

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

REGIONAL BENCH - COURT No. III

Customs Appeal No. 40999 of 2015

(Arising out of Order-in-Original No.34533/2015 dated 23.01.2015 passed by Commissioner of Customs, Chennai-IV, Custom House, No.60, Rajaji Salai, Chennai 600 001)

M/s.HBL Power Systems Ltd.

.... Appellant

8-2-601, Road No.10, Banjara Hills,
Hyderabad,
Telangana 500 034.

VERSUS

The Commissioner of Customs

... Respondent

Chennai-II, Custom House,
No.60, Rajaji Salai,
Chennai 600 001.

APPEARANCE :

Shri Raghavan Ramabadran, Advocate
Shri D. Santhana Gopalan, Advocate
Shri S. Ganesh Aravindh, Advocate
For the Appellant

Smt. Anandalakshmi Ganeshram, Authorized Representative
For the Respondent

CORAM :

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

FINAL ORDER No.40554/2025

DATE OF HEARING : 27.01.2025
DATE OF DECISION : 29.01.2025

Per: Shri P. Dinesha

This appeal is filed against the impugned Order-in-Original No.34533/2015 dated 23.01.2015 by the importer-assessee.

2. The admitted facts are that the importer-assessee, the appellant herein, is engaged in the business of manufacturing 'Nickel Cadmium Batteries' for which they had imported 'Nickel Hydroxide powder' from various countries. The said imported 'Nickel Hydroxide powder' is, admittedly, having different additives like Cobalt, Graphite, etc. It is the case of the appellant that they have been importing Hydroxide Powder from 2003 onwards by classifying the same under Chapter Heading 2825 4000 which corresponds to the entry description "Nickel Oxides and Hydroxides" on which they were paying applicable duties which was accepted by the Revenue without any dispute. With the introduction of Notification No.12/2012-Cus. dated 17.03.2012 which exempted goods under CTH 28254000 from payment of Customs duty, it appears that the appellant claimed BCD exemption under Sl.No.161 of the above Notification upon import of the "Nickel Hydroxide Type M5",

which were imported vide 24 Bills of Entry. The Revenue, however, disagreeing with the claim of the importer for the benefit of Notification *supra* issued SCN dated 17.03.2014 and after hearing the appellant, passed Order-in-Original No.34533/2015 dated 23.01.2015 demanding the differential duty along with applicable interest and penalty. The case of the Revenue is that in terms of Chapter Note 1 only separate chemical elements and separate chemically defined compounds were classifiable under Chapter 28 and hence, mixtures which are not separate chemically defined compounds are not at all classifiable under CTH 28; when Chapter Notes specifically exclude a particular category of goods, Rule 3 (b) of General Rules of Interpretation (GRI) could not be invoked; the goods in question were not naturally occurring substances present in a crude state or a clearly defined chemical compound but is a heterogeneous mixture formulated for the specific use, which has a specific function; in terms of Rule 4 of GRI read with Chapter Notes to Chapter 28, the goods are appropriately classifiable under Chapter 38 and under the residual heading 3824.90. It was also the case of the Department that appellant has acted contrary to the provisions of Section 17 and Section 46 of the Customs Act, 1962 and had not given the correct

description thereby claimed wrong notification benefits. Aggrieved by the above demand vide OIO *supra*, the present appeal has been filed before us.

3. Heard Shri Raghavan Ramabadrn, Ld. Advocate, for the appellant and Smt. Anandalakshmi Ganeshram, Ld. Assistant Commissioner for the Revenue; we have carefully considered the rival contentions as well as the documents placed on record. We have also carefully analyzed the judicial pronouncements relied upon by both the parties. The only dispute that arises for consideration is, "whether the goods in question are correctly classifiable under Chapter heading 2825 4000, as declared by the appellant?"

4. We have gone through the ruling of this very Bench in the case of **SAFT India Private Limited Vs CC Chennai** – 2024 (5) TMI 1156 – CESTAT Chennai, wherein this Bench has considered an almost similar issue and both the parties have in their respective synopsis filed before us, relied upon/referred to this specific order. In the said decision, this Bench has framed the following issue for decision:

“6. The main issues that arise for decision in this appeal are:-

i. What is the appropriate classification of the imported goods declared as “I-MAS Pos-Nickel Compound (Compound of Nickel Hydroxide)” whether under CTH 28254000 as declared by the appellant or under CTH 38249900 as classified by the Revenue?

ii. Whether the order of confiscation and imposition of redemption fine and penalty is justified or not in the facts and circumstances of this case?

This Bench had very elaborately considered the rival contentions in the context of the rival entries and, after detailed analysis, has held that the product “Nickel Hydroxide” is a separate chemically defined compound containing Cobalt Hydroxide, which is also a separate compound; also graphite an element/metal, which has been admitted that these were added to enhance the conductivity of Nickel Hydroxide Compound, which is meant to be used for manufacture of ‘Nickel Cadmium Batteries’. The relevant observations are reproduced below for ease of reference:

“36.3 However, we find that during the process of investigation, the views of the Department were conveyed to the appellants and Show Cause-cumDemand Notice was issued only after considering their submissions. Even the appellant’s statement was recorded under Section 108 of the Customs Act, 1962. The technical literature and other details as to the composition of the impugned goods and the laboratory test reports, etc., were duly considered by the Original Adjudicating Authority before the issuance of the Show Cause Notice. The aim of the Pre-notice Consultation is to avoid litigation and for quick settlement of tax disputes. It is noticed that the appellant has been continuously contesting the classification of the imported product all along leading to issuance of the Show Cause Notice and

its adjudication. As such, we are of the opinion that no prejudice is caused to the appellant due to omission on the part of the Adjudicating Authority in not complying with the Pre-notice consultation process. Had the appellant accepted the classification adopted by the Revenue, he would have opted to pay the differential duty along with interest for settling the issue. Imposition of fine and penalties could be avoided. However, as even now the appellant is contesting the classification of the imported product, we are of the considered view that there is no justification for setting aside the adjudication proceedings already completed as strict observance of the principle of natural justice have been complied with by according an opportunity of personal hearing and by considering the submissions made by the appellant before passing the impugned order dated 31.03.2022 by the Commissioner of Customs. In support of the above, we rely on the following decisions of Higher Judicial Authorities:-

i) Jurisdictional High Court of Madras in the case of Redington (India) Ltd. Vs. Director General of Goods and Service Tax, Intelligence, Chennai [2022 (62) GSTL 406 (Mad.)] held as follows:-

“197. As far as challenge to impugned show cause notices on the ground that they have been issued contrary to the C.B.E. & C. Master Circular No. 1053/2/2017-CX, dated 10-3-2017, I am of the view that merely because there was no pre-consultation as per the said circular, it cannot be said that the proceedings are bad. These circulars neither binding on the Court nor are contemplated under the provisions of the Finance Act, 1994.

198. The aforementioned Master Circular is intended to only facilitate the defaulting assessee to come forward to pay the amount so that the department is not burdened with show cause proceedings.

199. However, mere failure to call for a preconsultation before the show cause notice was issued by that itself would not mean that impugned show cause proceedings initiated against the petitioner(s) are either illegal or without jurisdiction. Therefore, show cause proceedings initiated under Section 73 of the Finance Act, 1994 seeking to demand tax which was allegedly not paid cannot be allowed to be scuttled in the light of the above circular.

200. In any event circulars are not binding on the Courts as per the decision of the Hon’ble Supreme Court in Commissioner of Central Excise v. Ratan Melting and Wire Industries - 2008 (231) E.L.T. 22 (S.C.) = 2008 (12) S.T.R. 416 (S.C.). Therefore, I do not find any merits in the challenges to the as the impugned show cause notice/Order-in-Original.

201. *In W.P. No. 20969 of 2021 in the case of Brilliant Corporate Services Private Limited, (Now known as M/s. Brivas Private Limited) v. Commissioner, Office of the Commissioner of GST and Central Excise, Chennai Outer Commissionerate, vide order dated 28-1-2022, it was ordered as follows :-*

“8. The petitioner has challenged the notice primarily on the ground that there was no pre-consultation as per the above mentioned circular. These circulars neither binding on the Court nor are contemplated under the provisions of the Finance Act, 1994.

9. The aforementioned Master Circular is intended to only facilitate the parties to come forward to pay the amount so that the department is not burdened with show cause proceedings. However, that by itself would not mean impugned show cause proceedings initiated against the petitioner would be either illegal or without jurisdiction. The show cause proceedings initiated under Section 73 of the Finance Act, 1994 seeking to demand tax which was allegedly not paid, cannot be allowed to be scuttled in the light of the above circular. In any event circulars are not binding on the Courts as per the decision of the Hon’ble Supreme Court in Commissioner of Central Excise v. Rattan Melting and Wire Industries - 2008 (231) E.L.T. 22 (S.C.). Therefore, I do not find any merits in the present writ petition as the impugned show cause notice has been issued by a competent authority namely the Commissioner, Office of the Commissioner of GST and Central Excise, Chennai Outer Commissionerate under the Finance Act, 1994. The respective noticees can file their reply to the impugned show cause notice and meet out the allegations on merits.

10. I am therefore not inclined to interfere with the impugned show cause proceedings. The noticees are directed to file their separate reply to the show cause notices.

11. This writ petition stands dismissed with the above observations. There shall be no order as to costs. 28-1-2022”

Part VII – Conclusion

202. *The challenge to the proceedings which have been impugned in W.P. No. 24960 of 2021 and W.P. No. 17941 of 2020 (Category-2) on the ground of limitation etc., involves disputed*

questions of fact. Therefore these issues are best left to be adjudicated by the namely Central Excise Officer such a Central Excise Officer could be a different person from the person issued show cause notice as a Central Excise Officer under Section 73 of the Finance Act, 1994.

203. *As long as the show cause notices have been issued by a competent officer under the Finance Act, 1994 read with relevant notification, challenge to the proceeding based on the alleged failure to follow the circular cannot be countenanced. Therefore. the petitioners who have been issued with show cause notices and those who have been suffered Orders-in-Original have to be meet out the allegations on merits before the adjudicating authority or the appellate authority as the case may be. Therefore. there is no merits in these present writ petitions.*

204. *Issues touching on the merits are best left to be decided by the adjudicating authorities and appellate authorities in the hierarchy of the authorities under the Act.”*

(ii) Hon^{ble} Supreme Court in the case of Yaduka Agrotech Pvt. Ltd. Vs. Commissioner of CGST [2022 (66) GSTL 385 (SC)] has held as follows:-

“3. In view of the categorical directions issued by the High Court, to the effect that the show cause notice dated 11-10-2021 shall be read as “additional information in addition to the audit observation dated 11-10-2021”, with a further direction to the Assessing Officer that the petitioner-Assessee shall be accorded personal hearing and the matter shall be discussed at length, we are satisfied that there is a substantial compliance to the principle of natural justice and the petitioner has sufficient opportunities to satisfy the Authorities that there is no reason to proceed against it on the basis of show cause notice, which was issued without pre-consultation process.”

37.1 On the second issue of confiscability of the goods and imposition of fine and penalty, the Ld. Advocate has contended that there is no wilful misdeclaration rendering the imported goods liable for confiscation under Section 111(m) of the Customs Act, 1962. He has submitted that mere short payment of duty by adopting a particular classification will not make the imported goods liable for confiscation. In support of his contention, he has relied upon the Hon^{ble} Supreme Court’s decision in the case of Northern Plastic Ltd. Vs. Collector of Customs & Central Excise [1998 (101) ELT 549 (SC)] wherein it was held that merely claiming the benefit of exemption or a particular

classification under the Bill of Entry does not amount to mis-declaration under Section 111(m) of the Customs Act, 1962. The Hon^{ble} High Court of Bombay in the case of Commissioner of Customs Vs. Gaurav Enterprises [2006 (193) ELT 532 (Bom.)] has also held that claiming the benefit of exemption in the Bills of Entry filed under the Act does not amount to suppression / mis-declaration on the part of the assessee.

37.2 Also, it has been held in the case of Lewek Altair Shipping Pvt. Ltd. Vs. Commissioner of Customs [2019 (366) ELT 318 (Tri.-Hyd.)] which has been affirmed by the Hon^{ble} Supreme Court that claiming an incorrect classification or the benefit of an ineligible exemption Notification does not amount to making a false or incorrect statement as it is not an incorrect description of the goods or their value but only a claim made by the assessee. The appellant has contended that he has given the description correctly in the Bills of Entry filed and as such their actions are bonafide and no malafide intention can be attributed to their actions. The Ld. Advocate has vehemently contended that the provisions of Section 111(m) of the Customs Act, 1962 cannot be invoked, even if the allegation against the appellant in respect of the mis-classification is held to be correct.

38. On the issue of imposition of penalty, it is submitted that the issue involved is one of classification or interpretation of terms of an exemption Notification, so penalty cannot be imposed as there was no intention to evade payment of duty. Reliance was placed on the decision in the cases of :-

(i) *Whiteline Chemicals Vs. Commissioner of Central Excise, Surat [2008 (229) ELT 95 (Tri.-Ahmd.)] wherein it was held as follows:-*

“5. However, we find that the issue involved is bonafide interpretation of notification and does not call for imposition of any penalty upon the appellants. The same is accordingly, set aside.”

(ii) *Vadilal Industries Ltd. Vs. Commissioner of Central Excise, Ahmedabad [2007 (213) ELT 157 (Tri.-Ahmd.)] wherein it has been held as:-*

“10. However, the learned Advocate submits the following alternative pleas that the price realised by them, should have been treated as cum-duty price and no penalty should have been imposed as this is a case of difference in interpretation. There is no issue of limitation involved as the

show cause notices were issued within the normal period of limitation.”

39. Considering the above facts that the appellant is a regular importer of the product which is used in the manufacture of Nickel Cadmium batteries and also considering that the supplier is reportedly adopting the above classification globally, we are of the opinion that attributing any malafide intention or motive for adopting such classification or claiming exemption benefit of the Notification is not justified in the facts of this case. Further, appreciating the ratio decidendi on the issue as discussed above, we hold that the imposition of fine and penalty is not justified and so ordered to be set aside.

40. In pursuance of the above discussion and findings, the appropriate classification of the imported product viz., I-MAS POs-Nickel Compound (Compound of Nickel Hydroxide) is determined to be under Tariff Heading 38249900 of CTA, 1975 as a chemical product or preparation of chemical and allied industries not elsewhere specified or included. The appellant's classification of the impugned goods under Chapter Heading 28254000 is rejected. Consequently, the appellant is not eligible for the benefit of the Notification No. 50/2017-Cus. dated 30.06.2017 (Sl.No. 180) and demand of duty along with interest is confirmed. However, the fine and penalties imposed are set aside.

41. As above the appeal with regard to classification is rejected but in respect of confiscability of the goods and imposition of fine and penalty is set aside.

42. Thus, the appeal is partly allowed on the above terms.”

5. From the above, it is clear that the classification of the imported compound viz. Nickel Hydroxide as admitted by the appellant is incorrect and hence, on merits, following the above ruling we dismiss the appeal.

6. In so far as the imposition of penalty and the invocation of the extended period of limitation is concerned, the said issue involved interpretation of the Customs Tariff

Act and General Rules of Interpretation (GRI) as could be seen from the elaborate analysis by this Bench in the order of **SAFT India Pvt. Ltd.** *supra* and hence, we are of the view that attributing any *mala fide* intention or motive in so far as classification or claiming the benefit of Notification *supra* cannot sustain in the peculiar facts of this case. Therefore, imposition of fine or penalty is not justified. For these very reasons, even invoking of extended period cannot sustain. Demand if any, could be justified only for the normal period.

7. Resultantly, the appeal stands partly allowed on the above terms.

(Order pronounced in open court on 29.01.2025)

(M. AJIT KUMAR)
Member (Technical)

(P. DINESHA)
Member (Judicial)