

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI.**

PRINCIPAL BENCH,
COURT NO. I

CUSTOMS APPEAL NO. 51091 OF 2020

[Arising out of the Order-in-Original No. 02/COMMR/MS/EXEDY/ICD-PPG/2020 dated 24/06/2020 passed by Commissioner of Customs, ICD Patparganj, Delhi – 110 096.]

M/s Exedy India Ltd.

Plot NO. 9, Udyog Kendra Industrial Area,
Greater NOIDA – 201 304.

.....Appellant

Versus

Commissioner of Customs

ICD Patparganj and other ICDs,
Delhi – 110 096.

....Respondent

APPEARANCE:

Shri Shammi Kapoor, Shri Srinivas Kotni, Ms. Swati Agarwal,
Ms. Prachi Jain and Shri Akshay Kumar, Advocates for the
appellant.

Shri Rakesh Kumar, Authorized Representative for the
Department

CORAM:

HON'BLE JUSTICE MR. DILIP GUPTA, PRESIDENT

HON'BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)

FINAL ORDER NO. 55668/2024

DATE OF HEARING: 11.03.2024

DATE OF DECISION: 30.04.2024

P.V. SUBBA RAO

M/s Exedy India Ltd.¹ filed this appeal to assail the
order-in-original² dated 24.06.2020 passed by the
Commissioner whereby he confirmed demand of
Rs. 1,14,95,588/- as customs duty under section 28(1) of the

1. importer

2. the impugned order

Customs Act, 1962³ along with interest under section 28AA and imposed penalty of Rs. 1,00,000/- under section 117. The demand pertained to the period 27.01.2017 to 05.02.2019 and the show cause notice⁴ was issued on 06.06.2019. Thus, the entire period of demand was within the normal period of limitation.

2. We have heard learned counsel for the appellant and the learned authorised representative for the Revenue and perused the records.

3. The issue which falls for consideration in this case is as whether the 'Accordion springs' imported by the appellant are 'leaf springs' classifiable under **Customs Tariff Item⁵ 7320 10 11** as claimed by the appellant or as 'other springs under **CTI 7320 90 90** as held in the impugned order.

4. The appellant imported 'Accordion springs', self-assessed duty by classifying them under **CTI 7320 10 11** and claiming the benefit of exemption Notification No. 46/2011-Cus dated 01.06.2011 (Sl. No. 972) and paid duty accordingly and cleared them. The appellant's Bills of Entry were audited after clearance and it was felt that the correct classification of 'Accordion springs' was **CTI 7320 90 90** and on which the benefit of the notification no. 46/2011 was not available.

3. Act

4. SCN

5. CTI

5. The appellant was asked to submit product catalogue, sample product and product literature along with its comments on the classification. The appellant produced the documents sought by the department but defended its classification under **CTI 7320 10 11**. The mandatory consultative letter dated 21.01.2019 was issued to the appellant but the issue could not be resolved through these consultations. Therefore, the SCN was issued which culminated in the impugned order.

Submissions of the appellant

6. Learned counsels for the appellant made the following submissions:

1.1. The 'Accordion Springs' imported by the appellant merit classification as leaf springs under **CTI 7320 10 11**. As per World Customs Organisation's⁶ classification, there are four types of springs- Leaf Springs, helical springs, flat springs and Disc springs. Of these, the first is covered by 732010, the second is covered by 732020 and the third and fourth are covered by 732090. Leaf springs are used in automobiles whereas flat springs are used in operated motors, locks, etc. Since the Accordion springs imported by the appellant is used in automobiles and not in locks, they should be classified as leaf springs.

6. WCO

1.2. The appellant had obtained technical opinions from two experts- Dr. Jayant Jain of IIT Delhi and Prof. Krishna Kar of IIT Kanpur which states that the accordion springs are classifiable under **CTI 7320 10 11**.

1.3. There should be consistency in classification. Since the appellant had been classifying them under **CTI 7320 10 11** and the department had not disputed it in the past, it cannot dispute it now also.

1.4. Unless there are changes in the circumstances, classification cannot be changed.

1.5. Goods should be classified as per the common parlance.

1.6. In case of ambiguity, the classification beneficial to the assessee should be adopted.

1.7. The expert opinions relied in the SCN and impugned order are not admissible and cannot be relied upon.

1.8. The appeal may be allowed and the impugned order may be set aside.

Submissions on behalf of the Revenue

7. Learned authorised representative for the Revenue supports the impugned order and submits as follows:

- (a) The goods have been correctly classified as ‘other’ under the heading ‘Springs and leaves for Springs of Iron and Steel’ under **CTI 7320 90 90**.
- (b) The appellant deliberately mis-classified the goods under **CTI 7320 10 11** which is meant for ‘Leaf Springs and Leaves therefor for motor vehicles’ when it is very clear and is undisputed that what were imported were ‘Accordion Springs’.
- (c) The appeal may be dismissed and the impugned order may be upheld.

Findings

8. We have considered the submissions on both sides and perused the records.
9. The appellant imported ‘Accordion springs’ which are to be used in clutch plates for automobiles and in dispute is their classification. The relevant part of the Customs Tariff is as follows:

Tariff item	Description of goods
7320	Springs and Leaves for Springs, of iron or steel
7320 10	- Leaf-springs and leaves therefor:
7320 10 11	---- For motor vehicles
7320 10 12	---- For railways and tramways
7320 10 19	---- Other
7320 10 20	--- Leaves for springs
7320 20 00	- Helical springs
7320 90	- Other
7320 90 10	---Coil springs for railways, tramways
7320 90 20	--- Spring pins

7320 90 90	--- Other
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10. There is no dispute that the disputed goods fall under the four digit Customs Tariff Heading of 7320 which covers springs and leaves for springs of iron and steel. This has three six digit Customs Tariff sub-headings

7320 10 – Leaf Springs and leaves therefor

7320 20 – Helical springs

7320 - Others

11. Helical springs, as are commonly understood are made of helical coil of a wire which helix could be cylindrical (such as the springs one finds in ball point pens or shock absorbers) or could be conical. It is not the case of either party that the imported goods are helical springs. Therefore, sub-heading 7320 20 is not relevant to this case.

12. The question which remains is whether the imported 'Accordion springs' are leaf springs falling under Customs sub-heading 7320 10 or they are "others" in which case they fall under 7320 90. According to the appellant, they are leaf springs and since they are meant for motor vehicles, they fall under **CTI 7320 10 11**. According to the Revenue, they are not leaf springs and therefore, they fall under the customs tariff sub-heading of 7320 90 'Others' and since they are not

coil springs for railways, tramways or spring pins, they fall under the residual **CTI 7320 90 90**.

13. Accordion springs, as the name suggests, look like the bellows of an Accordion. They are made by bending a flat piece of metal at an angle in one direction and then in the opposite direction at regular intervals into a zig zag pattern. This gives it the elasticity.

14. Learned counsel for the appellant seeks to justify its classification of the Accordion Springs under **CTI 7320 10 11** on several grounds. Firstly, he relies on WCO classification of tariff which according to the learned counsel, supports its case that accordion springs should be classified as leaf springs. We find that the WCO classification is at six digit level which is identical to the classification in our Customs Tariff. The subsequent notes discuss four types of springs which fall under the four digit classification viz., leaf springs, helical springs, flat springs and disc springs and their nature. Of course, the first two are specifically covered by 7320 10 and 7320 20 respectively. The submission of the learned counsel is that Accordion springs are neither flat springs nor disc springs and therefore, they must be considered as leaf springs. According to him, they are not flat springs because the notes to WCO classification, describes flat springs as "Flat springs and flat spiral springs as used in spring operated motors, in locks, etc." and does not mention "automobiles" while the description of

leaf springs refers to use in automobiles therefore, the Accordion springs deserve to be classified as 'leaf springs'. This argument cannot be accepted. Firstly, classification cannot be based on some example. Example is only a sample and it does not exclude everything else from the group. Nothing in the description of the flat springs excludes springs used for any purpose other than motors or locks. Secondly, even the description of the leaf springs refers to use in "suspension systems of automobiles". The accordion springs are admittedly not meant for suspension but for clutches. Thirdly, when something does not fall under any of the categories, the residual category 'Other' applies. If "Accordion Springs" are not covered as leaf-springs or helical springs, they must be covered under 'other'. The WCO notes do not discuss Accordion Springs at all let alone say that they fall under 'leaf springs'.

15. Learned counsel second submission is that it has been classifying them under **CTI 7320 10 11** in the past and therefore, the department cannot change it now. This argument cannot be accepted. Every Bill of Entry is an assessment and is appealable by both sides or is subject to modification by the Revenue by issuing a notice under section 28. The larger bench of Supreme Court held in **ITC Ltd. versus Commissioner**⁷ that all assessments including self-assessments are appealable. If the appellant had wrongly

7. 2019 (368) E.L.T. 216 (S.C.)

classified the goods and no notice under section 28 was issued to it by the department, it does not make the classification correct. Only the remedy available to the Revenue to correct the classification and recover duties get lost. Classification has to be as per the law and it cannot be based on what the appellant had done in the past. If the appellant had wrongly classified in the past, it does not mean that the mistake has to be repeated. If the importer had wrongly classified the goods and paid higher duty in one Bill of Entry and it was not corrected, it does not mean that the importer has to continue to make the mistake and continue to pay higher duty forever. Conversely, if the importer had incorrectly classified and paid less duty once, he does not earn the right to pay less duty forever in all future Bills of Entry.

16. Learned counsel third submission is that two experts have decided the classification. We find classification is a part of the assessment process which is a quasi-judicial process appealable by both sides. The persons empowered to decide the classification are the importer (during self-assessment), the proper officer (during re-assessment) or any adjudicating or appellate authority or court. An expert can give his opinion on the nature of the goods but he cannot classify the goods. If he suggests any classification, that has to be ignored because neither does the expert have the authority to decide the classification nor is his opinion appealable.

17. Learned counsel fourth submission is that common parlance test must be applied to determine the nature of the goods. We agree. The goods, as is evident from the documents, are 'Accordion springs' and are sold as such. They are neither sold as helical springs nor sold as leaf springs. Since there is no separate category of 'accordion springs' in the tariff, they must be classified under the residual category of 'others'.

18. The last submission of the learned counsel is that the classification beneficial to the assessee should be adopted. However, we find what is beneficial to the assessee depends on the rates of duty under different headings and the exemption notifications which can change anytime. Classification cannot be changed with these changes so as to help an assessee. Classification has to be done as per the tariff and then the relevant rates of duty and exemption notifications must be applied and not the other way round- classification cannot be decided based on the rates of duty and what is beneficial to the assessee. Further, for the same good, one classification may be beneficial to one assessee and another may be beneficial to another (because they may be entitled to different notifications). Classification cannot be different for the two assessees based on what is beneficial to each.

19. In view of the above, we find that 'Accordion Springs' imported by the appellant are neither helical springs nor leaf

springs and are a category of springs in themselves. They are also sold as 'Accordion springs' only and not as leaf springs or helical springs. Therefore, they fall under the Customs six digit heading of 7320 90 'Other'. Under this, there are three eight digit Customs Tariff Items and since these do not fall under the categories of coil springs for railways (7320 90 10) or spring pins (7320 90 20), they fall under the residual category of **CTI 7320 90 90. We, therefore, find in favour of the Revenue and against the appellant on the question of classification.**

20. In view of the above, the appeal is dismissed and the impugned order is upheld.

(Order pronounced in open court on 30/04/2024.)

(JUSTICE DILIP GUPTA)
PRESIDENT

(P.V. SUBBA RAO)
MEMBER (TECHNICAL)

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