10.2014 are reiterated. In the instant case, the Appellant had filed Bill of Entry No.4172443 dated 24.12.2013 for import clearance of goods declared as Rotary Power Weeders – 324 Sets – Model AMH 200 (Agriculture use), classifying the same under CTH 84322990 and claiming exemption under Notification No.12/2012-Cus [Sl.No.399(a)] @ 2.5% BCD & nil CVD. The said items were imported from M/s Yung Chi Y.C. Industrial Co, Taiwan. The copy of user manual produced by the Appellant before the Hon'ble Bench during hearing on 05.09.2023 was also produced before the original authority at the time of import. It may be seen that, on the cover page at the top the words "POWER WEEDER / SHOOT PRUNER" are printed and at the bottom of the cover page the instructions given are read as "Please read the following instructions before you use this **brush cutter** to ensure safe operation". It may also be seen from the printed images of the import items on the user manual, especially from the images at the page no. 5 & 8, that the import item is a hand-held device and also it can be seen that the cutting blades are designed exclusively for brush cutting and therefore it may be concluded from the user manual itself that the import goods are Brush Cutters – Model No. AMH 200 and are hand held machines used for brush cutting purpose. A brand name of AGRIMATE was given on the user manual. However, there are no other details on the user manual to prove that the said machines are used **exclusively** for agriculture purpose.

3.2 In Budget 2012, concessional duty of customs was provided, specifically to agriculture and agro-processing sectors, from 7.5% /5% to 2.5%, on - "Sugarcane planter, root or tuber crop harvesting machine and **rotary tiller & weeder**, parts & components for their manufacture", as per Para 24(iv) of letter D.O.F.No.334/ 3/2012-TRU New Delhi, dated the 16th March, 2012 read with Sl.No.399(A)(x) of Notification No.12/2012-Cus dated 17.03.2012. The benefit of concessional duty is exclusively given to **"rotary tiller & weeder"** and not to such other rotary equipment like brush cutters and it is obvious that the "Rotary tiller & weeder" or "Rotary tiller / weeder" mentioned on the above notification at Sl.No.399(A)(x) can only be read as "Rotary tiller-cum-weeder" as a single equipment which is used exclusively for agriculture purpose. Hence, it may be deduced that the said notification did not provide any benefit of concessional duty to 'brush cutters' which are not exclusively used for agriculture purpose.

3.3 The Appellant contention that the 'Power Weeder' and 'Brush Cutter" are synonymous, is not acceptable, since the 'Power Weeder' equipment is visually, mechanically and functionally very different from the 'Brush Cutter", as can be seen from the sample images of 'Agrimate – Power Weeder" and 'Agrimate – Brush Cutter". The difference between the two has been explained at para 7.4 and 7.5 of the impugned OIO, with images. The Customs Tariff classification of above two equipment is also different as clearly explained at the para 18.8 to 19.6.6 of the impugned OIO. The HSN Explanatory Notes are safe guide to resolve classification disputes as held by Hon'ble Supreme Court in case of LML Ltd Vs Commissioner of Customs [2010(258) ELT 321 (SC)]. The HSN Explanatory notes for CTH 8432 at Sl. No. (3) refer to 'Weeders". The said Sl. No. (3) also defines 'Weeders" and is reproduced below :

> "(3) Scarifiers, cultivators, **weeders** and hoes which are used for working, weeding or smoothing the soil after ploughing, or during the growth of the crops. These machines usually consist of a horizontal frame fitted with several rows of various types of tools (shares, discs, teeth etc), which may be rigid or springy, fixed or movable, and are sometimes interchangeable."

3.4 The HSN Explanatory Note under CTH 8467, at Sl. No. (19) refers to "Portable Brush- Cutters with a self-contained motor……". The Sl. No.(18) explains usability of such portable machine classifiable under CTH 8467 - "(18) Portable machines for trimming lawns, cutting grass in corners, along walls, boarders or under bushes, for example ……….". From the user manual of Agrimate AMH 200 Brush Cutter and the images therein it may be seen that the said Brush Cutter is a hand-held device and from the information available on the internet, it is found that the said Brush Cutters are very light weight equipment, with weight of 7.7 Kgs and the weight of the main part i.e., engine Honda GX-35 is only 3.33 Kgs Therefore, the impugned equipment is a portable device. The said Brush Cutter also has a self-contained engine and therefore, the Adjudicating Authority has rightly classified the said 'Brush Cutters' under CTH 84678990. Whereas, the CTH 8432 refers exclusively to 'Agricultural, horticultural or forestry machinery, the CTH 8467 refers to the tools used in various industries. While Tillers / Power Weeders are exclusively used for Agricultural or horticultural work, the portable Brush Cutters are usable at various other work as mentioned at HSN Explanatory Note under CTH 8467 Sl. No. (18). Therefore, the impugned Brush Cutters are not exclusively usable for agricultural purpose. Hence, it is the benefit of concessional duty of customs provided exclusively to agricultural equipment 'Rotary Tiller / Weeder' (classifiable under CTH 8432) vide Entry No.399(A)(x) of

Notification No.12/2012-Cus dated 17.03.2012 cannot be extended to 'Brush Cutters" classifiable under CTH 8467.

3.5 The Appellant had also claimed benefit of concessional duty in terms of Entry No.252A, List 32A(iii) under Notification No.21/2002-Cus dated 01.03.2002 (as amended) for the earlier period. However, it is respectfully submitted that the said List 32A(iii) refers to "Power weeding machine falling under CTH 84331190' and not 'Brush Cutters classifiable under CTH 8467, hence, it is submitted that the Appellant was not entitled to claim concessional rate of customs duty for the impugned goods for the earlier period also. In view of the above, the impugned goods are rightly classifiable under CTH 84678990, as held by the adjudicating authority.

3.6 The adjudicating authority has justified the invoking of extended period – at para 21.4 & 21.5 of the impugned OIO, on the ground that the clearance of Bill of Entry under RMS and Self-Assessment. Further, at para 18.2 of the impugned OIO, the adjudicating observed that only "Brush Cutters" were found on the supplier M/s. Yung Chi's website (www.yungchi.com.tw) and not 'Power weeders'; that the "Brush Cutter" mentioned on the said website is same as the equipment imported by the Appellant and there is no reasonable explanation is forthcoming as to why the goods were described as "Power Weeders", on the import documents, when the manufacturer is describing the goods as "Brush Cutters", on the website. Therefore, it may be concluded that the Appellant / Importer had mis-declared / mis-stated on the import documents only to claim exemption available to the equipment exclusively used in agriculture, which is not available to 'Brush Cutters' which are not exclusively usable in agriculture purpose. It is humbly submitted that the extended period is rightly invokable to demand customs duty. The adjudicating authority at para 22, 23 & 24 of impugned OIO justified imposition of penalty under Section 112, 114A & 114AA of Customs Act, 1962 and imposition of penalty on Shri S. A. Gopalakrishna, CEO & Director under Section 112 & 114AA of Customs Act, 1962. The Appellants were fully aware that brush cutters and power weeders are different commodities but still proceeded to claim that these are one and the same or synonymous. In Appellant's own case, for the earlier period on similar issues, the hon'ble CESTAT Bengaluru vide Final Order No.20934-20936/2018 dated 10.07.2018 {Ratnagiri Impex Pvt Ltd Versus Commissioner of Customs, Bengaluru [2019(369) ELT 1132 (Tr. Bang.)]} held that the Appellant – M/s Ratnagiri Impex are not entitled for exemption under Notification No.21/2002-Cus. The Extended Period was also held to be invokable as and also the penalties imposed on the Appellant company and the Director was also upheld. The ratio of the said judgment is applicable to the instant case also.

3.7 The learned Authorised Representative also relied on the following case laws and the ratio of judgements therein, as applicable to the instant case:

(i) **Commissioner of Customs (Import), Mumbai Versus Dilip Kumar & Company [2018 (361) ELT 577(SC)]** – wherein the Larger Bench of Hon'ble Apex Court has held that the burden to prove the entitlement for claiming exemption is on the assessee and that, it any ambiguity in exemption notification, benefit of such ambiguity cannot be claimed by the assessee and it must be interpreted in favour of the revenue.

(ii) **M/s. Bayer India Ltd Versus Commissioner of Central Excise, Mumbai [2001 (130) ELT 97 (Tri. Mumbai)]** – At para 11, it was held that "where a notification grants exemption to a product specifically described in the Tariff Entry, the benefit thereof would necessarily be extended to that entry alone and cannot be permitted to be extended to another product described separately in the said Entry;

(iii) **M/s. Ruchi Soya Industries Ltd *versus* Commissioner of Customs, Mumbai [2019 (369) ELT 1529 (Tri. Mumbai)]** – where in Hon'ble Tribunal has held that the classification is to be done in accordance with the terms of Heading and any relative Section and Chapter Notes and not in accordance with exemption notification, as per Rule 1 of General Rules of Interpretation of Import Tariff;

(iv) **M/s. LML Ltd Vs Commissioner of Customs [2010(258) ELT 321 (SC)]** – the Hon'ble Apex Court has held that the HSN Explanatory Notes are safe guide to resolve classification disputes;

(v) Order of Authority for Advance Ruling under GST, Gujarat, in case of **M/s. Flint Group India Private Ltd [2020 (36) GSTL 128 (AAR – GST- Guj.)]** –where in it is held that HSN Explanatory Notes are dependable guide for interpretation of Customs Tariff.

(vi) **M/s. Bird Retail Pvt Ltd Versus Commissioner of Customs (Import), New Delhi [2020 (373) ELT 267 (Tri- Delhi)]** – wherein, the hon'ble CESTAT has, at para 26, discussed in details about invocation of extended period and held that the extended period is invokable since therein the attempt of mis-declaration was consciously done to evade customs duty by availing concessional duty under Notification No.12/2012-Cus dated 17.03.2012. In the instant case also, the misdeclaration of import goods on the Bill of Entry was consciously done, as can be seen from the statement of the Director of the company.

(vii) **M/s. Interglobe Aviation Ltd Versus PR. Commissioner of Customs, Bangalore [2022 (379) ELT 235 (Tri – Bang)]** – wherein the Hon'ble CESTAT, Bengaluru held that "the scheme of self-assessment places greater responsibility on the importer inasmuch as departmental intervention being minimal, the importer is required to make declaration and claim benefits with extra caution" and observing that the Bills of Entry were self-assessed and were also cleared under RMS, the hon'ble CESTAT held that the extended period is invokable.

(viii) **Commissioner of Customs, New Delhi Versus M/s. Punjab Stainless Steel Industries [2001 (132) ELT 10 (SC)]** – wherein extended period is held to be invokable for 'mis-statement and suppression by the party.

4. Heard both sides and perused the records. The issues involved in the present appeal for determination are:

(i) Whether the goods are 'power weeders or brush cutters'

(ii) Whether the goods are classifiable under CTH 8432/8433 as claimed by the importer or under CTH 8467 as claimed by the Revenue

(iii) Whether the benefit of concessional rate of duty 2.5% advalorem in terms of Notification No.12/2012 dated 17.3.2012 is available.

(iv) Whether the appellant mis-declared the description of the goods to evade payment of duty.

5. On verification by the department, the products were mentioned as 'Agrimate' and on the package, it was mentioned as "This cutting blade is designed exclusively for brush cutter. Do not use it for other applications". The user manual produced before us reads as "please read the following instructions before you use

this brush cutter to ensure safe operation”. The learned AR has also placed on record the document which mentions the item as ‘Agrimate AMH 200-4S Brush Cutter’, which is from the Ministry of Agricultural and Farmers Welfare and therefore which is similar to the product imported by the appellant which is a hand-held device which has a self-contained engine. The Commissioner in the impugned order at para 7.4 and 7.5 has clearly brought out the difference between the power weeder and the brush cutters which is not disputed. Power weeders are devices used for removing the weeds, stirring, pulverizing and for loosening the soil before the crop is grown while the brush cutters are used for clearing thick grass, brush and shrubs. None of this is disputed by the appellant except for claiming that the product by them is interchangeably known as either power weeder or brush cutter and they represent the same machine in as much as they have the same functions and are used for the same purpose. But based on the descriptions and the literature placed before us along with the manuals, it is very clear that the item imported is a brush cutter.

6. Coming to the classification of the brush cutter, this Bench in the case of **Hikoki Power Tools India Pvt. Ltd. & Ors. Vs. CC, Bangalore vide Final Order No. 20945-20946/2023 dated 18.09.2023** has already decided considering the CTH 8432 / 8433 and 8467 and based on the HSN notes, it is rightly classifiable under CTH 8467. The Tribunal in the above case has held as follows:

"8. Before analyzing the relevant entries in ascertaining the correct classification of the imported goods viz. brush cutters, it is necessary to reproduce the competing entries of the Customs Tariff Act,1975 which is as under:

8432	**AGRICULTURAL, HORTICULTURAL OR FORESTRY MACHINERY FOR**			
8432 10	**SOIL PREPARATION OR**			
8432 10 10	**CULTIVATION; LAWN OR**	U	7.5%	-
8432 10 20	**SPORTS- GROUND ROLLERS**	U	7.5%	-
8432 10 90	- Ploughs:	U	7.5%	-
	--- Disc ploughs			
8432 21 00	--- Other tractor ploughs	U	7.5%	-
8432 29	--- Other			
8432 29 10	-Harrows, scarifiers,	U	7.5%	-
8432 29 90	cultivators, weeders and hoes	U	7.5%	-
8432 30 00	-- Disc harrows	U	7.5%	-
8432 40 00	-- Other	U	7.5%	-
8432 80	--- Rotary hoes			
8432 80 10	--- Other	kg	7.5%	-
8432 80 20	- seeders, planters and	kg	7.5%	-
8432 80 90	transplanters	kg	7.5%	-
8432 90	- Manure spreaders and			
8432 90 10	fertiliser distributors	kg	7.5%	-
	- Other machinery			
8432 90 90	--- Lawn or sports ground rollers	kg	7.5%	-
	--- Rotary tiller			
	---- Others			
	- Parts			
	--- Parts of agricultural machinery falling within headings 843210, 843221, 843229, 843230 and 843240			
	---Others			

8433	**HARVESTING OR THRESHING MACHINERY, INCLUDING STRAW OR FODDER BALERS; GRASS OR HAY MOWERS; MACHINES FOR CLEANING, SORTING OR GRADING EGGS,**			
8433 11	**FRUIT OR OTHER**			
8433 11 10	**AGRICULTURAL PRODUCE,**	U	7.5%	-
8433 11 90	**OTHER THAN MACHINERY OF**	U	10%	-
8433 19	**HEADING 8437**			
8433 19 10	- Mowers for lawns, parks or	U	7.5%	-
8433 19 90	sports-grounds:	U	10%	-
8433 20 00	-- Powered with the cutting	U	7.5%	-
8433 30 00	device rotating in a horizontal	U	7.5%	-
8433 40 00	plane	U	7.5%	-
	--- Powered with 3 HP or more			
8433 51 00	---Other	U	7.5%	-
8433 52 00	--Other	U	7.5%	-
8433 53 00	---Non-powered mowers, having	U	7.5%	-
8433 59 00	width of 75 cm or more	U	7.5%	-
8433 60	---Other			
	- Other mowers, including cutter			

8433 60 10 8433 60 20 8433 90 00	bars for tractor mounting - Other haymaking machinery - Straw or fodder balers, including pick-up balers - Other harvesting machinery; threshing machinery -- Combine harvester-threshers -- Other threshing machinery -- Root or tuber harvesting machines -- Other - Machines for cleaning, sorting or grading eggs, fruit or other agricultural produce : --- Machines for cleaning --- Machines for sorting or grading - Parts	U U Kg	7.5% 7.5% 7.5%	- - -

8467 8467 11 8467 11 10 8467 11 20 8467 11 90 8467 19 00 8467 21 00 8467 22 00 8467 29 00 8467 81 00 8467 89 8467 89 10 8467 89 20 8467 89 90 8467 91 00 8467 92 00 8467 99 00	**TOOLS FOR WORKING IN THE HAND, PNEUMATIC, HYDRAULIC OR WITH SELF-CONTAINED ELECTRIC OR NON-ELECTRIC MOTOR** - Pneumatic : -- Rotary type (including combined rotary percussion) --- Drills --- Hammers --- Other -- - -- Other -With self-contained electric motor: --Drills of all kinds --Saws --Other -Other Tools --Chain saws --Other --Compressed air grease guns, lubricators and similar appliances --Vibrators --Other -Parts: -Of Chain saws -Of pneumatic tools --Other	 U U U U U U U U U U U Kg Kg Kg	 7.5% 7.5% 7.5% 7.5% 7.5% 7.5% 7.5% 7.5% 7.5% 7.5% 7.5% 7.5% 7.5% 7.5%	 - - - - - - - - - - - - - -

9. The claim of the appellants in the respective bills of entry is that the declared product namely ‘brush cutters’ is classifiable under CTH 8432 2990 since this product is meant for agricultural purposes and cleared to the farmers. Its use for agricultural purposes has been supported by certificates issued by the University of Agricultural Sciences, Bangalore.

10. ………..

11. Revenue's argument, on the other hand, is that CTH 8432 and 8433 cover only 'machinery' and not hand tools. The hand tools specifically covered under the scope of CTH 8467. In support, ld. A.R. for the Revenue referred to the relevant HSN Explanatory Notes, which is reproduced as under:

> *"8.1The Explanatory Notes to Harmonized Commodity Description and Coding System (Fifth Edition, 2013) for CTH 8432 read as follows:*
>
> *"The heading covers **machines,** whatever their mode of traction, **used in place of hand tools**, for one or more of the following classes of agricultural, horticultural and forestry work, viz.:*
> *------*
> *------*
> *The **machines** of the heading may be hauled by an animal or by a vehicle (e.g. a tractor), or may be mounted on a vehicle (e.g. on a tractor or horse-drawn chassis). (In this context "tractor" includes "pedestrian controlled tractor") (emphasis supplied)*
>
> *8.2 -------*
> *8.3 As per Explanatory Notes, the goods covered under Chapter 8433 are described as follows:*
> *"The heading covers machines used in place of hand tools, for mechanical performance of the following operations:*
> *-----*
> *-----*
> *The provisions of Explanatory Heading 84.32 apply, mutatis mutandis, to this heading, e.g., in respect of tractors fitted with harvesting, threshing, mowing or other interchangeable attachments, and in respect of motor rakes. (emphasis supplied)*
>
> *The heading includes*
>
> *(1) Lawn Mowers, whether worked by hand or motor driven. They may have a cutter bar like agriculture mower, rotary blades which cut the grass against a fixed horizontal blade, or rotating disc with knives on outer edge.*
> *(2) Mowers (including Motor mowers) for cutting hay etc. They usually consist of a horizontal cutter bar and sections which cut by oscillating action of teeth between the fingers of cutter bar, or they may consist of rotating discs or drums with knives on outer edge.*
> *------*
> *(21) Machines for removing leaves from maize (corn) cabs; maize (corn) threshers.*
>
> ***However, this heading excludes portable machines for trimming lawns, cutting grass along walls, borders or under bushes, for example. These machines, which are composed of a self-contained internal combustion engine in a***

> ***light frame or of an electric motor mounted on a metal handle and cutting device usually consisting of one or more thin nylon threads are classified in heading 8467. (emphasis supplied).***
>
> *8.4.1 The Explanatory Notes to CTH 8467 are follows:*
>
> *"This heading covers tools which incorporate an electric motor, a compressed Air Motor (or compressed air operated piston), on internal combustion motor or any other motor (e.g. small hydraulic turbine)….*
>
> *The heading covers such tools only if for working in hand. The expression 'tools for working in hand' means tools designed to be held in the hand during use, and also heavier tools (such as earth rammers) which are portable, that is, which can be lifted and moved by hand by the user, in particular while work is in progress, and which are also designed to be controlled and directed by hand during the operation. To obviate the fatigue of taking their full weight during operation they may be used with auxiliary supporting devices (e.g. Tripods, Jacklegs, Overhead Lifting Tackle). However, certain tools for working in the hand of this heading have fittings permitting them to temporarily fixed to a support. They remained classified here, together with support if it is presented therewith, provided the tools are essentially "for working in hand" as defined above. Some of the tools covered by this heading may be fitted with auxiliary devices (e.g. ; a Fan Wheel and its dust bag to remove and collect dust during working)"*
>
> *8.4.2 Further, the Explanatory Notes to CTH 8467 also specify the Tools covered under this heading and Sl.No. 18 & 19 of the list are reproduced below:-*
>
> *"(18) Portable machine for trimming lawns, cutting grass in corners, along walls, borders or under bushes, for example. Such machine have a self-contained motor in light metal frame and a cutting device usually consisting of this nylon thread.*
>
> *(19) Portable brush-cutters with a self-contained motor, a drive shaft (rigid or flexible) and a tool holder, presented together with various interchangeable cutting tools for mounting in tool holder."*

12. On a plain reading of the relevant Tariff Entry and said explanatory notes under CTH 8432/8433 and 8467, it is clear that the products mentioned under CTH 8432/8433 are referring to 'machineries'; 'hand tools' fall outside the scope of said entries; whereas hand tools explained in the explanatory note under CTH 8467 at sr. no 18 & 19 includes 'brush cutters', hence the product in dispute would fall under CTH 8467. The use of the product for Agricultural purpose cannot be the criterion for determination of the appropriate classification. It is held by the Hon'ble Supreme Court in the case of *M/s O.K. Play (India) Ltd vs CCE – 2005*

(180) ELT 300 (SC) that use of an article as 'Toys' by children would not place in classification under 'Toys'. It has been held in a series of cases that the explanations for classification of particular product mentioned in the HSN cannot be brushed aside in determining the correct classification of a product. The Hon'ble Apex Court in *CC, Bombay Vs. Business Forms Ltd. - 2002-TIOL-277-SC-CUS-LB* held as below:

> *"These civil appeals arise on orders of the Customs, Excise and Gold (Control) Appellate Tribunal and they have to be allowed and the matters remanded for re-consideration by that Tribunal because, principally, the Tribunal has declined to place reliance upon the Explanatory Notes in the H.S.N. stating that, at best, these have only persuasive value.*
>
> 2. *This Court in Collector of Central Excise, Shillong v. Wood Craft Products Limited [1995 (77) E.L.T. 23] has said:*
>
> *"We are of the view that the Tribunal as well as the High Court fell into the error of overlooking the fact that the structure of the Central Excise Tariff is based on the internationally accepted nomenclature found in the HSN and, therefore, be resolved with reference to the nomenclature indicated by the HSN unless there be an express different intention indicated by the Central Excise Tariff Act, 1985 itself. The definition of a term in the ISI Glossary, which has a different purpose, cannot, in case of a conflict, override the clear indication of the meaning of an identical expression in the same context in the HSN. In the HSN, block board is included within the meaning of the expression 'similar laminated wood' in the same context of classification of block board. Since the Central Excise Tariff Act, 1985 is enacted on the basis and pattern of the HSN, the same expression used in the Act must, as far as practicable, be construed to have the meaning which is expressly given to it in the HSN when there is no indication in the Indian Tariff of a different intention."*
>
> *Clearly, therefore, the HSN Explanatory Notes are entitled to far greater consideration than the Tribunal has given there.*
>
> ***3.*** *The Tribunal has also said that the Collector (Appeals) had not relied upon the HSN Explanatory Notes. That was clearly an oversight of the Tribunal because its order says, earlier, thus: "The Collector (Appeals) held that the photographic apparatus, as has been imported, for making printing blocks were excluded from Chapter Heading 84.38 vide Explanatory Notes to CCOM at Page 1288."*
>
> ***4.*** *The civil appeals are, therefore, allowed. The orders under appeal are set aside. The appeals before the Tribunal are restored to it for being heard and disposed of afresh. All contentions shall be available to the parties thereto."* Thus, the impugned

> goods in question i.e. 'brush cutters' is correctly classifiable under CTH 8467 8990 of CTA,1975."

Therefore, the question of classification is settled and hence, the impugned goods are classifiable under 8467 as brush cutters.

7. Now let's examine whether the benefit of notification is available to brush cutters. The relevant clause of the Notification 12/2012 reads as follows:

399.	84 or any other Chapter	(A) The following goods, namely :- (i) Paddy transplanter; (ii) Laser land leveller; (iii) Reaper-cum-binder; (iv) Sugarcane harvester; (v) Straw or fodder balers; (vi) Cotton picker; (vii) Track used for manufacture of track type combine harvesters; (viii) Sugarcane planter; (ix) Root or tuber crop harvesting machines; (x) **Rotary tiller/weeder**	2.5%	-	-
		(B) Parts and components required for manufacture of goods specified at (A)	2.5%	-	5

8. As seen above the Notification No.12/2012 dated 17.3.2012 is available only for items listed therein and it allows only rotary tiller /weeder and not brush cutters. As seen at para 7 (supra) is very clear that the machinery mentioned in the above notification are all those machineries namely weeder, planters, transplanters, rotary tiller, root tuber harvesting machine which are specifically designed and used for the purpose of agriculture and the brush cutters are nowhere to be considered a machinery as discussed supra. Since we have already decided that the item imported is a brush cutter, therefore the question of extending the benefit of Notification does not arise. In view of the Supreme Court's decision in the case of **Commissioner of Customs (Import),**

Mumbai vs. Dilip Kumar and Company: 2018 (361) ELT 577 (SC), the exemption Notification has to be interpreted strictly and therefore, question of extending the benefit to brush cutter does not arise. It is also on record that in appellant's own case, this Bench vide Final Order No.20934-20936/2018 dated 10.07.2018 held that the appellants are not eligible for exemption under Notification No.21/2002.

9. As regards to demand against extended period of limitation, though it is admitted by the appellant that they were aware about the fact that power weeder is a machinery, they have obtained expert opinion from different sources to make proper preparation regarding the classification and as per expert opinion, it is exempted as per Notification No.12/2012. To support the above, the appellant produced test report dated 27.05.2011 given by University of Agricultural Sciences, Bangalore; Order dated 21.9.2011 given by Department of Horticulture, Government of Karnataka; Letter dated 24.8.2012 from Coffee Board, Bangalore; and Circular dated 21.2.2011 of Coffee Board, Bangalore. The goods imported by the appellant have got dual use though it is not meant for use exclusively for the agricultural operations. Moreover, goods were subjected to examination by the proper officer of the Customs and burden to prove that an article falls under a particular entry lies upon the Revenue. In the absence of any specific averments regarding wilful suppression of the fact, as held by this Tribunal in similar case in the case of **Hikoki Power Tools India Pvt. Ltd. vs. CC, Bangalore** vide **Final Order**

20945-20946/2023 dated 18.09.2023, extended period of limitation cannot be invoked. Following the ration of the above decision, the impugned goods are classifiable as 'Brush Cutters" under Chapter Heading 8467 and not eligible for the benefit of Notification. Invoking extended period of limitation cannot be sustained.

10. In the result, the impugned order is modified to the extent of confirming classification of the impugned goods are classified as 'Brush Cutters' under Chapter Heading 8467; the benefit of the Notification is denied; confirmation of demand with interest for normal period and set aside demand and interest for extended period.

11. The redemption fine of Rs.1,50,00,000/- was imposed on the Bills of Entry cleared earlier on the goods valued at Rs.8.48 crores and the redemption fine imposed of Rs.8,00,000/- was imposed on the present Bill of Entry cleared on the goods valued at Rs.40,58,791/-. The issue that goods when not available are not liable for confiscation is a settled law as held by the Hon'ble High court in the case of **Commissioner of Customs (Import), Mumbai Versus Finesse Creation INC**. Customs Appeal No. 66 of 2009, **2009 (248) E.L.T. 122 (Bom.)** decided on 25-8-2009 observed that :

> "**5.** In our opinion, the concept of redemption fine arises in the event the goods are available and are to be redeemed. If the goods are not available, there is no question of redemption of the goods. Under Section 125 a power is

> conferred on the Customs Authorities in case import of goods becoming prohibited on account of breach of the provisions of the Act, rules or notification, to order confiscation of the goods with a discretion in the authorities on passing the order of confiscation, to release the goods on payment of redemption fine. Such an order can only be passed if the goods are available, for redemption. The question of confiscating the goods would not arise if there are no goods available for confiscation nor consequently redemption. Once goods cannot be redeemed no fine can be imposed. The fine is in the nature of computation to the state for the wrong done by the importer/exporter."
>
> **6.** In these circumstances, in our opinion, the tribunal was right in holding that in the absence of the goods being available no fine in lieu of confiscation could have been imposed. The goods in fact had been cleared earlier. "

Therefore, the confiscation and redemption along with penalty for the extended period is set aside and for the present consignments valued at Rs. 40.58 lakhs, the redemption fine is reduced to Rs.4,00,000/- (Rupees Four Lakhs Only) under Section 111(m) of the Customs Act, 1962 and penalty to Rs.2,00,000/- (Rupees Two Lakhs Only) is confirmed under Section 114AA of the Customs Act, 1962 on the appellant-company and all other penalties are set aside.

12. In the result, duty demand is confirmed for normal period with interest and the impugned order is modified in the above terms and the appeal No.20012 of 2015 is partially allowed and Appeal No. 20008 of 2015 pertaining to personal penalty on Shri

S. A. Gopalakrishna, Director is set aside and this appeal is allowed.

(Order pronounced in open court on 29.02.2024)

(P. A. AUGUSTIAN)
MEMBER (JUDICIAL)

(R. BHAGYA DEVI
MEMBER (TECHNICAL)

rv