

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

REGIONAL BENCH – COURT NO. I

Customs Appeal No. 40581 of 2023

(Arising out of Order-in-Appeal Seaport C.Cus. II. No. 540/2023 dated 24.08.2023 passed by the Commissioner of Customs (Appeals-II), No. 60, Rajaji Salai, Custom House, Chennai – 600 001)

M/s. SEW Eurodrive India Private Limited : **Appellant**
Plot No. K-3/1, SIPCOT Industrial Park,
Phase-II, Mambakkam Village,
Sri Perumbudur – 602 105

VERSUS

Commissioner of Customs : **Respondent**
Chennai-II Commissionerate
Custom House, No. 60, Rajaji Salai,
Chennai – 600 001

APPEARANCE:

Shri Saurabh Dixit, Advocate for the Appellant

Shri Rudra Pratap Singh, Additional Commissioner for the Respondent

CORAM:

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

FINAL ORDER NO. 40007 / 2024

DATE OF HEARING: 27.10.2023

DATE OF DECISION: 03.01.2024

Order : [Per Hon'ble Mr. P. Dinesha]

Facts, as could be gathered from the impugned order, are as under: -

- The appellant is engaged in the manufacture and sale of goods falling under Chapters 84 and 85 of the Central Excise Tariff Act, 1985. The appellant imports various goods, as being parts

of the finished goods, *inter alia*, gear motors and gearboxes, by classifying it appropriately.

- The appellant had filed the Bill-of-Entry No. 2258223 dated 01.09.2022 for the clearance of various goods, including goods declared as "Flanges" which attracted BCD @ 7.5% under Customs Tariff Item No. 85030090/84839000.
- During examination of the imported goods during the course of assessment, it was observed by the officer that the goods imported namely "Flanges" under the above Bill-of-Entry were wrongly classified under Customs Tariff Item No. 85030090/84839000 instead of Customs Tariff Heading (CTH) 7307, which attract BCD @ 10% and IGST @ 18%.

2.1 It appears that there was a Pre-consultative Notice dated 21.10.2022 to the importer and the importer responded through its letter dated 07.11.2022, but however, it appears that the Additional Commissioner issued a Show Cause Notice dated 09.11.2022 thereafter, by ignoring the reply of the importer to the Pre-consultative Notice. The proposals in the Show Cause Notice were: -

- a. Rejection of the classification adopted by the importer for the goods in question under CTH 8503 and re-classifying the same under CTH 7307 which attracts BCD @ 10%, SWS @ 10% and IGST @ 18%.
- b. Demand of the differential duty amounting to Rs.10,88,434/- under Section 28(1) of the Customs Act, 1962.
- c. Demand of interest on the short-levied duty under Section 28AA of the Customs Act, 1962.
- d. Confiscation of the imported goods valued at Rs.3,35,42,154/- under Section 111(m) of the Customs Act, 1962; and
- e. Imposition of penalty on the importer under Section 112(a) of the Customs Act, 1962.

2.2 The importer appears to have filed a detailed reply to the Show Cause Notice dated 09.11.2022.

3. The Additional Commissioner of Customs- adjudicating authority having considered the reply of the importer in adjudication, vide Order-in-Original No. 101688/2023 dated 26.04.2023, however, confirmed the proposals made in the Show Cause Notice, thereby rejecting the declared classification of the importer by re-classifying the goods under dispute under CTH 7307.

4. Seriously aggrieved by the re-classification vide Order-in-Original, it appears that the importer filed first appeal before the Commissioner of Customs (Appeals-II), Chennai, but however, even the Commissioner (Appeals-II) having rejected their appeal vide impugned Order-in-Appeal Seaport C.Cus. II No. 540/2023 dated 24.08.2023, the present appeal has been filed before this forum.

5. Heard Shri Saurabh Dixit, Ld. Advocate for the importer/appellant and Shri Rudra Pratap Singh, Ld. Additional Commissioner for the Revenue. After hearing both sides, we find that the only issue that is to be decided by us is: whether the imported item namely "Flanges", is to be classified under CTH 85030090/84839000 or CTH 7307?

6. The basic rule insofar as classification under the First Schedule of the Customs Tariff Act, 1975 is concerned, the same is governed by the General Rules of Interpretation of Import Tariff. In terms of the same, classification of goods shall be determined according to the terms of the headings and any relative Section or Chapter Notes and if such headings or Notes do not otherwise require, then the classification is to be determined in accordance with Rules 2 to 6 of the said Rules.

7. There is no doubt that what was imported was flanges. The importer, for the reasons explained by it, sought to declare the same under CTH 8503, since according to them the said goods were designed specifically and meant for special/specific uses in its industry other than general use. It was the further case of the importer that they are engaged in the manufacture of motors assembly/gearboxes and hence, the flanges were imported for use in the above machines and equipment and not for any general/automobile purposes. For the above purpose, they require various specially designed parts and components including flanges, and since the goods manufactured by them were clearly classifiable under CTH 8503 alone, they believed in good faith that the flanges so imported did also fall under CTH 8503 as they were to be used in the manufacture of the above final products.

8. The disputed classifications under both Customs Tariff Headings read as under: -

▪ CTH 7307:

7307		TUBE OR PIPE FITTINGS (FOR EXAMPLE, COUPLINGS, ELBOWS, SLEEVES), OF IRON OR STEEL		
	-	<i>Cast fittings:</i>		
7307 11	--	<i>Of non-malleable cast iron:</i>		
7307 11 10	---	Sponge iron cast fittings	kg.	10%
7307 11 20	---	SG iron cast fittings	kg.	10%
7307 11 90	---	Other	kg.	10%
7307 19 00	--	Other	kg.	10%

	-	<i>Other, of stainless steel:</i>		
7307 21 00	--	Flanges	kg.	10%
7307 22 00	--	Threaded elbows, bends and sleeves	kg.	10%
7307 23 00	--	Butt welding fittings	kg.	10%
7307 29 00	--	Other	kg.	10%
	-	<i>Other :</i>		
7307 91	--	<i>Flanges :</i>		
7307 91 10	---	Galvanised	kg.	10%
7307 91 90	---	Other	kg.	10%
7307 92	--	<i>Threaded elbows, bends and sleeves :</i>		
7307 92 10	---	Galvanised	kg.	10%
7307 92 90	---	Other	kg.	10%
7307 93	--	<i>Butt welding fittings :</i>		
7307 93 10	---	Galvanised	kg.	10%
7307 93 90	---	Other	kg.	10%
7307 99	--	<i>Other :</i>		
7307 99 10	---	Galvanised	kg.	10%
7307 99 90	---	Other	kg.	10%

▪ CTH 8503:

8503		PARTS SUITABLE FOR USE SOLELY OR PRINCIPALLY WITH THE MACHINES OF HEADING 8501 OR 8502		
8503 00	-	<i>Parts suitable for use solely or principally with the machines of heading 8501 or 8502:</i>		
8503 00 10	---	Parts of generator (AC or DC)	kg.	7.5%
	---	<i>Parts of electric motor :</i>		
8503 00 21	----	Of DC motor	kg.	7.5%
8503 00 29	----	Other	kg.	7.5%
8503 00 90	---	Other	kg.	7.5%

9.1 From a perusal of the Order-in-Original, it is clear that the original authority firstly proceeded on the basis of the statement given by the personnel of the importer. Though it is recorded by him as to the importer stating that flanges were exclusively designed for manufacturing of SEW make motors assembly/gearboxes [paragraph 3 (i) of the Order-in-Original] and that the same could not be used anywhere else, still, the original authority at paragraph 16 assumes that the importer had resorted

to mis-classification, on reasonable belief, the reason for which is very conspicuously absent. *Prima facie*, therefore, it appears that the original authority's apprehensions are not well-founded. This is also clear when at paragraph 17, the said authority has recorded that to the Pre-consultative Notice the importer did not file any reply, which is not the correct fact.

9.2 Further, the importer appears to have relied upon various judicial precedents, which though duly recorded, but however, no finding is given by the said authority on the applicability or otherwise of the same. When the importer has claimed that the flanges imported by it were specifically designed to suit in its industry/purpose, what was required was to examine the issue from that angle, since primarily, such examination was to be done to satisfy if the declaration / admission of the importer to that extent was correct, but however, it appears that there is not even an attempt in this regard by the original authority. He has only proceeded generally, as could be seen from paragraph 23, wherein he has taken a leap to the explanation from the Chapter Note, to hold that 'it was evident for him' that the flanges in question were not covered under CTH 8503, which was sufficient for him to not to accept the classification sought for by the importer. But however,

we do not see any basis for such assumption by the adjudicating authority from the record.

10.1 CTH 8503, which is extracted *supra*, covers parts suitable for use solely or principally with the machines coming under CTH 8501 or CTH 8502. CTH 8501 covers electric motors, generators and the like, while CTH 8502 covers electric generating sets, rotary converters and the like, both may not be forming specific parts of or used in an automobile industry. On the other hand, CTH 7307 covers tube or pipe fittings of iron or steel like couplings, elbows and the like, and below that we find the entry prefixed by a single ' - ' : cast fittings. It is of utmost importance for the Revenue which has disputed the classification to at least make a *prima facie* case to bring the goods under dispute close to the heading under 7307. In any case, it is not the case of the Revenue that the impugned goods in question are in the nature of tube or pipe fittings, like couplings/elbows of iron or steel. Hence, it is also not the case of the Revenue that the appellant is an automobile manufacturer or that the appellant is not manufacturing gearboxes/gear motors and nor does the Revenue dispute the claim of the appellant that these flanges which are imported were used in the manufacture of gearboxes/gear motors. We find that the claim of the importer that

`the flanges that were imported were for its specific use' needs to be accepted since the same were claimed to be used in the manufacture of gearboxes/gear motors and secondly, that the same was not of the likes of couplings or elbows.

10.2 The claim of the appellant was based on the usage of the imported goods in its industry, for specific purposes, which is required to be considered primarily, before brushing aside the same. This is apparently not done by the Revenue and the original authority– Additional Commissioner chose only to go by the word “flanges”, thereby seriously ignoring whether the same was for specific/special use or for general use. Be that as it may, the original authority having rejected the classification under CTH 8503 and proposed to re-classify under CTH 7307, it was incumbent upon him to at least place on record that the flanges in question were in fact for general use alone and not for specific purpose as claimed by the appellant.

10.3 Moreover, it is also not the case of the Revenue that these flanges are not for any specific purpose as claimed by the appellant. It is relevant since, when a dispute arises based on the end-use/function, then it has to be ascertained/established that the goods in

question are capable of performing multiple functions, or, at least capable of performing such functions as the items specified under the Chapter are capable of. This exercise has not at all been done by the Revenue.

10.4 Further, there is no dispute that in the matters of classification, identification of an entity is the primary step, and the identification is concerned with the goods and not with description of the goods. The description would be relevant for the application of a particular tariff entry and in several cases, a single tariff refers to a large number of goods of different types. Thus, the titles of sections, chapters and sub-chapters are looked into, for ease of reference. Further, as observed by the adjudicating authority at paragraph 15 of the Order-in-Original, "classification of imported goods under the first schedule of the Customs Tariff Act, 1975 is governed by the General Rules of Interpretation of Import Tariff. As per Rule of GRI, classification of goods shall be determined according to the terms of the headings and any relative Section or Chapter Notes. If such headings or notes do not otherwise require then the classification is to be determined in accordance with Rules 2 to 6 of the said Rules. Rule 6 of GRI stipulates that the classification of goods in the sub-headings of a heading shall be determined according to the terms of

those sub-headings and any related sub-heading Notes and, *mutatis mutandis*, to the above rules, on the understanding that only sub-headings at the same level are comparable. For the purposes of this rule the relative Section and Chapter Notes also apply, unless the context otherwise requires.” Considered thus, it becomes clear that CTH 8503 is more specific, whereas on the present set of facts, CTH 7307 is akin to a residuary entry/general compartment, which is applicable only if the goods in question do not fall within any other heading.

11. It is unfortunate that even the first appellate authority has, without going into the merits or otherwise of the claims of the importer, upheld the findings of the lower authority, thereby rejecting the claims of the appellant. Further, from the impugned order, we find that the appellant has undertaken a specific plea that “...since the flanges are being routinely imported by the Appellant not only at Chennai Port but also at JNPT as well, and since there is a healthy consistent and correct practice to classify them under CTH 8503, as mandated under the law, we wish to place on record sample BE copies, at different ports including at Chennai Port, both before and after booking of the present case, where the Customs itself is assessing the same under CTH 8503

as required under the law. That the present import consignments cannot be isolated and subjected to different classification and/or rate at all in the facts and circumstances of the case". However, the first appellate authority has also failed to examine the plea as regards consistent declaration / acceptance of the classification is concerned.

12.1 The Ld. Additional Commissioner for the Revenue has furnished before us additional hand-outs in the form of print outs, apparently pulled out from web-sites, to buttress his arguments as to the usage of flanges, but while appreciating his efforts at this stage, however, we find that the same are insufficient to conclude that the flanges in question were in fact general in nature, contrary to the claim of the appellant as to their usage.

12.2 Further, we note that the print outs filed before us by the Ld. Additional Commissioner are the pictorial depiction of various types of flanges available in the market. It is however not his case that any of the flanges could be used by the appellant in its industry. No doubt, there may be different kinds of flanges available in the market, but it is nobody's case that all those flanges could be used by the appellant in its activity of manufacturing motors

assembly/gearboxes, etc., and in any case, these are not emanating from either the Show Cause Notice or Order-in-Original, or even the Order-in-Appeal.

12.3 If every 'flange' available in the market could be used in any industry, then perhaps the classification under a single CTH would have served that purpose, but since one size does not fit all, different classifications are provided. The classification thus depends on, *inter alia*, functionality as well. Hence, when an item is imported for a specific purpose, if the Revenue does not believe in the classification declared by such importer, then the same could be rejected on some palpable evidence and if required, the Revenue could always insist upon further details / explanation insofar as the function / end-use claimed by such importer is concerned, in order to ascertain the chief/primary function, to arrive at the proper classification, otherwise the purpose of having two Customs Tariff Headings loses its significance, which is not the intention of legislature.

13. In view of our above discussions, we do not find any substance or merits in the impugned order, to sustain the re-classification attempt made by the original authority as sustained in the impugned order,

for which reason the same deserves to be set aside,
which we hereby do.

14. In the result, the appeal stands allowed.

(Order pronounced in the open court on **03.01.2024**)

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

Sd/-
(P. DINESHA)
MEMBER (JUDICIAL)

Sdd