

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

REGIONAL BENCH - COURT NO. 2

Customs Appeal No. 20756 of 2023

(Arising out of Order-in-Appeal No. COC-CUSTOM-000-APP-36-2023-24 dated 07.07.2023 passed by the Commissioner of Customs (Appeals), Cochin)

**Scholasys Technologies
& Solutions Pvt. Ltd.**

09/568, 2nd Floor, Papal Tower,
ST Nagar, Thrissur
Kerala- 680 000

..... **Appellant**

VERSUS

Commissioner of Customs, Cochin

Cutoms House Willingdon Island,
Kochi, Kerala 682 009.

.....**Respondent**

Appearance:

Sh. Baby M. A., Advocate for the Appellant
Sh. Jathin K. A., AR. for the Respondent

CORAM:

Hon'ble Mr. P.A. Augustian (Judicial)
Hon'ble Mr. Pullela Nageswara Rao (Technical)

FINAL ORDER NO.20274/2024

Date of Hearing: 24.01.2024
Date of Decision: 19.04.2024

Per: P.A. Augustian

M/s. Scholasys Technologies & Solutions Pvt. Ltd.,
appellant is providing education courses in schools as
part of a smart Learning.

2. The brief facts of the case are the appellant to boost the smart education, where students practically engage themselves in developing various sciences and robotic related projects and enhance various life skills like logic, analytics, team leadership and organizational skills and to modernize the classrooms imported the following goods:-

1. Make UiS (Education)- Constructable and programming Robot with sensors, actuators and powerful controller-30 sets.
2. AI Module 2s (Education)-Constructable and programming Robot with sensors, actuators and powerful controller -30 sets.
3. AI Module 2s (Education)-Constructable and programming Robot with sensors, actuators and powerful controller-30 sets.
4. Litebee wing-Nano Drone Components kits for educational demonstration – 20 Sets.

3. As per the declaration made by the appellant all the above goods were classified under CTH-90230010. Alleging that the goods are wrongly classified, proceedings were initiated and when the issue was brought to the notice of the appellant, they have submitted that, they are ready to re-export the goods to Qatar. However, alleging that the goods are liable for confiscation, Adjudication authority proceeded with adjudication and as per the impugned order held that item at Sl. No. 1 to 3 at para 2, supra are children building/constructable robot toys in CKD condition with individual box packing and are electronic toys, which are used as a recreation purpose item. Hence, considering it as toys, classified under CTH 95030099. Since goods under 9503 require BIS compliance, Adjudication Authority held that the goods are liable for confiscation. Regarding goods listed at Serial No. 4, since it is a

drone, it is classified under 88062100. Thus, held that all the goods are liable for confiscation. Considering the request for re-export, Adjudication Authority allowed re-export of the goods on payment of Rs.2,00,000/- as Redemption Fine and also imposed penalty of Rs.1,00,000 on the appellant under Section 112 (a) of the Customs Act, 1962.

4. Aggrieved by the said order, an appeal was filed before the Commissioner (Appeals), who has also upheld the finding given by the adjudication authority. Aggrieved by said order, present appeal is filed. Since, clearance of goods are pending, petition for early hearing was allowed.

5. During the hearing of the appeal, Learned Counsel for the appellant submits that; the impugned order confiscating the goods is illegal and unsustainable; the goods covered from Serial No. 1 to 3 were imported by the appellant for using as aid for teaching in schools; in support of the classification of the goods under CTH 9023, the appellant had submitted Certification of origin, certificate of conformity, RoHS declaration of conformity and certificate of compliance from accredited agency. Learned Counsel further submits that the evidence produced by the appellant clearly shows that they have entered into an agreement with various schools for smart education with an intent to set up robotics and programming labs to enhance various life skills of students. However, Adjudication Authority has not considered the same and without any admissible evidence held that goods are falling under the category of toys and ordered confiscation of the goods.

6. Regarding import of drone at Serial No. 4, Learned Counsel drew our attention to the DGFT Notification No. 54/2015-2020 dated 09.02.2022, where intention of prohibiting the import is only to restrict unauthorised use of drones but not to prohibit import of drone solely for

education purpose. The Memorandum of Understanding (MoU) entered by the Appellant with the education institutions is sufficient to prove that the import is made for the purpose of supporting education. Since the appellant is involved in technology solution to education sector including product development, data management and knowledge processing services, even if there is an omission on the part of appellant to obtain authorisation from the DGFT as per the above notification, goods can be allowed to be redeemed for home consumption on payment of redemption fine

7. Learned Authorised Representative (AR) reiterated the findings in the impugned order and further submits that when the goods were found liable for confiscation due to misdeclaration of classification, the appellant had only requested for re-export and considering the plea for re-export, Adjudication Authority allowed the same. In the absence of any further objections at the initial stage, appellant cannot seek release of goods for home consumption.

8. In his rejoinder, Learned Counsel for the appellant submitted that; the appellant requested for re-export initially is only due to the reason that delay in clearing the goods were causing huge demurrage charges and goods were required for a project in Qatar at the relevant time; only due to such pressing circumstances, appellant requested for re-export of the goods to Qatar; however, the Adjudication Authority has not agreed for re-export to Qatar but allowed redemption of goods for the sole purpose of re-export to the country of origin; the overseas supplier in China was not willing to take the goods back as the same were supplied against specific order placed by the appellant; since the goods are not classifiable under CTH 95030099 as held by Adjudication/ Appellate Authority, Appellant has the right to seek release of goods for home consumption.

9. Heard both sides and perused of records.

10. We find that as regards the classification of the goods at Serial No. 1 to 3 of Para 2 supra, the Adjudication Authority rejected the declared classification under 9023 and classified them under CTH 9502. We find that CTH 9023 is applicable to 'Instruments, apparatus and models, designed for demonstrational purposes (for example in education or exhibitions), unsuitable for other uses'. The items covered under the declared classification 9023 0010 are 'Teaching aids'. The CTH 9503 include 'Tricycles, Scooters, Pedal cars and similar wheeled toys; doll's carriages; dolls; other toys; reduced-size("scale") models and similar recreational models, working or not; puzzles of all kinds'.

11. We find that the goods from Serial No. 1 to 3 were imported by the appellant for using as 'Teaching Aids' in schools and the evidence produced by the appellant clearly shows that they have entered into agreements with various schools for smart education with an intent to set up Robotics and Programming labs to enhance various life skills of students. The adjudicating authority also held that these items may be used for educational purpose, since the appellant is having the educational institution. However, he held that the item cannot be considered as for demonstrational purpose as the imported quantity is 30 Nos. of working models. Hence, they can be used for the recreational purpose also. Chapter 95 refer to goods like 'Toys, games and sports requisites; parts and accessories thereof'. Further, CTH 9023 covers wide range of instruments and apparatus that are designed for demonstration purpose in schools, lecture rooms and exhibitions. While interpreting the said classification, adjudication authority presumed that the goods which come under the inclusion list of the explanatory notes are dummy models not in working

condition. But as per CTH or explanatory notes, no such finding can be arrived that it applies to "dummy models not in working condition". Though it includes articles designed for the recreational and demonstration purpose it excludes the goods unsuitable for other use, HSN 90230010 applies to teaching aids. Hence, in view of the above we find that the goods cannot be considered as 'Toys to merit classification under CTH 9503

12. In the present case, the appellant has produced sufficient evidence to substantiate that the goods are imported for the purpose of demonstration in schools. Hence, the goods imported from Sl. No. 1 to 3 may not be classifiable as toys under CTH 9503 as held by the Adjudication Authority and the Appellant Authority. Further, the adjudication authority's finding that since the quantity imported is 30 nos. each they cannot be for demonstrational purpose is not tenable, since the quantity imported cannot have a bearing on the classification of the imported goods. Since there is no other classification confirmed, in the facts and circumstances of the case, the goods from S.No. 1 to 3 can be classified under 9023 as declared by the importer. Further in the absence of any restriction to import the goods falling under CTH 9023, the said goods are also not liable for confiscation.

13. We find as regards the import of drone at Serial No. 4, as per the DGFT Notification No. 54/2015-2020 dated 09.02.2022, import of drone is prohibited and even if it is permitted to import it is subject to approval from DGFT. Drone in CBU, SKD or CKD form is permitted to be imported only by education institutions recognised by Central or State Governments. In the present appeal, though the appellant is involved in activity related to supporting education institutions, appellant is not an educational institution recognised by Central or State Governments. Moreover, import of drone is prohibited due

to security reasons. Thus, drone imported by the appellant cannot be allowed to be released for home consumption even on payment of redemption fine and penalty. Since, violation of importing restricted goods is admitted, confiscation of drone (Serial No. 4) is upheld. However, considering the delay, a lenient view can be taken for redemption of the same for re-export to Qatar as requested by the appellant.

14. Considering the above, appeal is partially allowed directing release of the goods at serial number 1 to 3 at para 2 supra as per the declaration made by the appellant for home consumption. Regarding drone (Sl. No. 4) order of confiscation is upheld. However, the appellant is permitted to redeem the drones having declared value of Rs. 2,68,943/- for re-export to Qatar on payment of reduced redemption fine of Rs. 25,000/- and Penalty of Rs. 10,000/-.

15. In the result the appeal is partially allowed as per the above terms.

(Order pronounced in the open court on 19.04.2024)

(P.A. Augustian)
Member (Judicial)

(Pullela Nageswara Rao)
Member (Technical)

Sasidhar