

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

REGIONAL BENCH – COURT NO. III

CUSTOMS APPEAL No.40341 of 2013

[Arising out of Order-in-Appeal No.C.Cus.1366/2012 dated 29.11.2012 passed by the Commissioner of Customs (Appeals), Chennai]

The Commissioner of Customs (Imports)

Custom House,
Chennai 600 001.

: Appellant

VERSUS

M/s.Kaveri Seed Company Ltd.

513, 5th Floor, Minerva Complex,
S.D. Road,
Secunderabad 500 003.

: Respondent

APPEARANCE:

Mr. S. Balakumar, Assistant Commissioner (A.R)
For the Appellant

Shri N. Viswanathan, Advocate
For the Respondent

CORAM:

HON'BLE MS. SULEKHA BEEVI C.S., MEMBER (JUDICIAL)

HON'BLE MR. M. AJIT KUMAR, MEMBER (TECHNICAL)

FINAL ORDER NO. 40159 / 2023

DATE OF HEARING : 08.03.2023
DATE OF PRONOUNCEMENT : 16.03.2023

Per: Ms. SULEKHA BEEVI C.S

The above appeal is filed against the order passed by the Commissioner (Appeals) who set aside the order of adjudicating authority and allowed the appeal filed by the respondent.

2. Brief facts are that the respondents imported 2 nos. of seed processing lines for seed processing plant, each with an intake capacity of 10 tons per hour vide two Bills of Entry both dated 12.12.2008. Among the Bills of Entry, the second Bill of Entry was for partial shipment / part delivery. The respondent classified the goods under CTH 8437 as applicable to seed processing machine and paid BCD @ 7.5% with 'Nil' CVD. Later, Customs Receipt Audit (CRA) observed that part deliveries include elevators, conveyers, two way valves, square packing bins, cyclofan, piping system etc. which cannot be treated as seed processing machinery and hence cannot be classified under CTH 8437. Demand notice dated 05.06.2009 was issued proposing to demand duty of Rs.17,28,863/- under Section 28 (1) of the Customs Act, 1962. Though the respondent contended that the Proforma Invoice for the whole two seed processing lines was EURO 680866 (CIF) and that without these part shipments, the machine cannot be completed, the adjudicating authority observed that the respondent has not complied with the procedure under Public Notice No.91/87 as applicable for such partial shipment. The adjudicating authority denied benefit of classification under CTH 8437 and confirmed the demand. On appeal, Commissioner (Appeals) set aside the order passed by the adjudicating authority. Hence this appeal by Revenue.

3. The Ld. A.R Shri S. Balakumar reiterated the grounds of appeal. It is argued by him that the entire consignment was not imported and cleared together. There were two consignments with different items and

each item having individual values which are said to be parts and components of seed processing line. The respondent ought to have strictly followed the procedure as laid down in Public Notice No.91/87 when part shipments are made. They had filed two separate Bills of Entry for the said consignments claiming the goods to be component of a seed processing line which were cleared without assessment or examination. The proforma invoice value though tallies with the value of the invoices cannot be accepted as proof for classification of the goods imported in separate consignments.

4. Ld. Counsel Shri N. Viswanathan appeared and argued for the respondent. It is submitted that though the department contends that the imported partial shipment cannot be classified under CTH 8437, they have failed to render any finding as to what would be the correct classification. The Commissioner (Appeals) has noted this aspect in para-9 of the order. It is observed by the Commissioner (Appeals) that although the department has denied the classification to be under CTH 8437, there is nothing stated in the show cause notice as to what would be the correct classification of the goods. Further, in the present case, both the consignments cleared under two separate Bills of Entry belonged to the same proforma invoice which can be verified from the import invoices. Only when the goods, which are other than the complete machinery, are imported separately without accompanying the main machinery, there can be a doubt as to whether they can be classified under CTH 8437 or not. It is also noted by the authorities

below that whole consignment imported vide two Bills of Entry put together formed two processing lines for processing seed. The two bills of entry were numbered consecutively on the same date. These facts would establish that the entire consignment came together in one lot. The observation made by the Commissioner (Appeals) that probably for the reason that the consignment might have been received under two IGM numbers, the respondent happened to file two separate Bills of Entry for clearing the goods may be considered. For this reason, respondent had failed to follow the procedure laid down in Public Notice No.91/87. The respondent cannot be denied the substantial benefit of concessional rate of duty for not following the procedure. Ld. Counsel argued that the Commissioner has correctly analyzed the facts and the issue and set aside the demand. Ld. Counsel prayed that the appeal may be dismissed.

5. Heard both sides.

6. From the arguments narrated above, it can be seen that though the department has denied the classification adopted by the respondent (CTH 8437), as rightly discussed by the Commissioner (Appeals), it is not stated either in the show cause notice or in the Order-in-Original as to what would be the correct classification if the goods are not to be classified under CTH 8437. The demand has been raised by denying the classification to under CTH 8437. The Commissioner (Appeals) has analyzed the said issue as under :

“9. Since, the impugned order is not clear exactly under what sub-heading the goods were cleared under eight digit level and the appellant also did not produce the copies of the bills of entry to verify the same, I am not in a position to find out the correct classification of the goods under which the same were cleared. According to the description of the goods available from the impugned order, I am of the opinion that the complete machinery as such will fall under CTH 84371000. The partial shipment/part shipment goods, which were other than the complete machinery, at least should have been classified under CTH 84379090 as ‘Parts’. Under both the classification the ‘CVD’ payable is ‘Nil’. Whether both the consignment cleared under two bills of entry belonged to the same Proforma Invoice or not can be verified from the import invoices, which will have the reference about the Proforma Invoice number. Only, when the goods, which were other than the complete machinery, imported separately without accompanying the main machinery, there can be a doubt that it can be put to more than one use and cannot be considered to be classified under CTH 8437 and should be classified under the respective heading of its individual description, material of make etc. Last but not the least, the whole consignment imported vide two bills of entry put together formed two processing lines for processing seed can be confirmed from the jurisdictional Central Excise authorities.”

7. The other allegation raised by the department is that the respondent has not followed the procedure laid down in Public Notice No.91/87. The said issue has also been analyzed by the Commissioner (Appeals) in para-8 which reads as under :

“8. There are various judgments by different higher legal forum that a substantive benefit should not be denied for procedural lapse/defect. In the instant case it is to be decided whether the appellant is eligible for the substantive benefit. As pointed out by the LAA himself the Proforma Invoice value and the goods imported vide three import invoices value filed under two bills of entry were tallying in all respects and forms two processing line for processing seed. Going by the fact that the two bills of entry were numbered consecutively on the same date, proves that the entire consignment came together in one lot. Probably for the reason

that the consignment might have been received under two IGM numbers, the appellant filed two bills of entry for clearing the same. Further, that may be the probable reason, the appellant might have not followed the procedure laid down under PN No.91/87 as the consignment was cleared together though vide two bills of entry. There is a valid point in the contention of the appellant in this regard.”

8. It has to be seen that the proforma invoice shows the import of composite unit comprising of two seed processing lines. It is not in dispute that the order placed for supply would be complete only by including the goods imported *vide* both Bills of Entry. Merely because some parts were imported separately and cleared under a separate Bill of Entry, the department cannot contend that the goods cannot be classified under CTH 8437. We find no reasons to interfere with the decision arrived at by the Commissioner (Appeals). The appeal filed by the Department is dismissed.

(pronounced in open court on 16.03.2023)

Sd/-
(SULEKHA BEEVI C.S.)
MEMBER (JUDICIAL)

Sd/-
(M. AJIT KUMAR)
MEMBER (TECHNICAL)

