CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH - COURT NO. 1

Appeal(s) Involved:

E/00472/2011-DB, E/00473/2011-DB, E/00474/2011-DB, E/26726/2013-DB, E/21674/2015-DB, E/21772/2015-DB, E/1138/2012-DB E/20275/2016-DB, E/20276/2016-DB,

[Arising out of Order-in-Appeal No. 39-41/2010 dated 23/11/2010 passed by Commissioner of Central Excise , BANGALORE.]

[Arising out of Order-in-Appeal No. 08/2012 dated 31/01/2012 passed by Commissioner of Central Excise , BANGALORE-I]

[Arising out of Order-in-Appeal No. 19/2013 dated 28/02/2013 passed by Commissioner of Central Excise , BANGALORE-I]

[Arising out of Order-in-Appeal No. 05-ATT-COMMR-B1-2015 dated 31/03/2015 passed by Commissioner of Central Excise , BANGALORE-I]

[Arising out of Order-in-Appeal No. 06-ATT-COMR-B1-2015 dated 31/03/2015 passed by Commissioner of Central Excise , BANGALORE-I]

[Arising out of Order-in-Appeal No. BLR-EXCUS-005-COM-08-15-16 dated 30/11/2015 passed by Commissioner of Central Excise , BANGALORE-V]

[Arising out of Order-in-Appeal No. BLR-EXCUS-005-COM-09-15-16 dated 30/11/2015 passed by Commissioner of Central Excise , BANGALORE-V]

FOWLER WESTRUP (INDIA) P LTD
PLOT NO.249/250, BOMMASANDRA
INDL.AREA, III PHASE, BANGLAORE — Appellant(s)

FOWLER WESTRUP (INDIA) P LTD
PLOT NO.249/250, BOMMASANDRA
INDL.AREA, III PHASE, BANGALORE 560099 — Appellant(s)

FOWLER WESTRUP (INDIA) P LTD
PLOT NO.249/250, BOMMASANDRA
INDL.AREA, III PHASE, BANGALORE 560099 — Appellant(s)

Fowler Westrup (india) Pvt Ltd
Plot No. 249/250, Bommasandra Industrial Area, Iii Phase,
BANGALORE - 560099
KARNATAKA

Appellant(s)

Fowler Westrp India Private Limited
Plot No-61-63,kiadb Indistrial Area, 4th Phase,malur Taluk Kolar Dist
KOLAR - 563130
KARNATAKA

Appellant(s)

Fowler Westrup India Private Limited
Plot No 249/250,bommasandra Industrial Area, Iii Phase,bangalore
BANGALORE - 560099
KARNATAKA

Appellant(s)

Fowler Westrup (india) Pvt Ltd
Plot No.249/250, Bommasandra Indl.area, Iii Phase, Bangalore 560 099

Appellant(s)

VERSUS

Commissioner of Central Excise, Customs and Service Tax BANGALORE-I
POST BOX NO 5400, CR BUILDINGS,
BANGALORE, - 560001
KARNATAKA

Respondent(s)

Commissioner of Central Excise, Customs and Service Tax Bangalore-v
POST BOX NO 5400, CR BUILDINGS,
BANGALORE, - 560001
KARNATAKA

Respondent(s)

Commissioner of Central Excise ,Customs and Service Tax Bangalore-I
POST BOX NO 5400...CR BUILDINGS,
BANGALORE, - 560001
KARNATAKA

Respondent(s)

Appearance:

S. THIRUMALAI ADVOCATE
1-8-384 & 385, 3RD FLOOR, GOWRA GRAND,
S.P. ROAD, BEGUMPET,
SECUNDERABAD 500 003
ANDHRA PRADESH

For the Appellant

Mr. HARISH BINDUMADHAVAN / Ms. DISHA GURSAHANEY
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For the Appellant

GROUNDS,
BENGALURU - 560001
KARNATAKA

Mr. K. Murali,
Superintendent (AR) For the Respondent

CORAM:

HON'BLE MR. S.S GARG, JUDICIAL MEMBER
HON'BLE MR. V. PADMANABHAN, TECHNICAL MEMBER

Final Order No. 20320-20328 / 2019

Date of Hearing: 05/04/2019
Date of Decision: 05/04/2019

Per : V. PADMANABHAN

The appeals are directed against various Orders-in-Original passed by the Commissioner of Central Excise, Bangalore. The nine appeals covered the period of dispute from June 2007 up to December 2014. The details of the orders which are the subject matter of the present appeals are as follows:

Appeal No.	**Period of Dispute**	**Excise Demand (in INR)**	**Impugned Order details**
E/472/2011	June 2007 – November 2008	1,55,38,577	No. 39/2010 dated 23.11.2010
E/473/2011	December 2008 – September 2009	1,01,81,678	No. 40/2010 dated 23.11.2010
E/474/2011	October 2009 – July 2010	1,41,70,486	No. 41/2010 dated 23.11.2010
E/1138/2012	August 2010 – June 2011	1,60,93,682	No. 8/2012 dated 31.01.2012
E/26726/2013	July 2011 – March 2012	3,08,84,739	No. 19/2013 dated 28.02.2013
E/21674/2015	April 2012 – February 2013	2,67,87,315	No. 05/ATT/COMMR/ B1/2015 dated 31.03.2015
E/21772/2015	March 2013 – May 2013	81,55,776	No. 06/ATT/COMMR/ B1/2015 dated 31.03.2015
E/20275/2016	June 2013 – March 2014	96,86,167	No. BLR-EXCUS-005-COM-08/15-16 dated 30.11.2015
E/20276/2016	April 2014 – December 2014	98,95,151	No. BLR-EXCUS-005-COM-09/15-16 dated 30.11.2015

The issue involved in all these appeals is the classification of ”galvanized silo storage systems” manufactured by the appellant. The appellant is contending that the goods are rightly classifiable under subheading 8437 1000 of the Schedule to the Central Excise Tariff Act, 1985 as “machinery used in milling industry”. The Revenue, on the other hand, has taken the stand that the goods are classifiable under heading 9406 0099 as "prefabricated building used for storage".

2. For the demand covered by the period April 2012 to February 2013, the adjudicating authority had passed the order classifying the goods under the heading 9406 originally by issue of Order-in-Original No.59/2013 dated 20.11.2013. When the appeal against this order came up before this Tribunal in the first round of litigation, the Tribunal passed Final Order No.21888/2014 dated 13.10.2014 remanding the issue back to the adjudicating authority for a *de novo* decision with the following observations:

> "4. After hearing both the sides and considering all these submissions, we came to the conclusion that it would be appropriate to remand the matter at this stage itself even though in respect of the very same product this Tribunal vide Stay Order No.1180-1182/2012 dated 5.7.2012 had taken a view that the appellant has to deposit the amount that may be payable during the normal period. The learned AR submitted that there is no reason why this order should not be followed. In the normal course, this would have been the approach followed by us and in fact, we would have also not heard the party in great detail. The learned counsel pressed that he has different grounds to address and should be given an opportunity and hence, the matter was heard in great details. We find that there are three major differences why we intend to remand the matter at this stage to the original adjudicating authority.
>
> (i) It was submitted that only one purchase order was considered by the Commissioner wherein appellants had supplied only silos without any accessories. It was the submission that in most of the cases the appellants supplied silos with accessories and therefore in such cases where silos with accessories are cleared and it works as a system which can perform the function of grading, sorting, cleaning seeds, etc., it has to be treated as machinery. It was also submitted that the decision in the case of Thermax Ltd. relied upon by the learned counsel before the original authority is applicable to the facts of this case and distinction made by the Commissioner may not be applicable in respect of all the consignments cleared by the appellants.
>
> (ii) The learned counsel submitted brochure of B. G. Shirke Construction Technology Pvt. Ltd. and Rosfrei Steels Pvt. Ltd. which were probably not made available to the Commissioner. It was submitted with the support of invoices raised by the competitors that the same type of systems are being classified under CETA 8437 1000 and are being

cleared without payment of duty. We feel that this is an important aspect which requires consideration. The duty element can make a substantial difference to the capacity to compete by an assessee and therefore, similar products should get similar treatment.

(iii) In fact even the Commissioner has distinguished the decision in the case of Thermax Ltd: 1996 (81) ELT 417 (Tri.) holding that in the Thermax Ltd. case the assessee had catalogue which showed that the said silo had multiple devices attached to the storage system and therefore, had multiple uses. However, in this case, he has not discussed the catalogue or brochures of the assessee."

2.1 It is also to be recorded that various appeals filed before this period continue to be pending in this Tribunal. The de novo adjudication for the period April 2012 to February 2013 was completed by the Commissioner by issue of order NO.5/2015 dated 31.3.2015. in the de novo proceedings, the Commissioner ordered classification of the impugned goods under chapter subheading 9406 0093 of the Central Excise Tariff. He observed as follows with reference to the compliance to the directions of the Tribunal vide its earlier order dated 13.10.2014.

"18. This is a denovo proceeding consequent to CESTAT Final Order 21888/2014 dated 13.10.2014 remanding the case to the original authority on these grounds:

(*i*) *It was submitted that only one purchase order was considered by the Commissioner wherein appellants had supplied only silos without any accessories. It was the submission that in most of the cases the appellants supplied silos with accessories and therefore in such cases wherein silos with accessories are cleared and it works as a system which can perform the function of grading, sorting, cleaning seeds etc., it has to be treated as machinery. It was also submitted that the decision in the case of Thermax Ltd. relied upon by the learned counsel before the original authority is applicable to the facts of this case and distinction made by the Commissioner may not be applicable in respect of all the consignments cleared by the appellants.*

All the POs submitted by the assessee during the various submissions made by the assessee during the various dates as mentioned against each of the POs referred in Para 16.12 above. As pointed out earlier, in view of the fact that there is a specific heading to classify the goods viz, 'silos for storing ensilage' under 94060093 which has also been suggested by the assessee during the course of their submissions, there is no ambiguity in the classifying of the goods and I hold that the Silos manufactured by the assessee rightly falls under Chapter sub-heading 94060093 of the First Schedule to the CETA, 1985. Further, Thermax Order has been discussed in detail in Para 16.16. above.

(ii) The learned counsel submitted brochure of B.G. Shirke Construction Technology Pvt. Ltd. and Rostfrei Steels Pvt. Ltd. which were probably not made available to the Commissioner. It was submitted with the support of invoices raised by the competitors that the same type of systems are being classified under CETA 84371000 and are being cleared without payment of duty. We feel that this is an important aspect which requires consideration. The duty element can make a substantial difference to the capacity to compete by an assessee and therefore similar products should get similar treatment.

The sample Invoices of B.G. Shirke Construction Technology Pvt. Ltd., do not indicate the CETH, however, the RTI response states that silos are classified under CETH 8437. Just because in some Commissionerate the classification is being wrongly done, there is no necessity for the Department to err and copy the same but it is an opportunity to rectify the malady. The remedy lies in making good the errors occurring in the classification of the goods by classifying them in the specific heading prescribed in the Tariff. In fact, it would not be out of place to go a step further to suggest that a pointer be sent to Pune Commissionerate to re-classify the product correctly as there is a specific heading covering the same. Basically, B G Shirke is a construction company and why the Pune Commissionerate has chosen to allow the classification of the product under CETH 8437 is not known and Silos are not the kinds of products which require chemical examination since they are huge Silos and especially when a specific heading exists in the Tariff. In respect of Rostfrei, the assessee has not furnished any documentary evidence wrt to the classification. However, it is once again reiterated that when the assessee have themselves averred that "Silos for storing ensilages are classified under 94060093 and hence other silos use for storage could be classified under 94060099. Goods cannot be classified under residuary entry when there is a more specific heading of 8437. The essential nature of silos manufactured by them is a completely mechanized storage system which includes accessories and handling system which impart it the nature of machinery completed at the customer's location in all cases and will not be a pre-fabricated building covered under 94060099." (Para 16.17 refers)

(iii) In fact even the Commissioner has distinguished the decision in the case of Thermax Ltd. holding that in the Thermax Ltd. case the assessee had catalogue which showed that the said silo had multiple devices attached to the storage system and therefore had multiple uses. However, in this case, he has not discussed the catalogue or brochures of the assessee.

The Thermax case has already been discussed in detail in Para 16.16 supra. Further the brochures, the assessees call that the products deserves classification under 94060093 specific heading and the additional submissions as exhibits have all been taken into cognizance while arriving at the classification of the Silos manufacture by the assessee and it is felt that the product deserves classification under CETH 94060093 as rightly pointed out by the assessee."

2.2 Subsequent to the issue of impugned order dated 31.3.2015, the Commissioner proceeded to decide the issue for the subsequent periods by issue of various further orders. All these appeals are taken up for decision by this common order.

3. The appellant's case is argued by Mr. S. Tirumali, Mr. Bindhu Madhavan and Ms. Disha Gursahaney, learned advocates and Revenue is represented by Mr. K. Murali, Authorised Representative.

4.1 The arguments advanced on behalf of the appellants are summarized below:

a. The silos manufactured by the Appellant are rightly classified under Chapter Heading 8437 of the Central Excise Tariff Act.

b. The Appellant's catalogue clearly shows that the Silo's are equipped with pre-cleaners, fine cleaners, destoners, conveyor with belt/chain, elevators, temperature and level sensors, temperature controllers, aeration system, etc., and thus, the silos are not mere storage structure but a complete machinery system consisting of equipment, and machinery for fine cleaning, and storage.

c. The **Chartered Engineer's Certificate** provides for a detailed explanation of the description and function/usage of the product, as available on **page 14** of the paperbook to E/21674/2015 against Order-in-Original No. No. 05/ATT/COMMR/ B1/2015 dated 31.03.2015, as detailed below:

"Description and Features of the Silos manufactured
Silos manufactured by the Appellant and sought to be procured by the customers are equipped with pre-cleaners, fine-cleaners, de-stoners, conveyor belt/ chains, elevators, temperature and level sensors, temperature controllers, aeration system etc. Thus, the silos are not mere storage structure as alleged in the SCN, but a complete and a complex machinery system consisting of equipment and machinery for fine cleaning and mechanized storage.

In order to substantiate this, detailed description of basic characteristics, usage and function of its Galvanized Silos Storage System as follows:

Characteristics:

Appellant offers the best and safest solution for mechanized storage & handling of grains, cereals & other commodities and challenges the other methods of storage in gunnysacks, concrete structures and MS storage structures. Being technologically advanced the galvanized silos storage systems are engineered using the best materials and proven technology to deliver maximum value.

Usage:

The Galvanized Silo Storage System is a scientific method of storing grains and is designed to minimize wastage of food grains due to moisture, temperature, pests and handling. They are highly sophisticated and mechanized to control temperature and humidity. They retain the quality of stored goods for a longer duration while reducing transportation and manpower costs, resulting in sale of stored items at the peak-value.

Function:

The Silos are structured to include equipment for specific functions that enable scientific and mechanized storage and handling of grains, like, for instance, Galvanised Silos are equipped with Silo Accessories like Level Switches, Aeration System, Sweep Auger, Temperature Monitoring Device and Discharge Gates. Hence, it cannot be said that Galvanized Silos manufactured by the Appellant are merely storage systems."

The above facts are clear from the **brochure and the purchase orders of the Appellant**, as available from **pages 6 to 13 and 56 to 75** of the paperbook to E/21674/2015 against Order-in-Original No. No. 05/ATT/COMMR/ B1/2015 dated 31.03.2015.

4.2 In light of the above facts, the Appellant summarizes its submissions as below::

(a) **Burden of proof of classification lies on the Department**

It is submitted that it is a settled position of law that the onus of establishing that the classification of the product in question is on the Department. In the present case that onus and burden has not been discharged by the Department. The Appellant submits that in the present case there has not been a single technical literature which has been relied upon by the Department to assert its proposed classification under chapter 94.

(b) Non-applicability of Rule 3(a) of the General Rules of Interpretation of CETA

The Department has erred in applying Rule 3 without recourse to Rule 1 of GRI. Further, Rule 2 will not be applicable in the instant case since Rule 2 covers specific situation wherein goods are in incomplete form (2a) or are mixed with other material (2b). In case of mechanized food grain handling and storage systems manufactured by the Appellant, there exists no issue regarding classification with respect to one or more material contained in such systems. Appellant is involved in manufacture of mechanized food grain handling and storage systems which is a mechanized storage solution and is used for storage of grains. In addition to the same, Rule 3 begins on the note that if the goods are classifiable under two headings under Rule 2(b), then the classification may be resolved by application of Rule 3. However, since Rule 2 is not applicable, Rule 3 which clarifies the issue on classification when the goods fall under two headings as per Rule 2(b) is also clearly not applicable in case of the Appellant. It is also submitted that comparison at sub-heading level permissible only within a Chapter Heading.

(c) Silos manufactured by the Appellant are machinery classifiable under Chapter 8437

The Appellant has been consistently declaring the manufacture and clearance of the subject goods rightfully classifying them as 'agri processing machines' based on the bonafide belief that subject goods being machinery used in milling industry can be termed as such. Therefore rendering the classification of the said goods under CETH 84.73 as correct and proper.

(d) It is also submitted that as per the Notes to Chapter 84, under part (B) General Arrangement of the Chapter, point (3) states that *Headings 84.25 to 84.78 cover machines and apparatus which, with certain exceptions, are classified there by reference to the field of industry in which they are used, regardless of their particular function in that field.* Hence, the machinery is rightly classified under CETH 84378090 in as much as it is a machinery used in the milling industry.

(e) The silo's manufactured by the Appellant are similar to that considered in the Thermax judgment. Therefore the said judgment will continue to apply to the case of the Appellant as well and the classification under heading 84.37 claimed by the Appellant is tenable in law. The Thermax judgment has not been reversed till date and the same holds the field even today in so far as the classification of Grain Silo systems is concerned. The said judgment squarely applies in situations where the silos are cleared with various forms of machineries.

(f) It is possible to order pre cleaners separately and not with the silos that the appellant clears usually. As it is understood that pre cleaners are required by other customers too even if no order for silos have been made.

(g) Chapter Heading No. 8437 is a specific one and it ought to have been appreciated that the very description of the heading states that it covers machinery used in the milling industry. It is wrong to misapply the general rules of interpretation. Chapter Heading No. 8437 provides the most specific description of the silos given that it is machinery used in the milling industry.

(h) If there is a conflict between two entries one leading to an opinion that it comes within the purview of the tariff entry and another residuary entry, the former should be preferred. The decision of the Honorable Supreme Court in Bharat Forge and Press Industries (P) Ltd. V. Collector of Central Excise, Baroda, Gujarat reported in

MANU/SC/0110/1990 : (1990) 1 SCC 532 has been relied upon by the Appellant in the support of the above contention.

(i) The very fact that the customers of the appellant, in so far as the subject silos are concerned, are of the milling industry can only lead to the conclusion that its use is in the milling industry. The Department has failed to establish that the goods in question can by no conceivable process of reasoning be brought under any of the tariff items, resort cannot be had to the residuary heading.

(j) Silos manufactured and cleared by the Appellant do not fall under the residuary Chapter sub-Heading 94060099

The basic character, function and use of the SILO as a prefabricated building functioning as a storage device used for storing grains in as much as such an opinion has been formed without appreciating the silo storage system in its entirety and ignoring the write up provided by the appellant. Such a contention is totally contradictory to the chapter note 4 of Section XX of the Central Excise Tariff Act, 1985.

(k) Goods cannot be classified under residuary entry when there is a more specific heading of 8437. Reliance is placed on Apex court's judgment in Mauri Yeast India Pvt. Ltd. v. State of U.P. 2008 (225) ELT 321 (SC) which states that if there is a conflict between two entries one leading to an opinion that it comes within purview of tariff entry and another the residuary entry, the former should be professed.

(l) Silo is not finished in the appellants factory nor are they put up as elements, presented together, to be assembled on site. It is quite evident that silos are erected/constructed by the appellant on the customers site. The Appellant reiterates that it has never been submitted or even remotely accepted by them that the machines manufactured are correctly classifiable under Chapter 94.

(m) The impugned order, Order-in-Original No. 05/ATT/COMMR/ B1/2015 dated 31.03.2015 has failed to accept and understand the facts of the case as submitted and reproduced in its order. The Appellant submits that the Ld. Commissioner has refused to consider the illustration provided in internal page 14 of the order, despite reproducing it.

(n) In this regard, reference is made to Order-in-Original No. 19/2013 dated 28.02.2013 in respect of the Appellant on the same issue for the period July 2011 to March 2012, passed by Shri Ashok, which clearly holds in para 12, that, classification under item 94060099 is better than under 94060093, since 'Others' covers any pre-fabricated building used for storage.

(o) Department cannot go beyond the SCN allegations in respect of classification

Burden of proving classification is on the Department, which has not been satisfied. More so, the stand of the Department in respect of classification has never remained constant, as evident from the table below:

Period of Dispute	**Alleged classification in the SCN**	**Classification as per the order** (Appealed before Tribunal)	**Denovo Order**
June 2007 – November 2008	94060099	94060099	-
December 2008 – September 2009	94060099		
October 2009 – July 2010	94060099		
August 2010 – June 2011	94060099	94060099	-
July 2011 – March 2012	94060099	94060099	-
April 2012 – February 2013	94060099	94060099	94060093
March 2013 – May 2013	94060099	94060093	
June 2013 – March 2014 Corrigendum to the above	94060099 94060093	94060093	

April 2014 – December 2014 Corrigendum to the above	94060099 94060093	94060093	
January 2015 – September 2015	94060093		
October 2015 – January 2017	94060099		
February 2017 – March 2017	94069090		
April 2017 – June 2017	94069090		

(p) Extended period cannot be invoked

Ever since 2007, the Noticee is acting under the *bona fide* belief that the systems manufactured by it are classifiable under CETH 8437 since such systems are machineries used in milling industries. Further, when the demand itself is based on an audit of the Noticee's records, no allegation of suppression can be made. Reliance is placed on **CCE, Bangalore v. Pragathi Concrete Products (P) Ltd. 2015 (322) ELT 819 (S.C.)**.

(q) The Appellant also submits that no penalty is imposable in case of classification disputes.

(r) Benefit of CENVAT Credit available, assuming Excise Duty is leviable on manufacture of Mechanized food grain handling and storage systems. A Chartered Accountant's certificate to this effect is submitted.

(s) It was submitted on behalf of the appellants that the Commissioner has grossly erred in rejecting the classification of the production under CETH 8437 1000. The show-cause notice proposed the classification under 9406 0099, however, the Commissioner has ordered the classification under 9406 0093 which was not as per the show-cause notice. He observed in para 16.18 as follows:

> "16.18 From the foregoing discussion, it can be seen that the assessee have themselves drawn by conclusion that the product manufactured by them is rightly classifiable under 9406

> 0093 and as the product manufactured by the assesse has a clear, unambiguous and specific heading 9406 0093 for classification, the product merits classification under that heading only and not elsewhere as mentioned by the assessee. Though the said heading is not sought for re-classification by the SCN since the assessee have on their own arrived at the conclusion that the product manufactured by them falls squarely under the heading 9406 0093, I hold that the product merits classifications under that heading alone."

It was emphasized that the appellants have never conceded to the conclusion that the product is classifiable under 9406 0093.

(t) The learned counsel further submitted that one of the points to be considered in de novo adjudication was due consideration of various purchase orders procured by the appellant. The Tribunal had directed that the adjudicating authority shall examine all the purchase orders but it was highlighted that the adjudicating authority, in spite of examining all the purchase orders, has proceeded on the assumption that the appellant has conceded the classification under specific heading 9406 0093.

(u) With reference to the direction of the Tribunal to the Commissioner to reexamine the issue in the context of Trimax case, he submitted that the adjudicating authority has declined to undertaken this exercise by citing that the appellant themselves have conceded the classification under CTH 9406 0093.

5. The learned DR reiterated the findings of the adjudicating authority, however, in the light of the arguments advanced on behalf of the appellant, he submitted that the Bench may consider remand of the case for complying with the directions of the Tribunal.

6. We have heard both sides at length and considered the appeal records.

6.1 The two competing Central Excise Tariff headings for the classification of the goods manufactured by the appellant are 8437 1000 as well as 9406 0099. The case was remanded in the last round of litigation to the Commissioner with certain directions. The adjudicating authority, while passing the order in de novo proceedings does not appear to have complied with the directions of the Tribunal. While examining the issue of classification keeping in view the directions of the Tribunal, he has proceeded on the assumption that the appellant has conceded the classification of the products under Central Excise Tariff Heading 9406 0093. During the course of arguments, the learned advocates appearing for the appellants have emphatically submitted that no such concession was ever made by the appellants. It has been reiterated that the classification claim of the appellant is under Heading 8437 and further, it has been pointed out that the adjudicating authority has travelled beyond the proposals made in the show-cause notice. The claims that classification has been made under 8437 by certain other manufacturers of similar goods also appear to have been brushed aside by the adjudicating authority.

6.2 Under the circumstances, we find no option other than to set aside the impugned order passed, without proper compliance of the directions of the Tribunal, in the case of order dated 13.10.2014 in the last round of litigation. It is further seen that the appeals pertaining to the orders passed by the same adjudicating authority for the periods prior to the impugned order dated 31.3.2015 as well as for the period subsequent thereto are also pending before this Tribunal. We are of the view that a consolidated view needs to be taken by the adjudicating authority for the entire period covered in the dispute before us.

6.3 In view of the above, we set aside all the impugned orders as mentioned in para 1 above, and remand the issue to the adjudicating authority for a de novo consideration and after compliance of the directions already given by the Tribunal vide Final Order No.21888/2014 dated 13.10.2014.

6.4 The learned advocate for the appellants also submits during the course of arguments that the disputes for the period subsequent to December 2014 are also pending adjudication before the same adjudicating authority. In view of the above, we direct the adjudicating authority to take up adjudication of all the cases in a consolidated manner on a priority basis to be completed within a period of three months from the date of receipt of the present order. The learned advocates assure us of their full cooperation in the adjudication process and will not seek unnecessary adjournment.

(Order was pronounced and dictated
in Open Court on **05/04/2019.**)

S.S GARG
JUDICIAL MEMBER

V. PADMANABHAN
TECHNICAL MEMBER

rv...