

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI**

REGIONAL BENCH – COURT NO. IV

Customs Appeal No. 41734 of 2015

(Arising out of Order-in-Original No. 380/2015-AIR dated 31.03.2015 passed by the Principal Commissioner of Customs, Chennai-VII Commissionerate, New Custom House, Meenambakkam, Chennai – 600 027)

M/s. Ford India Private Limited,
S.P. Koil Post, Chengalpattu,
Tamil Nadu – 603 204

: Appellant

VERSUS

The Commissioner of Customs,
Chennai-VII Commissionerate,
Air Port & Air Cargo Complex,
Meenambakkam, Chennai – 600 027

: Respondent

WITH

Customs Appeal No. 41735 of 2015

(Arising out of Order-in-Original No. 380/2015-AIR dated 31.03.2015 passed by the Principal Commissioner of Customs, Chennai-VII Commissionerate, New Custom House, Meenambakkam, Chennai – 600 027)

Mr. R. Sathyan,
General Manager (Material Planning and Logistics),
M/s. Ford India Private Limited,
S.P. Koil Post, Chengalpattu,
Tamil Nadu – 603 204

: Appellant

VERSUS

The Commissioner of Customs,
Chennai-VII Commissionerate,
Air Port & Air Cargo Complex,
Meenambakkam, Chennai – 600 027

: Respondent

APPEARANCE:

Shri P. Sridharan, Advocate for the Appellant

Ms. SrideviTaritla, Authorized Representative (A.R.) for the Respondent

CORAM:

HON'BLE MR. C. J. MATHEW, MEMBER (TECHNICAL)

HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)

FINAL ORDER NOS. 41259-41260 / 2020

DATE OF HEARING: 12.12.2019

DATE OF DECISION: **04.12.2020**

Order Per :Hon'ble Mr. P. Dinesha

The appellant is engaged in the manufacture and sale of automobiles and in this regard, it imports various parts and components.

2.1 The Show Cause Notice dated 07.04.2014 came to be issued after the CZU-DRI carried an investigation into the *modus operandi* and goods declared by the appellant as "catalytic converter asy" that were imported vide Bills-of-Entry Nos. 5747715, 5747602 and 5749760, all dated 17.01.2012. The description of the goods imported under the above Bills-of-Entry are "Catalytic Converter Asy"/"Catalytic Converter Asy"/"Catalytic Converter Asy", "Conv. & Pip AsyExh", "Conv. & Pip AsyExh"/ "Conv. & Pip AsyExh", "Conv. & Pip AsyExh", "Manf& Conv. AsyExh LH"/ "Conv. & Pip AsyExh", "Manf& Conv. AsyExh LH", "Manf& Conv. AsyExh LH" in the corresponding commercial invoices.

2.2 The Revenue was of the view that in respect of the goods imported and declared by the appellant vide above three Bills-of-Entry all dated 17.01.2012, the appellant had claimed the benefit of concessional rate of duty in terms of Serial No. 265 of Notification No. 21/2002-Cus. dated 01.03.2002 on which the appellant had paid Basic Customs Duty (BCD) at 5% as against tariff rate of 7.5% BCD; the notified goods at Sl. No. 265 of Notification No. 21/2002 being just 'catalytic converter' and that the imported goods covered under three Bills-of-Entry above being found to be of different varieties which was in an assembled form, i.e., containing :

- (i) Catalytic converter with inlet and outlet mechanisms welded together;
- (ii) Catalytic converter with an inlet mechanism and an outlet mechanism containing a flexible exhaust pipe assembly welded together;

(iii) Catalytic converter, manifold and outlet assembly welded together; and

(iv) Catalytic converter, manifold and flexible exhaust pipe assembly welded together,

sought to deny the benefit of concessional rate of duty as claimed by the appellant. Accordingly, the said Show Cause Notice also carried the Revenue's proposal to correctly classify the imported goods under tariff item 8421 3990 *inter alia* demanding differential duty along with applicable penalty.

3. The appellant filed a very detailed reply *inter alia* justifying its classification and its claim of benefit of concessional rate of duty in terms of Notification No. 21/2002 (*supra*), but the Adjudicating Authority namely, the Principal Commissioner of Customs, Chennai-VII Commissionerate, vide impugned Order-in-Original No. 380/2015-AIR dated 31.03.2015, however, proceeded to confirm the proposed classification under CTH 8421 3990 apart from demanding differential duty, interest under Section 28(2)/28(8) of the Customs Act, 1962 read with Section 28AA/28AB of the Customs Act, 1962 – twice – one in respect of Bill-of-Entry pertaining to Sea Commissionerate, Chennai, and another in respect of Bill-of-Entry pertaining to Air Commissionerate, Chennai, and penalty under Section 114AA *ibid*, apart from ordering confiscation of the impugned imported goods. Aggrieved by the above, the assessee has preferred the present appeals before this forum.

4.1 When the matter was taken up for hearing, Shri. P. Sridharan, Learned Advocate appearing for the assessee-appellant, submitted at the outset that the only issue which is involved in the present appeals is whether the appellant is eligible for the concessional rate of BCD at 5% in respect of the import of 'catalytic converter assembly' which is attached with an inlet and an outlet pipe.

4.2 The contentions of the Learned Advocate *are inter alia* summarized as below :

- The catalytic converter assemblies were classified under CTH 8421 3990 and the appellant claimed concessional duty of BCD;
- DRI initiated investigation on the ground that the goods in issue were not eligible for the concessional rate of BCD as the imported goods were not catalytic converter but catalytic converter assemblies;
- The impugned order proceeded on the basis that the goods in issue was something more than a catalytic converter and that the exemption was available only to catalytic converter;
- In India, from April 1995, new passenger cars were allowed to be registered only if these were fitted with catalytic converters. The role of the catalytic converter was thus identified with emission control;
- A catalytic converter is a device which converts, with the help of precious metal catalysts, harmful exhaust gases like carbon monoxide, nitrous oxide and hydro carbons in the exhaust fumes into less harmful carbon-di-oxide, nitrogen and water;
- The inlet gases from the engine exhaust are taken into the converter and after conversion let out through the exhaust pipe;
- The catalytic converter is positioned between the engine exhaust manifold and the outlet pipe and consequently supplied in the form of a converter and pipe assembly;
- The converter and pipe assembly imported by the appellant was nothing but a catalytic converter;

- The impugned goods satisfied the object and purpose of the Notification (*supra*) and therefore, entitled to the concessional rate of BCD;
- When there is no dispute that the impugned goods are catalytic converters, the denial of exemption on the ground that the catalytic converter was in the form of an assembly with an inlet and an outlet pipe was incorrect;
- Even assuming that the impugned goods contained additional features in the form of inlet and outlet pipes, it is still no ground to deny the concession so long as they remained as catalytic converters and relied on the Tribunal decision in the case of *Philips India Ltd. v. Collector of Central Excise, Pune* [1996 (81) E.L.T. 375 (Tri.)].

4.3 Learned Advocate also relied on the following decisions :

- (i) *Tata Oil Mills Co. Ltd. v. C.C.E.* [1989 (43) E.L.T. 183 (S.C.)];
- (ii) *Associated Cement Companies Ltd. v. State of Bihar* [(2004) 7 SCC 642];
- (iii) *Union of India v. Wood Papers Ltd.* [1990 (47) E.L.T. 500 (S.C.)];
- (iv) *Badra Estates & Industries Ltd. v. Collector of Cus., Bangalore* [1997 (93) E.L.T. 46 (Tri.)].

4.4 Learned Advocate further submitted that the import in question was made between May 2009 and January 2012, the classification of which was known to the Revenue; that the Revenue had earlier issued two Show Cause Notices dated 27.10.2006 and 30.03.2008 proposing to deny the exemption on catalytic converter and pipe assembly, for which the appellant had already submitted its replies and therefore, there was no scope for the Revenue to allege suppression to invoke the larger

period of limitation. In this regard, he relied on the following decisions of the Hon'ble Supreme Court :

(i) *Nizam Sugar v. C.C.E., A.P. [2006 (197) E.L.T. 465 (S.C.)]*;

(ii) *Hyderabad Polymers (P) Ltd. v. C.C.E., Hyderabad [2004 (166) E.L.T. 151 (S.C.)]*.

5.1 *Per contra*, Ms. SrideviTaritla, Learned Authorized Representative appearing for the Revenue, supporting the findings in the impugned order, also contended that the benefit of concessional rate of duty is given vide the impugned Notification (Sl. No. 265) to an individual item, i.e., 'catalytic converter' *per se*; that the imported goods in question are more than 'catalytic converter' and hence, the denial of concessional rate of duty was correctly made.

5.2 Learned Authorized Representative would also submit that the imported goods viz. catalytic converter assembly consisted of three clear parts which were having distinct and different identities and distinct part numbers and that each part performed different functions whereas the impugned Notification (*supra*) extended the concessional rate only to 'catalytic converter' *per se* with no attachments and hence, benefit cannot be extended to the assembly in question.

5.3 Referring to the ruling of the Tribunal in the case of *M/s. Philips India Ltd. (supra)*, Learned Authorized Representative would submit that the benefit has been extended considering the function/performance which is perhaps the intention in the relevant exemption Notification therein, but here the issue is about multiple parts constituting an assembly when the entry item is a single unit, because, the exemption was for a particular product and not depending on its function.

5.4 With regard to the invoking of extended period of limitation, Learned Authorized Representative submitted that the doubt in the mind of the Revenue was for the

proposal to deny the benefit for both catalytic converter and pipe assembly because the benefit was always available to 'catalytic converter' alone, which the appellant all along maintained that what it imported was nothing but 'catalytic converter'; that this amounted to a clear suppression, calling for invoking the extended period of limitation.

6. In rejoinder, Learned Advocate for the appellant would submit that the imported items namely, catalytic converter assembly, should be classified only under CTH 8421 which is also supported by GIR 2 (b) and referred to paragraph B.15 at page 11 of the grounds-of-appeal.

7. We have heard the rival contentions and carefully gone through the documents placed on record as also the various decisions relied upon during the course of arguments.

8.1 Admittedly, the issue to be decided is the eligibility of catalytic converter assembly imported by the appellant to benefit of concessional rate of duty extended vide SI. No. 265 of the impugned Notification. As per the impugned Notification, the concessional rate of duty is for a particular item/goods; a perusal of the Bills-of-Entry placed along with the Appeal Memorandum reflects 'piece price' for the relevant item under 'description' column which would only mean that the price charged was for the described assembly and other than this, we do not see any breakup and nor is it relevant for us now.

8.2 Further, we also do not dispute the classification of the disputed item under CTH 8421 duly supported by GIR 2 (b), but however, mere classification *ipso facto* does not decide the eligibility or otherwise to a beneficial Notification since Notification No. 21/2002(*supra*) does not grant concession based on a mere classification, rather on individual items.

8.3 A perusal of the Show Cause Notice reveals that the DRI had entertained a doubt that the appellant was

claiming ineligible concession of duty under Customs Notification No. 21/2002 dated 01.03.2002. In this background, the Revenue considered Bills-of-Entry No. 5747602, 5747715 and 5749760 all dated 17.01.2012 and conducted a thorough verification of the goods described in the above Bills-of-Entry. These are the invoices furnished by the appellant. From the Bills-of-Entry it is seen that for the goods imported and declared as "Catalytic Converter Asy" vide said three Bills-of-Entry all dated 17.01.2012, the appellant has claimed benefit of concessional rate of duty vide Notification *ibid.* and has paid Basic Customs Duty at 5% as against tariff rate of 7.5% Basic Customs Duty: the benefit is apparently claimed on the amount reflected which represents the cumulative value for "Catalytic Converter Asy".

8.4 However, in the impugned Order-in-Original, even though there are allegations in the Show Cause Notice as to mismatch of the Bills-of-Entry *vis-à-vis* the invoices furnished by the appellant and also as to the alleged glaring discrepancies, there is no finding recorded and thereby the allegations or suspicions in the mind of the Revenue authorities have not been taken to its logical conclusion in the impugned Order-in-Original.

9.1 Now, coming to the issue of invoking the extended period of limitation as canvassed by the Learned Advocate for the appellant, we see that the lower authority has recorded in the Show Cause Notice itself the justifiable reasons for invoking the larger period, in the following words:

"40. With this at the outset, in the instant case, M/s Ford have subscribed to a declaration as to the truthfulness of the contents of the bill of entry in terms of Section 46(4) of the Customs Act, 1962 in respect of all their import declarations i.e., bills of entry. Further, with the introduction of self-assessment and consequent upon amendments to Section 17, since 8th April 2011, it is the responsibility of the importer to declare the correct description, value, notification etc., and to determine and pay the duty applicable in respect of the imported goods. Moreover, M/s Ford is an ACP client. Under the risk management system [RMS], only

minimum bills were taken up for assessment and were given assured facilitation, on a premise that ACP clients are highly compliant and further the Customs Department will (under normal circumstances) accept the declared classification, valuation, notification etc on the basis of importers' self-declaration."

9.2 Further, at paragraph 41 of the Show Cause Notice, it is *inter alia* recorded that M/s. Ford India Pvt. Ltd. have been constantly mis-declaring the description; that they have not only mis-declared but also misled the Customs; that the invoice descriptions themselves do not correctly represent the items imported in many cases; that all descriptions available on the invoices per se contradicted each other with reference to the correct description/identity of the item under import; that there is an inherent contradiction/mismatch between what was imported and what was declared to Customs and what is contained in the invoices; that with the above *modus operandi* the importer had evaded duty; that by this, the appellant has wilfully suppressed as well as mis-stated the actual/complete description of the impugned goods under import, etc., thereby claiming the benefit of concessional rate of duty, to justify the invoking of extended period of limitation in terms of Section 28 (1) / 28 (4) of the Customs Act, 1962, as applicable during the period.

9.3 The above observations, according to us, satisfy the requirements of Section 28 (1)/ 28 (4) of the Customs Act since it appears that there has been wilful suppression coupled with mis-statement of the very description of goods imported which has misled the Customs authorities for a number of years.

10. In view of our above findings, we do not see any justifiable reasons to interfere with the findings in the impugned order as to invoking extended period of limitation. But however, we deem it proper and necessary to remit the matter back to the file of the Original Authority to pass a *de novo* Order-in-Original, giving a

logical finding on the allegations raised in the Show Cause Notice after considering the plea of the appellant, on merits. The authority is, however, free to consider all such case laws that are relevant in this regard while passing the *de novo* order. The appellant is also expected to co-operate with the Revenue as and when it is requested without causing undue delay and may also furnish all such necessary details in this regard to assist the lower authority in reaching a proper conclusion on merits. We further make it clear that we have not expressed our opinion on merits.

11. The appeal is treated as partly allowed by way of remand on merits, but however, partly dismissed on the ground of limitation in view of our findings at paragraph 9.3 of this order. The Original Authority shall pass a *de novo* order within a period of six months from the date of receipt of this order.

(Order pronounced in the open court on **04.12.2020**)

Sd/-

(C.J. MATHEW)
MEMBER (TECHNICAL)

Sd/-

(P. DINESHA)
MEMBER (JUDICIAL)

Sdd