

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

REGIONAL BENCH - COURT NO. 1

Customs Appeal No. 20159 of 2015

(Arising out of Order-in-Original No. BLR-CUSTM-000-COM-031-14-15 dated 12.11.2014 passed by the Commissioner of Customs, Bangalore.)

M/s. Fortune Agro Impex,

Fortune House, No. 343, 9th Block,
Sir M. Visvesvaraya Layout,
Kengunte First Main Road,
(Mallathahalli Lake Road),
Bangalore - 560 056.

Appellant(s)

VERSUS

The Commissioner of Customs,

C.R. Building,
P.B. No.5400, Queens Road,
Bengaluru - 560 001.

Respondent(s)

WITH

Customs Appeal No. 20161 of 2015

(Arising out of Order-in-Original No. BLR-CUSTM-000-COM-031-14-15 dated 12.11.2014 passed by the Commissioner of Customs, Bangalore.)

Shri Sreepada, Partner,

M/s. Fortune Agro Impex,

Fortune House, No. 343, 9th Block,
Sir M. Visvesvaraya Layout,
Kengunte First Main Road,
(Mallathahalli Lake Road),
Bangalore - 560 056.

Appellant(s)

VERSUS

The Commissioner of Customs

C.R. Building,
P.B. No.5400, Queens Road,
Bengaluru - 560 001.

Respondent(s)

APPEARANCE:

None for the Appellant.

Shri K. A. Jathin, Deputy Commissioner (AR) for the Respondent

**CORAM: HON'BLE DR. D.M. MISRA, MEMBER (JUDICIAL)
HON'BLE MRS. R. BHAGYA DEVI, MEMBER
(TECHNICAL)**

Final Order No. 20796 - 20797 / 2024

DATE OF HEARING: 27.05.2024

DATE OF DECISION: 17.09.2024

PER : R. BHAGYA DEVI

This appeal is filed against Order-in-Original No. BLR-CUSTM-000-COM-031-14-15.

2. Brief facts of the case are that the appellant M/s. Fortune Agro Impex filed Bill of Entry No. 3751556 dated 08.11.2013 for clearance of 185 sets of Power Operated Reapers. On investigation, it was found that the appellant had cleared 'Brush Cutters' by mis-declaring them as 'Power Operated Reapers' and mis-classifying them as goods falling under Chapter Heading 8433 5900 instead of appropriate classification under Chapter Heading 8467 8990 thereby evading payment of duty. The Officers on finding that the packages imported by the appellant clearly carried the description as 'Brush Cutters' and the catalogues recovered from the packages also declared them as 'Brush Cutters', and the website of the supplier www.yungchi.com also indicated the sale of Brush Cutters, hence, there was clear suppression on the part of the appellant by declaring them as 'Power Operated Reapers'. It was also noted that the HSN Explanatory Notes for Chapter Heading 8467 (19) "*Portable brush Cutters with the self-contained motors.....*" is specifically mentioned while Chapter Heading 8433 is meant for agricultural purpose. Accordingly, the Commissioner rejected the classification under Chapter Heading 8433 5900 and reclassified the above products under Chapter Heading 8467 8990. The impugned order demanded differential duty of Rs. 53,37,203/- along with the interest under Section 28(4) of the Customs Act, 1962. The goods were also confiscated and allowed to be redeemed on payment of redemption fine of Rs. 6,00,000/-. In addition, equivalent penalty was imposed under Section 114A of Customs Act 1962, plus penalty of Rs.35,00,000/- under Section 114AA of the Customs Act, 1962.

Penalty of Rs.6,00,000/- under Section 112 and penalty of Rs.4,00,000/- under Section 114AA of the Customs Act, 1992, was also imposed on Shri Sreepada, Partner of the appellant-company. Hence, these appeals both against duty, confiscation and various penalties.

3. None appeared for the appellant. On the last date of hearing that is on 01.04.2024 the matter was adjourned as a last chance; in spite of that, no one appeared and since there was no request for adjournment, the same is taken up for final disposal. Appellants in their grounds of appeal has strongly opposed the demand for the extended period. It is submitted that from 31.12.2011 to 08.10.2013, the appellant had imported the above products, during this period proper documents in the form of technical data sheets/product catalogues were filed and the bills of entry were accordingly assessed. Hence, the question of suppression of facts and wilful mis-declaration of facts is untenable and devoid of substance. It is also stated that there is no corroborative evidence to indicate that they had knowingly classified the said item under CTH 8433 5900. In view of the above, the demand of duty cannot be sustained beyond the normal period.

4. The Learned Authorised Representative reiterating the findings of the Commissioner submitted that the appellant had mis-declared the goods even though the packages clearly established them to be Brush Cutters. He also relied upon the decisions of this Bench wherein the issue of classification has already been settled and in view of the above, the demands need to be upheld. The following are the decisions relied upon by the Revenue.

- Hikoki Power Tools India Pvt. Ltd. vs. CC, Bangalore: 2024 (3) TMI 137 – CESTAT Bangalore.
- M/s. Ratnagiri Impex Pvt. Ltd. vs. CC, Bangalore: 2024 (3) TMI 194 – CESTAT Bangalore.

5. Heard both sides and perused the records. The only issue to be decided is regarding classification of the goods imported by the appellant. Secondly, whether knowingly the appellant had mis-declared the classification in order to evade the duty liability.

6. The classification of Brush Cutters stands settled in view of our decision in the case of **M/s. Rathnagiri Impex Pvt. Ltd. vs. Commissioner of Customs:** Final Order No. 20123-20124/2024 dated 29.02.2024 and Final Order No. 20945-20946/2023 dated 18.09.2023 in the case of **Hikoki Power Tools India Pvt. Ltd. Vs. CC Bangalore** wherein this Tribunal had clearly held that the Brush Cutters are classifiable under Chapter Heading 8467 8990. Following the ratio rendered in the above decisions, in the present appeal also, the classification of the 'Brush Cutters' is upheld under Chapter Heading 8467 8990.

7. With regard to suppression, the Revenue submits that the investigation revealed that catalogues recovered from the packages and the user manuals including the website of the suppliers clearly described the said products as Brush Cutters. In view of the above, it is clear that the appellant knowing well that the goods are nothing but 'Brush Cutters', mis-declared them as 'Power Operated Reapers' for claiming the benefit of duty under agricultural equipment. From the instruction manual placed on record, we find that the product is clearly mentioned as 'Brush Cutter' though the catalogue mentions it as 'Power Operated Reaper'. The website of Fortune Agro Impex lists the products supplied by them as Pump Sets, Rice Transplanter, Intercultivator, Sprayers, Brush Cutters and Reapers. In his statement Shri Sreepada, Partner of the appellant had stated that they have informed the supplier through mail to print their logo and print 'Power Reaper' on all documents and name of the company. He also mentions that to avail the subsidy certificate issued by the Government of Karnataka, the supplier was informed to mention 'Power Reaper FAI 435'. This statement has not been retracted and therefore, the investigation clearly established that there was mis-declaration on the part of the appellant since the user manual clearly mentions the product as Brush Cutter and Shri Sreepada, Partner admits to having got the documents from the supplier to mention as 'Power Operated Reapers' only for the purpose of availing subsidy on agricultural equipment. In view of the above, the impugned order is upheld to the extent of demand of differential duty of Rs.53,37,203/- in terms of Section 28(4) of the Customs Act 19962 along with applicable interest under Section 28AA and equivalent penalty under Section 114A of the

Customs Act, 1962, on the appellant-company, as per law. The confiscation of goods valued at Rs.31,25,693/- is upheld, however, redemption fine is reduced to Rs.3,00,000/- (Rupees Three Lakh Only). The penalty imposed on Shri Sreepada, Partner of the appellant-company is reduced to Rs. 50,000/- (Rupees Fifty Thousand Only) under Section 112 of the Customs Act, 1962. The penalties imposed under Section 114AA of the Customs Act, 1962 are set aside.

8. The impugned order is modified on the above terms and the appeals are disposed of.

(Order pronounced in Open Court on 17.09.2024.)

(D.M. MISRA)
MEMBER (JUDICIAL)

(R. BHAGYA DEVI)
MEMBER (TECHNICAL)

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