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

Appeal No.C/99/2009

[Arising out of Order-in-Appeal C.Cus.532/2008 dt. 29.12.2008 passed by the Commissioner of Customs (Appeals), Chennai]

Laila Global Feed Pvt. Ltd. Appellant

Versus

Commissioner of Customs, Chennai Respondent

Appearance:

Shri G.Derrick Sam, Advocate
For the Appellant

Shri B. Balamurugan, AC (AR)
For the Respondent

CORAM :

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

Date of hearing : **07.08.2017**
Date of Pronouncement : 10.08.2017

FINAL ORDER No. 41542/2017

Per Bench

Brief facts of the case are that the appellants had imported goods declared as parts of pellet mill and spare parts for shrimp feed machinery from Taiwan for a consideration of Rs.12,74,468/- vide Bill of Entry No.482592 dated 22.4.2003. The goods were classified under CTH 84368090 and duty @ 25% BCD + nil CVD + 4% SAD amounting to Rs.3,82,340/- was paid on 24.4.2003. Department took the view that the impugned goods are for industrial use and hence excluded from CTH 8436 vide HSN notes and that they instead merit classification under CTH 84389090. In adjudication proceedings, the classification of goods under CTH 84389090 was ordered and differential duty liability of Rs.2,65,090/- with interest thereon was also confirmed. The appeal thereof was rejected by the Commissioner (Appeals) vide impugned order dt.29.12.2008. Hence the appellants are before this forum.

2. On 07.08.2017 when the matter came up for hearing, on behalf of appellant, Ld. Advocate Shri Derrick Sam made oral submissions which can be summarized as follows :

(i) The imported goods are meant for manufacture of animal feed for the appellant's own aqua unit and therefore cannot be considered as industrial use.

(ii) Even for industrial production, the goods merit classification under CTH 8436, as CTH 8438 is only a residual entry.

(iii) The Tribunal in the case of *Shanthi Polultry Farm Vs CC Chennai* - 2017 (345) ELT 320 (Tri.-Chennai) has upheld the classification of machinery used for thermal/mechanical pre-treatment of mixed feed for poultry industry under Chapter heading 8436.

3. On the other hand, on behalf of department, Ld.A.R supports the adjudication.

4.1 The issue that comes up for appellate decision is whether part of pellet mill and spare parts of shrimp feed machinery can be classified under CTH 8436 as claimed by the appellant or otherwise under 8438 as per the stand of the department.

4.2 To understand the issue in perspective, it would be useful to reproduce the concerned Customs Tariff Headings as follows :

Tariff Item		**Description of goods**	**Unit**	**Rate of duty Standard**	**Preferential Areas**
8436		**Other agricultural, horticultural, forestry, poultry-keeping or bee-keeping machinery, including germination plant fitted with mechanical or thermal equipment; poultry incubators and brooders**			
8436 10 00	-	Machinery for preparing animal feeding stuffs	u	20%	-
	-	*Poultry-keeping machinery; poultry incubator, and brooders :*			-
8436 21 00	--	Poultry incubators and brooders	u	20%	-
8436 29 00	--	Other	u	20%	-
8436 80	-	*Other machinery:*			
8436 80 10	---	Germination plant fitted with mechanical and thermal equipment	u	20%	-
8436 80 90	---	Other	u	20%	-
	-	*Parts:*			
8436 91 00	--	Of poultry-keeping machinery or poultry incubators and brooders	kg.	20%	-
8436 99 00	--	Other	kg.	20%	-

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Tariff Item		Description of goods	Unit	Rate of duty	
				Standard	Preferential Areas
8438		**Machinery, not specified or included elsewhere in this Chapter, for the industrial preparation or manufacture of food or drink, other than machinery for the extraction or preparation of animal of f1xed vegetable fats or oils**			
8438 10	-	*Bakery machinery and machinery for the manufacture of macaroni, spaghetti or similar products:*			
8438 10 10	---	Bakery machinery	u	20%	-
8438 10 20	---	Machinery for manufacture of macaroni or spaghetti or similar products	u	20%	-
8438 20 00	-	Machinery for the manufacture of confectionery, cocoa or chocolate	u	20%	-
8438 30	-	*Machinery for sugar manufacture :*			
8438 30 10	---	Sugar cane crushers	u	20%	-
8438 30 90	---	Other	u	20%	-
8438 40 00	-	Brewery machinery	u	20%	-
8438 50 00	-	Machinery for the preparation of meat or poultry	u	20%	-
8438 60 00	-	Machinery for the preparation of fruits, nuts or vegetables	u	20%	-
8438 80	-	*Other machinery*:			
8438 80 10	---	Auxiliary equipment for extrusion cooking plant	u	20%	-
8438 80 20	---	For production of soya milk or other soya products (other than soya oil)	u	20%	-
8438 80 30	---	Diffusing machines (diffusers)	u	20%	-
8438 80 40	---	Tea leaf rolling or cutting machine	u	20%	-
8438 80 90	---	Other	u	20%	-
8438 90	-	*Parts :*			
8438 90 10	---	Of sugar manufacturing machinery	kg.	20%	-
8438 90 90	---	Of other machinery	kg.	20%	-

4.3 No doubt, the impugned items are parts of machinery for manufacturing shrimp feed. At the first glance, it may appear that they would fit into the CTH 8436 as since that entry covers "other machinery for preparing animal feeding stuffs". Nonetheless, the tariff entries have to be read in consonance with the Section and Chapter Notes not only of the Schedule to the Customs Tariff Act but also the notes laid down in the Harmonious System of Nomenclature (HSN) based on which the Customs Tariff Act has been codified.

4.4 The HSN notes for Heading 8436 reads as under :

> The HSN notes for 8436 reads "..................*The heading covers machinery,* ***not falling in headings 84.32 to 84.35,*** *which is of the type used on farms (including agricultural schools, co-operatives or testing stations), in forestry, market gardens, or poultry-keeping or bee-keeping farms or the like. However, it* ***excludes*** *machines clearly of a kind designed for industrial use".*

4.5 Notwithstanding the appellant's protestations that the impugned goods are parts of shrimp feed machinery for use in their own aqua farms, that does not come through from the facts on hand. Appellant has not adduced any proof to establish such a contention. On the other hand, the very name of the appellant, Laila Global Feed Pvt. Ltd., *prima facie,* appears to indicate that they are in the business of manufacture of shrimp feed. It is also not the case that appellant are only a shrimp farm and that they are importing the goods for use in production of shrimp feed in their own farm.

4.6 Appellant has also contended that HSN notes should not be relied upon for finalizing classification under the Customs Tariff Act. We are afraid that this is not the correct position. As early as in 2002, the Hon'ble Supreme Court vide their judgment in *Collector of Customs, Bombay Vs Business Farms Ltd.* – 2002 (142) ELT 18 (SC)

Customs, Excise & Service Tax Appellate Tribunal relying upon their earlier decision in *Collector Vs Wood Craft Products Ltd.* – 1995 (77) ELT 23 (SC) laid down that Explanatory Notes to HSN not only has persuasive value but entitled to the greater consideration in classifying the goods under Central Excise & Customs Tariff. The relevant portion of the judgment is reproduced as under :

> "**[Order].** - These civil appeals arise on orders of the Customs, Excise and Gold (Control) Appellate Tribunal and they have to be allowed and the matters remanded for re-consideration by that Tribunal because, principally, the Tribunal has declined to place reliance upon the Explanatory Notes in the H.S.N. stating that, at best, these have only persuasive value.
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> **2.** This Court in *Collector of Central Excise, Shillong* v. *Wood Craft Products Limited* [1995 (77) E.L.T. 23] has said :
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> "We are of the view that the Tribunal as well as the High Court fell into the error of overlooking the fact that the structure of the Central Excise Tariff is based on the internationally accepted nomenclature found in the HSN and, therefore, be resolved with reference to the nomenclature indicated by the HSN unless there be an express different intention indicated by the Central Excise Tariff Act, 1985 itself. The definition of a term in the ISI Glossary, which has a different purpose, cannot, in case of a conflict, override the clear indication of the meaning of an identical expression in the same context in the HSN. In the HSN, block board is included within the meaning of the expression 'similar laminated wood' in the same context of classification of block board. Since the Central Excise Tariff Act, 1985 is enacted on the basis and pattern of the HSN, the same expression used in the Act must, as far as practicable, be construed to have the meaning which is expressly given to it in the HSN when there is no indication in the Indian Tariff of a different intention."
>
> Clearly, therefore, the HSN Explanatory Notes are entitled to far greater consideration than the Tribunal has given there.
>
> **3.** The Tribunal has also said that the Collector (Appeals) had not relied upon the HSN Explanatory Notes. That was clearly an oversight of the Tribunal because its order says, earlier, thus : "The Collector (Appeals) held that the photographic apparatus, as has been imported, for making printing blocks were excluded from Chapter Heading 84.38 vide Explanatory Notes to CCOM at Page 1288."

4. The civil appeals are, therefore, allowed. The orders under appeal are set aside. The appeals before the Tribunal are restored to it for being heard and disposed of afresh. All contentions shall be available to the parties thereto."

We find that above judgement has been relied upon in a number of Tribunal decisions, for example in *CC Pune-I Vs Tetra Pak India Pvt. Ltd.* – 2014 (307) ELT 920 (Tri.-Mumbai) and in *CCE Pune-I Vs Praj Industries* – 2009 (242) ELT 430 (Tri.-Mumbai).

5. Viewed in this light, we do not find any infirmity in the impugned order for which reason, the appeal is dismissed.

(Order pronounced in court on 10/08/17)

(Madhu Mohan Damodhar)
Member (Technical)

Sulekha Beevi

(Sulekha Beevi C.S)
Member (Judicial)

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