

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH**

REGIONAL BENCH - COURT NO. I

Excise Appeal No. 54115 of 2014

[Arising out of Order-in-Original No. 37/CE/CHD-II/2014 dated 17.07.2014 passed by the Commissioner of Central Excise, Chandigarh-II]

Shiva Poultry Equipments

B.K.O. road, Pharwahi,
Barnala, Punjab

.....Appellant

VERSUS

**Commissioner of Central Excise, ...Respondent
Chandigarh-II**

Plot No. 19, Central Revenue Building,
Sector 17-C, Chandigarh 160017

APPEARANCE:

Shri Aman Garg, Advocate for the Appellant

Shri Harish Kapoor, Authorized Representative for the Respondent

CORAM: HON'BLE MR. S. S. GARG, MEMBER (JUDICIAL)

HON'BLE MR. P. ANJANI KUMAR, MEMBER (TECHNICAL)

FINAL ORDER NO. 60150/2025

DATE OF HEARING: 14.02.2025

DATE OF DECISION: 14.02.2025

S. S. GARG :

The present appeal is directed against impugned order dated 17.07.2014 passed by the Commissioner of Central Excise, Chandigarh-II, whereby the learned Commissioner has confirmed the demand of central excise duty along with interest and penalty.

2. Briefly stated facts of the present case are that the appellant is engaged in the manufacture and trading of Welded Wire Mesh, GI Welded Wire Mesh, GI Welded Wire, GI Wire Mesh, Chain Link, Chain Link Zali, Chechen Mess, GI Chain Link, GI Mesh, GI Mesh Roll, GI Powder Coating Mesh, GI Welded Mesh, Mess Roll, Grower Feeder, Layer Feeder, PVC Feeder, PVC Feeder & Pipe, PVC Feeder End Cap, PVC Feeder Joint, Side Zali, Chick Feeder, Chicken Feeder, Feeder, Feeder Cap, Feeder End Cap, Feeder Brackets. The officers of Headquarter (Preventive) Central Excise searched the factory premises of the appellant and during the search, statement of Shri Chander Shekhar Garg, Accountant of the firm, was recorded, who has disclosed the activities carried out by the appellant. Statement of Shri Vijay Kumar, Proprietor of the appellant, was also recorded, who has stated that the appellant is engaged in the manufacture of various equipments used in the poultry industries. On the basis of the statements and activities carried out by the appellant, the department came to the conclusion that the appellant is engaged in the manufacture of goods which are classifiable under Chapter Heading 73.14 of the CETA, 1985 and are liable to central excise duty. On the basis of this conclusion, the Revenue issued two SCNs to the appellant, one for the period from 2009 to December 2012 and another for the period from January 2013 to November 2013. After following the due process, the learned Commissioner confirmed the demand as proposed in the SCN. Aggrieved by the said order, the appellant filed the present appeal.

3. Heard both the parties and perused the material on record.

4. The learned Counsel for the appellant submits that the issue involved in this case is no more *res integra* and has been settled by this Tribunal in the appellant's own case for the earlier period in **Excise Appeal No. 60493/2013** vide **Final Order No. 61003/2016 dated 12.07.2016** [reported in **2017 (7) GSTL 243 (Tri. Chan.)**]. He further submits that in the appellant's own case in earlier appeal, this Tribunal has considered the decisions of the various Courts on the issue and has come to the conclusion that disputed items appropriately to be classifiable under Tariff Item 84369100 of CETA, 1985 and not under 73.14. He further submits that the said decision of the Tribunal was appealed against by the Revenue before the Hon'ble Apex Court and the Hon'ble Apex Court vide its **order dated 20.09.2024**, in the bunch of the appeals in the case of **CCE vs. M/s Grasim Industries Ltd and others**, in which the appellant was also one of the party, has dismissed the appeals of the Revenue on monetary consideration. He further submits that the issue involved in the present appeal is identical as involved in the earlier appeal of the appellant.

5. On the other hand, the learned Authorized Representative for the Revenue reiterates the findings of the impugned order.

6. After considering the submissions of both the parties and perusal of the material on record, we find that the Division Bench of this Tribunal in the appellant's own case (cited supra) where the identical issue was in dispute, has held that Welded Wire Mesh is classifiable under Tariff Item 84369100 of CETA, 1985. The said

decision of the Tribunal was appealed against by the Revenue before the Hon'ble Apex Court but the Hon'ble Apex Court vide its **order dated 20.09.2024**, has dismissed the same on monetary ground. Here it is pertinent to refer to the said findings of the Division Bench of this Tribunal in the appellant's own case (cited supra), which are reproduced herein below:

"5. We find that in the decision of the Bangalore Bench of this Tribunal, the classification is under Chapter Heading 8436.99. We note that this decision is in respect of the Central Excise Tariff existing during the period 1999-2000, whereas the Hon'ble High Court's decision is in respect of the tariff as it existed in the late 1980s. We also further note that the Central Excise Tariff was switched over to 8 digit classification in 2005. The classification of the goods in the impugned order covering the period 2009-13 is to be decided on the basis of 8 digit tariff existing at the time of the present proceedings, viz. 2009-13. We have seen the Entry No. 8436 as it existed prior to 2005 and post-2005. The entry in the new tariff includes the parts of poultry keeping machinery which was not included in this heading prior to 2005. The Hon'ble Delhi High Court dismissed the writ petition pertaining to the earlier Entry No. 8436 (relating to only Poultry Keeping Machinery) and held that wire mesh cannot be treated as poultry keeping machinery. We further note that in the 8 digit classification, since the subsequent Entry No. 8436 specifically included the parts of the poultry keeping machinery, the Hon'ble Delhi High Court's decision may not be applicable to the new tariff entry including parts. We also note that this decision of Delhi High Court was challenged before the Hon'ble Supreme Court by way of filing SLP and the Apex Court vide its order dated 23-7-2012 [*Azra Poultry Equipments v. Union of India* - 2015 (323) E.L.T. A21 (S.C.)] allowed the SLP to be

withdrawn, so as to pursue the matter with the Commissioner (Appeals) and directed that the Commissioner (Appeals) will consider the case on its merit uninfluenced by any observation by the Delhi High Court. We also find that the Commissioner of Central Excise, Hyderabad vide his separate Order-in-Original dated 16-5-2014, in the case of *Weld Fuse Pvt Ltd.* (supra) has taken note of the above developments and has decided that welded wire mesh, used in the poultry farms, is properly classifiable under Item No. 8436 91 00.

6. The goods manufactured by the appellant are in the form of Welded Wire Mesh and are supplied to poultry farms and claimed to be specifically designed parts of poultry keeping machinery. If the goods are considered as simple products of Iron & Steel, the classification indicated is Heading 7314. Further, we find that in the cases discussed above, where the classification of similar goods have been examined, it has been decided that the goods in question are more appropriately classifiable as parts of poultry machinery falling within the scope of Tariff Item No. 8436 91 00. For clear understanding of the above conclusion, we reproduce Paras 16 and 17 of the order dated 16-5-2014 passed by the Commissioner of Central Excise, Hyderabad, which read as under :

"16. The assessee's plea regarding earlier period is correct. The classification of these items in their own case has been settled by the Hon'ble Tribunal in the above-mentioned case and reiterated again in the Final Orders 1425 to 1427, dated 11-12-2007 [2008 (224) E.L.T. 451 (Tri.-Bang.)]. In order to arrive at different conclusion in the present proceedings new developments either in facts or in legal position are required. It is seen that Hon'ble Delhi High Court has decided a similar issue in respect of Azra Poultry Equipment [2012-TIOL-287-HC-Del-CX]. In the said order, Hon'ble High Court of Delhi held that wire mesh manufactured by the petitioner even if sold to poultry farmer for assembling cages for poultry or battery of such cages cannot qualify as machinery under heading

8436 and would be an article of iron and steel wire within the meaning of heading 7314. This decision was passed after examining the above mentioned CESTAT order. However, M/s. Azra Poultry Equipments filed an SLP and Hon'ble Supreme Court vide order dated 23-7-2012 allowed the withdrawal of the said SLP to pursue the matter with Commissioner (Appeals). The Supreme Court specifically directed that in case the appeal is entertained by the Commissioner (Appeals), it will be considered on its own merits uninfluenced by any observation by the Delhi High Court in the impugned judgment. It is ascertained that the Commissioner (Appeal-II), Bangalore had rejected the assessee's appeal on the grounds of limitation without considering or passing order on merits of the case. The net effect of these developments is that there is no contrary decision of higher forum regarding classification, of the subject items and the Delhi High Court's order is held to be not binding on the lower appellate authority by the Hon'ble Supreme Court while disposing of the SLP filed by the assessee.

17. On the legal position, it is seen that Tariff Heading 8436 91 00 is not dealing with machinery or equipments per se but with parts of poultry keeping machinery or poultry incubators and broodes. Reading together Note-I of Section XV, Note-2 of Section XVI and the scope of the entry in the above Tariff heading, it is apparent that there is no changed circumstances to warrant the change of classification as already upheld by the Hon'ble Tribunal in the assessee's own case and followed by this office vide the above-mentioned order-in-original for all the subsequent periods. It is pertinent to note that CTH 8436 91 00 dealing with parts in the tariff in the column for unit 'Kg' is mentioned. In respect of specific machinery and equipment 'u' unit is mentioned indicating thereby that in respect of parts of poultry incubators and broodes, the standard unit is 'kilogram'. The standard unit is indicative of the nature of product. In the case, it is not individual part of machinery but wire mesh. The HSN Explanatory Note for poultry keeping machines, incubators and broodes specifies batteries, large installations equipped with automatic devices for filling the feeding trays, clearing floors and collecting eggs. The installation is very large and wire mesh supplied by the assessee forms part of said batteries which are attached to various other mechanical devices to make a functional poultry keeping machine. Since the claim of the assessee is only to classify the

product as part of such overall machinery, there could be no sustainable ground to deny the same only on the ground of absence of mechanical function of the said parts. All parts of machinery will not have individual mechanical functions. The Board's clarification vide Circular No. 36/90-CX4, dated 31-8-1990 deals with scope of exemption under Notification No. 111/88-C.E., dated 1-3-1988 more specifically Sl. No. 11 of the table in the said notification. The present case is regarding classification parts of poultry machinery and the scope of the tariff entry 8436 91 00."

7. As discussed above, we find that the issue of classification of welded wire mesh made specifically for poultry keeping is no longer *res integra*. In line with the above discussion, the classification is ordered under [Tariff Item] 8436 91 00.

8. The impugned order is set aside and the appeal is allowed."

7. By following the ratio of the said decision of the Tribunal in the appellant's own case, we set aside the impugned order and allow the appeal of the appellant with consequential relief, if any, as per law.

(Operative part of the order pronounced in the open court)

(S. S. GARG)
MEMBER (JUDICIAL)

(P. ANJANI KUMAR)
MEMBER (TECHNICAL)