IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, CHENNAI

Customs Appeal No.146 of 2012

(Arising out of Order-in-Original No. 18771/2012 dated 4.5.2012 passed by the Commissioner of Customs (Seaport- Import), Chennai)

M/s.Chareon Pokphand (India) Pvt. Ltd. **Appellant**
No. 47/03, Gandhi Mandapam Road
Kotturpuram, Chennai – 600 085.

Vs.

Commissioner of Customs **Respondent**
Seaport – Import, Custom House
No. 60, Rajaji Salai, Chennai – 600001.

APPEARANCE:

Shri T. Ramesh, Advocate for the Appellant
Shri S. Balakumar, AC (AR) for the Respondent

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Hon'ble Ms. SulekhaBeevi C.S., Member (Judicial)
Hon'ble Shri P. Anjani Kumar, Member (Technical)

Final Order No. **42340 / 2021**

Date of Hearing : 22.09.2021
Date of Pronouncement: 24.09.2021

Per Ms. SulekhaBeevi C.S.

Brief facts are that the appellants filed 9 bills of entry during December 2010 and January 2011 for import of "screw / drag conveyors and bucket elevators" of various models declaring them as part of Feed Mill machinery claiming classification under CTH 84361000 and 84369900 paying duty of BCD @ 7.5% and CVD nil. Out of the 9 bills of entry, 8 bills of entry were facilitated through RMS. During audit, it appeared to the department that HSN Notes under the CTH 8428 clearly specifies that all types of conveyors and elevators used for transporting grains, straw, hay, sawdust etc. are to be classified under the Tariff Heading 8428. That appellants are not eligible for the concessional rate of duty as the goods are to be classified under CTH 8428. Demand notice was issued proposing to reclassify the subject goods under 8428 and to demand short-paid duty. The appellant replied on 2.5.2011 inter alia stating that the goods being part of feed mill machinery are rightly classifiable under CTH 84379090 where the duty is BCD @ 7.5% and CVD nil. After due process of law, the original authority reclassified the goods under 8428 and confirmed the duty proposed in the Show Cause Notice. The above appeal is filed against such order.

2. The learned counsel Shri T. Ramesh appeared and argued for the appellant. He submitted that the goods in question are an integral part of the milling machine used for the manufacture of shrimp feed. In the bills of entry itself, the goods are declared as part of milling machine and without these parts in the nature of conveyors and bucket elevators, the manufacturing activity cannot be carried out. In para 12 of the impugned order, it is noted by the Commissioner that the imported goods are used only for movement of animal feed or grains as conveyor. From this, it is clear that the imported goods are integral part of the milling machinery used by the appellant for manufacture of goods. The classification adopted by the appellant under CETA 8437 is therefore correct.

3. It is submitted by him that the issue is no more res integra and has been settled by the decision of the coordinate Bench of the Tribunal in the case of Annapurna Agronics Machinery P. Ltd. Vs. CCE & ST, Sonepat reported in 2020 (371) ELT 911 (Tri. Chand.). The said decision has been affirmed by the Hon'ble Supreme Court as reported in 2020 (371) ELT A302 (SC). The Tribunal in the decision had followed the earlier decision in the case of Alpsco Graintech Pvt. Ltd. Vs. CCE,

Chandigarh reported in 2019 (365) ELT 944 (Tri. Chand.). This decision also was affirmed by the Hon'ble Supreme Court reported in 2019 (368) ELT A225 (SC). Similar view was taken by the Tribunal in the case of Sona Foods (India) Vs. CCE reported in 2019 (368) ELT 162 (Tri. All.). The said decision has been affirmed by the Hon'ble Supreme Court as reported in 2019 (368) ELT A50 (SC). He prayed that the appeal may be allowed.

4. The learned AR Shri S. Balakumar supported the findings in the impugned order.

5. Heard both sides.

6. The issue involved is with regard to the classification of 'screw / drag conveyors and bucket elevators" imported by the appellant. The learned counsel has described the nature of the bucket elevators and conveyors imported by them and used in their milling factory. The pictures of the said item are also furnished before us. Diagrammatic representation of the pelleting, drying and cooling system and the packing system is also furnished to explain how the bucket elevators and conveyors are used in the milling factory in the manufacturing activity.

7. Further, it is seen from the bills of entry that the goods have been declared as "Feed mill Equipment and Materials / Inter systems – Bucket Elevators and Drag Conveyors". It is clear from the bills of entry itself that the bucket elevators and drag conveyors are imported as parts of the milling equipment. The department does not have a case that these imported goods were put to use in any other manner. The appellant contends that goods would merit classification under 8437. The said Heading is for machinery used in the milling industry whereas 8428 deals with machines used for lifting, handling, loading

or unloading etc. in the nature of lifts and elevators. The relevant Headings are reproduced as under for better appreciation:-

8428	**Other Lifting, Handling, Loading or Unloading Machinery (For example, Lifts, Escalators, Conveyors, Teleferics)**		
8428 10	*Lifts and skip hoists :*		
	Lifts		
8428 10 11	Lifts of a kind used in buildings	u	12%
8428 10 19	Other	u	12%
8428 10 20	Skip hoists	u	12%
8428 20	*Pneumatic elevators and conveyors*		
	Conveyors		
8428 20 11	Belt conveyors	u	12%
8428 20 19	Other	u	12%
8428 20 20	Pneumatic elevators	u	12%
	Other continuous-action elevators and conveyors, for Goods or materials :		
8428 31 00	Specifically designed for underground use	u	12%
8428 32 00	Other, bucket type	u	12%
8428 33 00	Other, belt type	u	12%
8428 39 00	Other	u	12%
8428 40 00	Escalators and moving walkways	u	12%
8428 60 00	Teleferics, chair-lifts, ski-raglines, traction Mechanisms for funiculars	u	12%
8428 90	*Other machinery :*		
8428 90 10	For Coal handling	u	12%
8437	**Machines for cleaning, sorting and grading seed, grain or dried leguminous vegetables machinery used in the Milling industry or for the working of cereals or dried leguminous vegetables, other than farm-type machinery**		
8437 10 00	Machines for cleaning, sorting or grading seed, grain or dried leguminous vegetables	u	Nil
8437 80	*Other machinery :*		
8437 80 10	Flour mill machinery	u	Nil
8437 80 20	Rice mill machinery	u	Nil
8437 80 90	Other	u	Nil
8437 90	*Parts*		
8437 90 10	Of [flour] mill machinery	kg.	Nil
8437 90 20	Of rice mill machinery	kg.	Nil
8437 90 90	Other	kg.	Nil

8. The contention of the department is that as per HSN Explanatory Notes, Chapter Heading 8437 excludes machines used in milling industry. It has to be borne in mind that Heading Notes in 8428 is the machines used for lifting, handling, loading or unloading in the nature

of escalators and conveyors etc. The department is trying to classify the goods under parts of lifts and escalators normally used in building industry. The Tariff headings in Central Excise Tariff and Customs Tariff are the same.

9. The very same issue was analyzed by the Tribunal in the case of Annapurna Agronics Machinery Pvt. Ltd. (supra). The discussions made in the case of Alpsco Graintech Pvt. Ltd. cited supra was quoted in the said decision, which reads as under:-

> "7. We further take a note of the fact that in the case of *Commissioner of Central Excise, Kanpur* v. *Rationale Iron & Steel Co.* (supra), this Tribunal has categorically observed that explanatory notes have no force of law and they are only for guidance whereas the findings of the Ld. Commissioner (Appeals) is on the basis of Central Excise Tariff Act, 1985 enacted by Indian Parliament. Therefore, it was held that the ground raised by the Revenue is not sustainable. Admittedly, in the case in hand, the revenue is heavily relied on the HSN explanatory note to Section 16 of the Central Excise Tariff Act to say that the conveyors and elevators are classifiable under heading No. 8428 is not applicable to the facts of the present case. We further take a note of the fact that explanatory note itself classifying feeder machines designed to ensure local and even flow of grain to the crushing rollers as classifiable under chapter heading No. 8437. The main function of the machines, these conveyors and elevators is take the grain from one machine and if the same in other machine along with its machines. Therefore, it is clear that elevators and conveyors are in industry of grain feeder and perform the function of feeding grains in various machines used in rice mill. In these set of observations, the merit classification of the conveyors and elevators used in specifically designed for rice milling are classifiable under chapter heading No. 8437. We further take a note of the fact that in the case of *Moped Assembly* (supra) this Tribunal has observed that sheet metal components for use exclusively in rice milling industry classifiable under chapter heading No. 8437. Admittedly, in this case, these conveyors and elevators are specifically used for rice milling industry as the part of the composite machinery of rice milling, therefore, having merit classification under chapter heading No. 8437.
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> 8. We have also gone through the decision of the Hon'ble Apex Court in the case of *G.S. Auto International Ltd.* (supra) wherein the Hon'ble Apex Court observed as if the items specifically made for specific machine would be classifiable as part of the said machine and not under the general heading. Admittedly, in the case in hand, the conveyors and elevators are for specific use of rice milling industry and nowhere else, in that circumstances, the same merits classification as per the rice milling machinery under tariff heading No. 8437.

> 9. The Ld. AR heavily relied on the decision of *Eminence Equipments Pvt. Ltd.* (supra) to say that conveyors and elevators used for rice mills is to be classified under chapter heading No. 8428. We have gone through the facts in the case of *Eminence Equipments Pvt. Ltd.* (supra) was not manufacturing the elevators and conveyors only for rice millers but were supplying the same to other industries like breweries etc., therefore, the items manufactured by *Eminence Equipments Pvt. Ltd* (supra) were of general nature and not for specific use to the machines of milling industry. Further, the conveyors and elevators manufactured by M/s. *Eminence Equipments Pvt. Ltd.* (supra) did not come under the category of composite machines as they were supplying only elevators and conveyors and not combination of machines. Therefore, the facts of the present appellants are distinguishable from the facts of the case of *M/s. Eminence Equipments Pvt. Ltd* (supra). Moreover, in the case of *Eminence Equipments Pvt Ltd.* (supra) this Tribunal has not considered the chapter note 3, 4 and 5 of Section 16 of Central Excise Tariff Act, 1985. Therefore, on that account also the decision of the said case is not applicable in the present case.
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> 10. Moreover, the appellants have produced various technical opinions as well as the data from Customs and Central Excise Department wherein the importer as well as exporter of elevators and conveyors used specifically designed for rice milling have been classified under heading No. 8437 of the CETA. Therefore, we hold that the decision in the case of *Eminence Equipments Pvt Ltd.* (supra) is not applicable to the facts of the present case."

10. From the above, we hold that the impugned goods imported for specific use in the milling factory merits classification under CTH 8437. The impugned order is set aside. The appeal is allowed with consequential reliefs, if any.

(Pronounced in open court on 24.9.2021)

(**SULEKHA BEEVI C.S.**)
Member (Judicial)

(**P. ANJANI KUMAR**)
Member (Technical)

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