

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

Customs Appeal No.40566 of 2020

(Arising out of Order-in-Appeal Seaport c. Cus. II No. 905/2020 dated 28.8.2020 passed by the Commissioner of Customs (Appeals – II), Chennai)

M/s. Shibaura Machine India Pvt. Ltd. Appellant

(formerly Toshiba Machine (Chennai) Pvt. Ltd.
No. 65 (PO Box 5), Chennai Bangalore Highway
Chembarambakkam Poonamallee Taluk
Thiruvallur, Chennai – 600 123.

Vs.

Commissioner of Customs

Respondent

Chennai II Commissionerate
Custom House
No. 60, Rajaji Salai
Chennai – 600001.

APPEARANCE:

Smt. J. Ragini, Advocate for the Appellant
Shri R. Rajaraman, AC (AR) for the Respondent

CORAM

Hon'ble Shri P. Dinesha, Member (Judicial)
Hon'ble Shri M. Ajit Kumar, Member (Technical)

Final Order No. 40265/2024

Date of Hearing : 21.11.2023

Date of Decision: 06.03.2024

Per P. Dinesha,

Brief facts as forth-coming from the Order in Original which are relevant for the purposes of the present appeal, as appearing at paragraphs 1 to 3 are that the appellant having imported "Nut tie Bar, Screw, Screw Tip, Locking ring, etc.", filed the Bill of Entry for clearance of the above consignments; the import was from China, the classification declared by the importer

was CTH 8477 9000 which attracted BCD @ 7.5% & IGST @ 18%. BoE came to cleared through RMS and later on, the Audit team of the Revenue having noticed that the classification of the goods in question was wrong and that the same was classifiable under CTH 7318 attracting BCD @ 10%, issued a pre-consultative notice but the importer appears to have justified its classification and thus not accepting the proposals of the Revenue, the same resulted in the issuance of a Show Cause Notice.

2. Show Cause Notice dated 17.12.2018 thus came to be issued proposing to demand diff duty on a/c of alleged wrong classification. Appellant appears to have justified its classification based on the strength of technical write-up, design & drawing, etc. filed in response to Show Cause Notice, but however, the Adjudicating Authority has without considering any of these nor disagreeing with the claims of the app, proceeds to confirm with the proposals in the Show Cause Notice thereby also confirming the proposed demands vide Order-In-Original dated 14.05.2019.

3. Aggrieved by the consequential demand of differential duty, the importer/appellant appears to have approached the First appellate authority; and the First Appellate Authority also having rejected its appeal thereby upholding the demand vide Order-In-Appeal

Seaport C. Cus. II No. 905/2020 dated 28.8.2020, the present appeal has been filed before this Forum.

4. Heard Smt. J. Ragini, learned Advocate for the appellant and Shri R. Rajaraman, learned Assistant Commissioner (AR) for the Revenue.

5. The only Issue that arises for our consideration is, “whether the revenue is correct in re-classifying the goods in question under CTH 7318 instead of the declared classification CTH 84779000?” The onus is on Revenue to establish that the said item falls in the taxing category as claimed by them.

6. We have very carefully perused the orders of both the lower authorities and also perused the documents placed on record. Admittedly, the claim of the appellant that the consignment in question was specially designed for its use alone and that the same could not be used as a general item was supported by the expert opinion in the form of tech-write-up and neither the original authority nor the FAA finds fault with the same, nor does they disagree with the same. Also, other than the audit objection by the audit team, there is absolutely nothing made available on record by the revenue to justify classification under CTH 7318, nor is there any whisper about the claims of the appellant being wrong.

7. In fact, we find that the original authority has himself recorded at paragraph 9 of the OIO about filing

of technical write-up coupled with design and drawing by the appellant. In the same para, he also records that *"... There is no disagreement on the fact that the items imported may be used as a custom made for injection moulding machines and could not be used in general though they have common name....."*. We fail to understand what more was required; there is no fault found with the nature or even the usage of the goods in question, nor is there any counter to the technical write-up as to the design and usage of the goods in question. We have to hold in these circumstances, that this is clear case where the revenue has alleged wrong classification based on nothing and thus the consequent SCN proposing to demand differential duty lacks a concrete foundation.

8. In view of the above, we hold that the Revenue is not able to establish or satisfy in its attempt to re-classify the goods in question under CTH 7318 and hence, the impugned order lacks merit.

9. Resultantly, the impugned order is set aside and the appeal is allowed with consequential benefits, if any, as per law.

(Pronounced in open court on 06.03.2024)

(M. AJIT KUMAR)
Member (Technical)

(P. DINESHA)
Member (Judicial)

Rex