

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

REGIONAL BENCH - COURT NO. 1

Customs Appeal No.20074 of 2018

(Arising out of Order-in-Appeal No.987-988/2017 dated 06.12.2017
passed by the Commissioner of Customs (Appeals), Bangalore)

**M/s. Suntec Agri Equipment (India)
Pvt. Ltd.**

Appellant(s)

Flat No.102, Brigade Rathna,
No.42, Rangarao Road, Shankarapuram,
Bangalore-500 026.

VERSUS

The Commissioner of Customs,
Queens Road,
Bangalore.

Respondent(s)

WITH

Customs Appeal No.20073 of 2018

(Arising out of Order-in-Appeal No.987-988/2017 dated 06.12.2017
passed by the Commissioner of Customs (Appeals), Bangalore.)

**S. V. Aravind
Director**

Appellant(s)

Suntec Agri Equipments (India) Pvt. Ltd.
Flat No.102, Brigade Rathna,
No.42, Rangarao Road,
Shankarapuram,
Bangalore-500 026.

VERSUS

The Commissioner of Customs
Queens Road,
Bangalore-560 051.

Respondent(s)

APPEARANCE:

Mr. B. V. Kumar, Advocate for the Appellant

Mr. 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. 20172-20173 / 2025

DATE OF HEARING: 06.11.2024

DATE OF DECISION: 18.02.2025

PER: R. BHAGYA DEVI

These two appeals are filed against Order-in-Appeal No. 987-988/2017 dated 06.12.2017 passed by Commissioner of Customs (Appeals), Bangalore.

2. The facts of the case are that the appellant M/s. Suntec Agri Equipment (I) Pvt. Ltd. imported certain machines declaring them as 'Power Weeders' initially classifying them under Chapter Heading 8433 and thereafter, *suo moto* changed the classification to Chapter Heading 8432 of the Customs Tariff Act, 1985 and claimed concessional rate of duty by availing the benefit of Notification No.12/2012-Cus. dated 17.03.2012. Revenue contended that the machines imported are 'Brush Cutters' and not 'Power Weeders' as claimed by the appellant, hence rightly classifiable under CTH 8467 and also the benefit of the above Notification not admissible. Accordingly, the original authority confirmed the demand along with interest, imposed redemption of fine of Rs.10,00,000/- on the goods already cleared, imposed redemption fine of Rs.4,00,000/- on the goods seized and confiscated valued at Rs.18,65,268/-. Also, imposed penalty equivalent to duty under Section 114A; penalty of Rs.26,00,000/- under Section 114AA; penalty of Rs.5,00,000/- on Shri S.V. Aravind Director of the appellant under Section 112 and penalty of Rs. 5,00,000/- under Section 114AA of the Customs Act 1962. The above order was upheld by the Commissioner (Appeals), hence, the present appeal.

3. The Learned Counsel fairly admits the fact that the similar products have been classified by this Tribunal under Chapter Heading 8467 in the case of **M/s. Ratnagiri Impex Pvt. Ltd. Vs. The Commissioner of Customs** vide **Final Order No. 20123-20124/2024 dated 29.02.2024** and **Hikoki Power Tools India Pvt. Ltd. Vs. Commissioner of Customs, Bangalore**

vide **Final Order No. 20945-20946/2023 dated 18.09.2023.**

However, submits that at the time of filing the Bill of Entry, the goods were declared as 'Power Weeders' since they are utilized for clearing of weeds in plantation, agriculture etc. The goods were examined by the concerned officers and cleared the same, hence the question of mis-declaration does not arise. It is also submitted that the word 'brush cutter' and 'power weeder' are synonymous in trade parlance, hence the Bills of Entry also mentioned brush cutter along with the name power feeder. It is also submitted that claiming an incorrect classification or the benefit of an ineligible exemption Notification does not amount to mis-declaration. Since, the description of the goods is clearly mentioned, suppression cannot be invoked and hence, not liable for penalty also.

3.1 Relying on the decisions in the case of **Tamil Nadu Housing Board Vs. Collector: 1999 (74) ELT 9 (S.C.)** and **M.K. Kotecha Vs. CCE 2005 (179) ELT 261 (S.C.)**, it is submitted that extended period of limitation cannot be invoked in the present case, as there was no suppression of facts or fraud involved. In view of this, the penalties also cannot be imposed as is held in the case of **CCE and ST Hyderabad-II Vs. Sandor Medicaids Pvt. Ltd.: 2019 (367) ELT 486 (Tri. -Hyd.)** and **Lewek Altair Shipping Pvt. Ltd. Vs. CC, Vijayawada: 2019 (366) ELT 316 (Tri.-Hyd.)**.

4. The Learned Authorized Representative for the Revenue submitted that the issue on classification stands settled in view of the Final Orders issued by this Tribunal in the case of **M/s. Ratnagiri Impex Pvt. Ltd. Vs. the Commissioner of Customs** (supra) and **Hikoki Power Tools India Pvt. Ltd. Vs. Commissioner of Customs, Bangalore** (supra). With regard to suppression, it is submitted that the appellant was very well aware of the fact that the declared product was a 'Brush Cutter' not eligible for the benefit of the Notification but claimed the benefit by mis-declaring the same as 'Power Weeder'; hence, the impugned order needs to be sustained.

5. Heard both sides. The issue regarding classification of 'Brush Cutter' stands settled in view of the decision of the Tribunal rendered in the cases of **M/s. Ratnagiri Impex Pvt. Ltd. Vs. the Commissioner of Customs** (supra) and **Hikoki Power Tools India Pvt. Ltd. Vs. Commissioner of Customs, Bangalore** (supra), wherein it is held that 'Brush Cutters' are classifiable under Chapter Heading 8467 8990. Following the ratio rendered in the above decisions, in the present appeals, since the products are identical to 'Brush Cutters', the classification of 'Brush Cutters' under Chapter Heading 8467 8990 is upheld.

6. The appellant had filed Bill of Entry No.3675794 dated 29.10.2013 for clearance of 150 sets of Rotary Power Weeder and on investigation, it was found to be 'Brush Cutters' and hence, the benefit of Notification was denied demanding a duty of Rs.3,91,930/- which was paid under protest by the appellant. On further investigation for the period 06.12.2010 to 23.07.2013, similar goods were found to be 'Brush Cutters' which were imported under concessional rate of duty, hence, the differential duty of Rs.26,43,951/- on the past clearances was also confirmed. With regard to past clearances, we find that Bills of Entry No. 4656425 dated 16.09.2011, 6559041 dated 17.04.2012, 6935540 dated 26.05.2012, 7280139 dated 03.07.2012, the appellant has declared the items as 'Brush Cutters' as also the description was correctly mentioned, therefore, the question of suppression does not arise. In view of the above, we do not find any reason to sustain the demand beyond the normal period of limitation. Accordingly, the demand is confirmed for the normal period. The goods detailed under Annexure-1 since already cleared and not available for confiscation, the question of redemption fine does not arise, hence set aside as is held in the case of **Commissioner of Customs (Import), ACC, Mumbai Versus AIR India Ltd. 2023 (386) E.L.T. 236 (Bom.) dated 18-7-2023** by the Hon'ble High Court of Bombay wherein it was observed as follows:

"13. Be that so, the Order-in-Original in Paragraph 22 categorically states that the goods were not available for

confiscation and further the goods were not cleared provisionally under any bond, bank guarantee, surety etc. However in Paragraph 23 in Order-in-Original, the authority observes that the goods were released under bond and therefore, redemption fine is imposable on these goods. The Tribunal in its order in Paragraph 4.6 has given categorical finding of fact that the goods were never seized or released provisionally against bond and bank guarantee. This finding of fact has not proved as wrong by the appellant/revenue in the present appeal. On a query by the Court to the appellant/revenue to produce any bond or any bank guarantee against which the goods were released provisionally, the appellant revenue could not produce the same. Therefore, this finding of fact that goods were not released against bond and bank guarantee is uncontroverted.

14. This Court in the decision in cases of *Commissioner of Customs (Import) v. Finesse Creation Inc.* (supra), *Commissioner of Customs (Import) v. Rishi Ship Breakers* (supra) and *Commissioner of Customs (Exports) v. Sudarshan Cargo Pvt. Ltd.* (supra), have held that if the goods are not available for confiscation there cannot be any redemption fine. The Supreme Court has dismissed the SLP of the revenue in the case of *Commissioner of Customs (Import) v. Finesse Creation Inc.* [2010 SCC Online SC 1452 = 2010 (255) E.L.T. A120 (S.C.)]. In the instant case, admittedly the appellant/revenue could not find actual goods for confiscation and therefore, the order setting aside the redemption fine is in consistence with the decisions of this Court. The appellant/revenue has relied upon the case of *Unimark Remedies Ltd.* (supra) which has taken a view that the redemption fine can be imposed even though there was no seizure and the goods were already cleared. In our view, this decision is distinguishable on the facts since in the present case, there was no actual excess stock found but it was only in the account books that an excess was worked out by the Chartered Accountant which too was reconciled by the internal audit team of the respondent/assessee and excess figure was substantially reduced whereas in the case of *Unimark* (supra) actual goods were available for confiscation and penalty was sought to be levied on non-fulfillment of post import condition. In the present

case there is no actual physical excess stock found by the revenue. In our view, the view taken by the Tribunal is a plausible view in the light of three decisions of this Court directly on the issue and therefore even on this account no substantial question of law would arise.

7. Regarding confiscation of goods valued at Rs.18,65,268/- is sustained, however redemption fine reduced to Rs.2,00,000/- (Rupees Two Lakhs Only) under Section 125 of the Customs Act, 1962. Since, demand is confirmed for normal period, penalties imposed under Section 114A and Section 114AA is set aside. Penalties imposed under Section 112 and 114AA on Director S.V. Aravind is also set aside.

(Order pronounced in Open Court on 18.02.2025.)

(D.M. MISRA)
MEMBER (JUDICIAL)

(R. BHAGYA DEVI)
MEMBER (TECHNICAL)

gb/rv