CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH
CHENNAI

Appeal No.C/393/2011

[Arising out of Order-in-Appeal No.C.Cus No.642/2011 dt.13.09.2011 passed by the Commissioner of Customs (Appeals), Chennai]

Commissioner of Customs (Imports), Chennai — Appellant

Versus

ICP India Pvt. Ltd. — Respondent

Appearance:

Shri A.Cletus, ADC (AR)
For the Appellant

Shri M.A.Narayana, Advocate
For the Respondent

CORAM :

Hon'ble Ms. Sulekha Beevi C.S. Member (Judicial)
Hon'ble Shri Madhu Mohan Damodhar, Member (Technical)

Date of hearing / decision : 24.5.2018

Per Bench

FINAL ORDER No. 41647/2018

Brief facts are that appellants imported goods described as 'Aluminium Composite Panels' vide four Bills of Entry declaring classification under CTH 7606 and claiming concessional rate of duty under Notification No.21/2002. The department was of the view that goods are rightly classifiable under CTH 7610 and appellants are not eligible for benefit of notification. The adjudicating authority finalized the assessment holding the goods to be classifiable under CTH 7610. In appeal, Commissioner (Appeals) set aside the same. Hence the department is in appeal before the Tribunal.

2. On behalf of department, Ld.AR, Sh.A.Cletus reiterated the grounds of appeal.

3. The Ld.Counsel, Sh.M.A.Narayana appeared and argued on behalf of respondent. He adverted to the respective tariff headings and submitted that the Heading 7610 deals with Aluminium Structures, prefabricated buildings of Heading 9406, parts of structures, Bridges, Bridge Section etc. The goods imported by appellant is not structure or part of structure. The goods at the time of importation are in the form of a sheet measuring 1.5 metres X 3.5 metres and bigger. The same has to be cut to different size and shape depending on the shape and size of the structure and contour of the design required to be provided on the structure, grooved (routed) and bent to fix it on the structure. Thus, the impugned goods are not ready to use in the form in which they are imported but needs further processing such as cutting, grooving/routing, bending etc. before being put to use. Therefore, it cannot be said that the impugned goods in the form in which it is presented are 'prepared for use in structure'. Thus, the claim of the department to classify the said goods under CTH 7610 is not correct.

4. Heard both sides.

5. For ease of analysation, the competing tariff headings are reproduced as under :

7606 ALUMINIUM PLATES, SHEETS AND STRIP, OF A THICKNESS EXCEEDING 0.2MM

- *Rectangular (including square):*

760611 -- *Of aluminium, not alloyed :*

76061110 --- Electrolytic plates or sheets

76061190 --- Other

76061200 -- Of aluminium Alloys

- *Other*

760691 -- *Of aluminium, not alloyed :*

76069110 --- Circles

76069120--- Electrolytic plates or sheets

76069190--- Other

760692 -- Of aluminium alloys

76069210--- Circles

76069290--- Other

Thus it is seen that this heading covers aluminium articles such as plates, sheets, strip, etc, so long as they are of a thickness exceeding 0.2mm.

The headings under CTH 7610 are reproduced below for ease of reference.

7610 ALUMINIUM STRUCTURES (EXCLUDING PREFABRICATED BUILDINGS OF HEADING 9406) AND PARTS OF STRUCTURES (FOR EXAMPLE, BRIDGES AND BRIDGE SECTIONS, TOWERS, LATTICE MASTS, ROOFS, ROOFING FRAMEWORKS, DOORS AND WINDOWS AND THEIR FRAMES, AND THRESHOLD FOR DOORS, BALUSTRADES, PILLARS AND COLUMNS); ALUMINIUM PLATES, RODS, PROFILES, TUBES

AND THE LIKE, PREPARED FOR USE IN STRUCTURES.

76101000 - Doors, windows and their frames and thresholds for doors.

761090 - *Other:*

76109010 --- Structures

76109020 --- Parts of structures, not elsewhere specified

76109030 --- Aluminium plates, rods, profiles, tubes and the like, prepared for use in structures

76109090 --- Parts

6. The Ld.Counsel has produced a sample plate of the impugned goods before us. It is in the form of a sheet and definitely is not a structure, or part of structure falling under 7610. It cannot be used as structure or part of structure and is only plates that are generally used for cladding the surfaces. These are sheets which are cut and grooved to clad surfaces, walls etc. They cannot be termed as structures or parts used for construction. In our view, the Commissioner (Appeals) has rightly classified the same under 7606. We therefore find no ground to interfere in the impugned order. The appeal filed by department is dismissed.

(Operative part of the order pronounced in open court)

(Madhu Mohan Damodhar)
Member (Technical)

(Sulekha Beevi C.S)
Member (Judicial)

vsr