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

Customs Appeal No.40427 of 2023

(Arising out of Order in Original TUT-CUSTM-PRV-COM-32/2023 dated 8.5.2023 passed by the Commissioner of Customs, Tuticorin)

M/s. Classic Shipping & Co. **Appellant**
2/50-12, Thiruchendur Main Road
Muthiyapuram, Tuticorin – 628 005.

Vs.

Commissioner of Customs **Respondent**
Custom House, New Harbour Estate
Tuticorin – 628 004.

APPEARANCE:

Shri A.K. Jayaraj, Advocate for the Appellant
Shri N. Satyanarayanan, Authorized Representative for the Respondent

CORAM

Hon’ble Shri M. Ajit Kumar, Member (Technical)

Final Order No. 41233/2024

Date of Hearing : 19.09.2024
Date of Decision: 23.09.2024

This filed by the appellant M/s. Classic Shipping & Co. against Order in Original No. 32/2023 dated 8.5.2023 passed by the Commissioner of Customs, Tuticorin.

2. Brief facts of the case are that one M/s. Luck International, an exporter, is engaged in purchasing safety matches and exporting it to various countries. The present appellant M/s. Classic Shipping & Co. is a Customs Broker who is engaged in facilitating import/export on behalf of the exporter. Scrutiny of the data analytics of Merchandise Export from India Scheme (MEIS) exports indicated that the exporter had availed undue benefit under MEIS in export of safety matches by allegedly misclassifying the same under CTH 36050090 whereas safety

matches merits classification under CTH 36050010. The appellant who is a Customs Broker in his statement recorded under sec. 108 of the Customs Act, 1962 stated that the appellant was doing business with this exporter during 2019 to 2021 and on the instruction of the exporter, they filed shipping bills under wrong CTI 36050090 and the rates of MEIS benefit for CTI 36050010 and 36050090 during 1.11.2017 to 31.12.2019 were only 3% of the FOB value and 7% of the FOB value respectively. Based on the statement, Show Cause Notice was issued to the appellant proposing to impose penalty for intentionally mis-classifying the goods with an aim to get higher MEIS benefit for the exporter. After due process of law, the Adjudicating Authority imposed a penalty of Rs.25,000/- under sec. 114(iii) of the Customs Act, 1962. Aggrieved by the said order, the appellant is before this Tribunal.

3. Shri A.K. Jayaraj, learned Counsel appeared for the appellant and Shri N. Satyanarayanan, learned Authorized Representative appeared for the respondent.

3.1 The Ld. Counsel for the appellant submitted that the allegations made against the appellant are that they colluded with the exporter and filed the shipping bills with incorrect classification intentionally, thereby allowing the exporter to claim higher MEIS benefit and thereby appellant have made liable to penalty under Section 114 and Section 114AA of Customs Act, 1962. He stated that the Customs officers allowed classification of the impugned goods under CTH 36050090 and allowed MEIS benefit claimed in the shipping bill. No objection was raised since it was a long time assessment practice from 2017 in respect of various exporters and also by the Customs Department for the ‘Safety Matches’ exported through Tuticorin port. Similarly, DGFT authorities who are in charge of implementing the Foreign Trade Policy has also allowed the MEIS benefits claimed under HS Code 36050090. The impugned goods are hence not liable for confiscation because there was no misdeclaration of description or value and penalties cannot be imposed under on the CHA Section 114 (iii) and 114 AA. He drew attention to the following judgments in their favour;

A) **M/s. Novel Digital Electronics Vs The Commissioner of Customs (Imports), Chennai** [2015 (321) ELT 29 (Mad.)], wherein the Hon’ble High Court held that when the assessee was pursuing the matter under the bona fide belief that the classification offered by it is correct, it cannot be said that the act of the assessee was wilful, deliberate and dishonest, in that he wanted to avoid payment of duty, thereby evading tax liability and it is not a case where penalty could have been imposed.

B) **M/s. Northern Plastic Ltd Vs Collector of Customs and Central Excise** [1998 (101) ELT 549 (SC)], wherein the Hon’ble Supreme Court held that, laying claim to an exemption, whether admissible or not, is a matter of belief of assessee and does not amount to mis-declaration.

C) **Him Logistics Pvt Ltd Vs Commissioner of Customs, New Delhi** [2016 (338) ELT 721 (Tri. – Del)] where the Tribunal held that, Issue of classification, being complex, it is not for CHA to have opinion as to whether goods are food supplements or medicaments. It was for Customs Authorities to correctly classify goods. Hence penalty was not imposable on CHA .

He hence prayed that the impugned order may be set aside.

3.2 The Ld. AR took us through the impugned order and reiterated the points given therein.

4. I have carefully gone through the appeals and have heard the rival parties. The charge against the appellant is that even though they knew the classification of the goods they did not advice the exporter to classify the goods correctly, facilitating the exporter to get undue higher MEIS benefits. Firstly, I find that the matter pertains to the period 2018-19 to 2020-21, covering a large number of Shipping Bills as seen from the Annexure to the SCN dated 25/05/2022. It hence shows that there was a practice in the Custom House to classify safety matches under CTH 3605.0090. In such a situation it would have been highly unusual for a Customs Broker to seek to change a long-followed classification and advice the exporter to file a classification of the impugned goods under CTH 3605.0010. Secondly as pointed out by the Apex Court in **Northern Plastic Ltd** (supra) and also by a Co-ordinate Bench of this Tribunal in **Him Logistics Pvt Ltd** (supra), classification of goods being complex, it is declared as a matter of belief of an assessee and does not on its own amount to mis-declaration. Further it is not for CHA to have opinion on how the goods are to be classified. It was for Customs Authorities to correctly classify goods. Hence, I find that there cannot be a dilution of the statutory responsibility of the Customs Officers in ensuring correctness classification / assessment and payment of duty by putting the responsibility of classification on the CHA, without proving any blame worthy action willfully done by him impacting the classification done. Thirdly there is no iota of proof in the impugned order of the CHA colluding with the exporter or illegally benefiting from the export of

goods. Assumptions and presumptions or bald statements do not make for proof. Hence as pointed out by the Hon'ble Madras High Court in **M/s. Novel Digital Electronics** (supra) in such circumstances, it cannot be said that the act was wilful, deliberate and dishonest, in that he wanted to avoid payment of duty, thereby evading tax liability and is not a case where penalty could have been imposed. Fourthly when action is proposed to be initiated against Custom Brokers for lapses on their part for their duties to be performed as a Customs Broker and not for any other blame worthy act under the Customs Act 1962, then the matter should be examined under the Customs Brokers Licensing Regulations, 2018 (CBLR, 2018) which regulates the working of Customs Brokers and contains provisions for action to be initiated against them for lapses on their part.

5. In the circumstances no grounds for imposition of penalty has been made out and hence the impugned order is set aside. The appellant is eligible for consequential relief, if any, as per law. The appeal is disposed of accordingly.

(Order pronounced in open court on 23.09.2024)

(**M. AJIT KUMAR**)
Member (Technical)

Rex