CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH - COURT NO. 1

Customs Appeal No. 20002 of 2023

(Arising out of Order-in-Appeal No. 1748/2022 dated 15/12/2022 passed by Commissioner of Customs(Appeals), Bangalore-I)

Hosmroc Exim
New Khata No 51 Ward No 185
Bikasipura Main Road Yelachenanhalli
BENGALURU - 560062
KARNATAKA

Appellant(s)

VERSUS

Commissioner Of Customs, Bangalore
C.R. BUILDING, QUEENS ROAD,
P.B.NO. 5400,
Bangalore - 560001
Karnataka

Respondent(s)

APPEARANCE:

Shri Naveen Bindal, Advocate for the appellant.

Smt. D.S. Sangeetha, Addl. Commissioner(AR) and
Shri Dyamappa Airani, 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. 20136 / 2023

Date of Hearing: 24/02/2023
Date of Decision: 24/02/2023

Per : DR. D.M.MISRA

This appeal is filed against the Order-in-Appeal No.1748/2022 dt. 15/12/2022 passed by the Commissioner of Customs(Appeals), Bangalore.

2. Briefly, the facts of the case are that the appellants are engaged in the business of import of 'Toughened Glass Top – Part of Gas Stove'. They have been importing the said goods for last two to three years classifying it under Sub-Heading 70072190 of Customs Tariff Act, 1975(CTA 1975, for short). The appellant had filed Bills of Entry No.6976687 dt. 06/01/2022 and 7365770 dt. 04/02/2022 declaring classification of the said goods under CTH 70072190 and the transaction value as Rs.7,23,643/- and Rs.7,92,277/- respectively. The Customs Department opined that the goods in question correctly classifiable under CTH 7013 attracting basic customs duty @ 20% instead of CTH 7007 attracting duty @ 10% declared by the appellant in the said two Bills of Entry. Consequently, the goods covered under the aforesaid Bills of Entry were seized on 04/02/2022 and 09/02/2022 alleging misclassification with intention to evade payment of duty since liable for confiscation under Section 111 of the Customs Act, 1962. The appellant thereafter represented on 12/02/2022 responding to the said allegation in the seizure memo and requested for provisional release of the goods seized by the Department. Replying to the said letter and subsequent reminder, the Department without considering the submissions/explanations advanced by the applicant, allowed provisional release of the goods through order dt. 04/03/2022, subject to the condition of execution of bond for the estimated value of seized goods i.e. Rs.39,64,262/-, furnishing bank guarantee/ security deposit of Rs.56,45,723/- and on payment of differential duty. Aggrieved by the said provisional release order dt. 04/03/2022, the appellant preferred an appeal

before the learned Commissioner(Appeals), who in turn, rejected their appeal. Hence, the present appeal.

3. At the outset, the learned advocate for the appellant submits that they have been importing the said goods viz. 'Toughened Glass Top – Part of Gas Stove' for the past two years having same description and quality declaring the goods under CTH 70072190. In support, he has referred to the relevant Bills of Entry dt. 03/06/2021, 13/10/2021 and 10/12/2021 enclosed with the Appeal paper book. It is his contention that the Customs Department has accepted the said classification and allowed clearance in the past. He has further submitted that other importers under different Customs Commissionerate declared the said product under same chapter sub-heading 70072190 of CTA,1975; hence arbitrarily changing the opinion by the Customs is unsustainable and devoid of merit. Further he has submitted that there was no misdeclaration of the goods on their part nor any suppression of facts warranting seizure of the goods even if the Department is of the opinion that the goods imported falls under CTH 7013 attracting higher rate of duty @20%, the goods should have been re-assessed and necessary demand notice ought to have been issued with an opportunity to the appellant to explain their stand vis-à-vis the proposal of re-classification by the Department. He has vehemently argued that directing seizure of the goods on mere change of opinion without suppression of facts or mis-declaration on their part is bad in law and to be set aside. He further submits that their request for provisional

release of the imported goods also has not been considered on its merit inasmuch as harsh conditions were imposed by unduly enhancing the value of the goods from the total transaction value of Rs.15,15,920/- to Rs.39,64,262/- when there was no allegation of misdeclaration or suppression of value in the seizure memo. Also, directing execution of bank guarantee / payment of security deposit of Rs.56,45,723/- is unrealistic and exorbitant in the facts of the present case. He prays that the order the authorities below be set aside and the conditions imposed for provisional release be modified in the facts of the present case suitably so as to enable the Appellant to avail the opportunity to release the goods provisionally pending adjudication.

4. *Per contra*, learned AR for the Revenue has submitted that by reading the competing tariff entries of the impugned goods viz. 'Toughened Glass Top – Part of Gas Stove', it can be easily inferred that when there is a specific entry, it would prevail over the general entry. Accordingly, the correct classification ought to have been CTH 7013 attracting 20% BCD instead of 70072190 as declared by the appellant. It is his contention that suppression of correct classification allows the Customs Department to seize the goods and proceed with the investigation. Further he has submitted that a statement of the appellant was recorded on 02/03/2022 and the Department came to know that there are enough material available to show that the transaction value declared by the appellant is sham and not acceptable. Accordingly, the estimated value on the basis of materials available arrived at by the department is around Rs.39,64,262/- for the purpose of provisional release of the goods. The learned AR further submitted that the adjudicating authority has fixed the amount of value of the bond and bank guarantee following the Circular No.35/2017-Customs dt. 16/08/2017, hence the argument of the learned advocate that it is arbitrary is incorrect and cannot be sustained. Learned AR has relied upon the judgment of Hon'ble Supreme Court in the case of *Addl. Director General Vs. Mala Petrochemicals & Polymers* [2018(360) ELT A256 (SC)].

5. In his rejoinder, the learned advocate for the appellant submitted that in the seizure memos dt. 04/02/2022 and 09/02/2022, nowhere it is mentioned that the reason to believe in effecting seizure of the goods relates to undervaluation or suppression of correct value. The only ground mentioned while making seizure of the goods refers to mis-declaration of chapter heading attracting less duty in comparison to the chapter heading proposed by the Department. He also submits that in view of the principle laid down in the following judgments, the conditions imposed for provisional release of the goods is arbitrary and unsustainable in law.

a. *Elvance Overseas LLP Vs. CC, Indore* [2022(379) ELT 262 (Tri. Del.)]
b. *Amglo Resources Pvt. Ltd. Vs. CC(NS-III), Raigad* [Order dt. 17/06/2022 decided by CESTAT, Mumbai]
c. *Kanpur Edibles Pvt. Ltd. Vs. CC(Preventive)* [2019(369) ELT 1281 (Tri. Kol.)]
d. *Bhaiya Fibres Ltd. Vs. Addl. Dir. General of Revenue Intelligence* [2012(281) ELT 396 (Del.)]

6. Heard both sides and perused the records. We find that the Appellants are engaged in the import of 'Toughened Glass Top – Part of Gas Stove' for the last 2/3 years and the last import was in Dec. 2021.They have been consistently declaring the description of the goods as 'Toughened Glass Top – Part of Gas Stove' and classification under CTH 70072190 of CTA,1975. In a routine manner, they imported the said good in Feb 2022 without any change in description nor different technical specification having any bearing on its classification as declared by them in the past and cleared by department without any objection. However, the Customs Department all of a sudden proposed to change the declared and assessed classification of said 'Toughened Glass Top – Part of Gas Stove' under CTH 7007 attracting BCD @ 10% to CTH 7013 attracting BCD @ 20% and proceeded to place the imported goods under seizure alleging mis-classification. It is pertinent to note that no mis-declaration of the description of the goods is alleged nor any other material disclosed in the seizure memo revealing intention to mis-declare the classification of the goods on the part of the appellant. On the other hand, appellant placed on record prevailing practice of classification of similar goods in different Customs House/Commissionerate which is under the same Chapter Heading 70072190 of Customs Tariff Act, 1975.

7. On scrutiny of the seizure memo, we do not find mention of suppression or mis-declaration of the value of the goods. Nor the

issue of suppression of the value has been deliberated in the impugned Order by the Ld. Commissioner(Appeals). Hence, the submission of the learned AR for the Revenue that subsequent statement recorded on 02.3.2022 revealed huge undervaluation, hence arriving at the estimated value, and consequently fixing the Bank Guarantee/cash deposit amount, in our opinion, *prima facie*, at this stage does not merit consideration. The precise question to be answered in the facts and circumstance of the case of alleged mis-classification of the goods imported is: whether the conditions imposed for the provisional release order by the adjudicating authority and upheld by the Ld. Commissioner(appeals), particularly the quantum of bank guarantee/ cash deposit and other conditions imposed to safeguard the interest of Revenue pending adjudication on the face of the allegation of mis-classification of 'Toughened Glass Top – Part of Gas Stove' is too harsh and warrants modification as prayed on behalf of the Appellant or otherwise. At this stage, learned advocate for the appellant, on instruction, submitted that the Appellant since incurring heavy warehousing charges for the last one year, are willing to deposit the differential duty and execute bank guarantee / security deposit of Rs.3,00,000/-(Three lakhs); also they have no objection to execute B-1 Bond for the estimated value of Rs.39,64,262/- as conditions for provisional release of the goods. In our considered opinion, keeping in view the principles of law settled in this regard, furnishing B-1 Bond for the estimated value of Rs.39,64,262/-, bank guarantee/cash deposit of Rs.3.00 lakhs (Rupees three lakhs only), and deposit of the differential duty at the time of provisional release of goods would sufficiently safeguard the interest of revenue and meet the ends of justice. Accordingly, the impugned order is modified to the extent that on execution of B-1 Bond for the estimated value of Rs. Rs.39,64,262/-, furnishing of bank guarantee/cash deposit for Rs.3.00 lakhs (Rupees three lakhs only) and on deposit of differential duty by the Appellant, the adjudicating authority shall release the goods provisionally forthwith pending adjudication of the case.

8. Appeal disposed of as above.

(Dictated and pronounced in open court)

(Dr. D.M. MISRA)
MEMBER (JUDICIAL)

(R. BHAGYA DEVI)
MEMBER (TECHNICAL)

Raja...