IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.
Principal Bench, New Delhi

COURT NO. I

DATE OF HEARING : 22/06/2017.
DATE OF DECISION : 06/07/2017.

Customs Appeal No. 59837 of 2013

M/s Tempsens Instruments (I) Pvt. Ltd. Appellant

Versus

CC (Import), New Delhi Respondent

Customs Appeal No. 60751 of 2013

CC (Import), New Delhi Appellant

Versus

M/s Tempsens Instruments (I) Pvt. Ltd. Respondent

[Arising out of the Order-in-Appeal No. CC (A) CUS/466/2013 dated 31/07/2013 passed by The Commissioner of Customs (Appeals), New Custom House, New Delhi.]

Appearance

Shri S. Vasudevan, Advocate – for the appellant/respondent.

Shri Govind Dixit, Authorized Representative (DR) – for the Respondent/appellant.

CORAM :**Hon'ble Shri Justice Dr. Satish Chandra, President**
Hon'ble Shri B. Ravichandran, Member (Technical)

Final Order No. 54682-54683/2017 Dated : __/07/2017

Per. B. Ravichandran :-

These two appeals, one by Revenue another by the Assessee are against common impugned order dated 31/07/2013 of Commissioner of Customs (Appeals), Airport, New Delhi. The assessee/appellant filed bill of entry dated 17/11/2012 for clearing pure platinum wire (semi-finished), platinum/rhodium wire (alloy) under Central Excise Tariff Heading 71101900. The assessee/appellant claimed benefits of concessional duty under Notification 12/2012-CUS dated 17/03/2012 (Sl. No. 328) and nil rate of duty under Notification 12/2012-CE dated 17/03/20912 (Sl. No. 193). The Assessing Authority denied the concession and assessed the goods. The assessee/appellant filed appeal which resulted in the impugned order. The Commissioner (Appeals) allowed the concession under Customs Notification but disallowed the benefit under Central Excise notification. No decision was recorded regarding SAD exemption. The assessee/appellant filed appeal against denial of exemption under Central Excise notification. The Revenue filed appeal against extension of benefit under customs notification.

2. We have heard both the sides and perused the appeal records. The assessee/appellant filed bill of entry for import of pure platinum wire, semi-finished platinum wire, platinum – rhodium (10%) wire and platinum/rhodium (13%) wire. All these items were classified under CETH 71101900. The assessee/ appellant made claim for exemption under 3 notifications – 12/2012-CUS (Sl. No. 328), 12/2012-CE (Sl. No. 193) and 21/2012-CUS (Sl. No. 77) with reference to basic Customs Duty, Additional Duty of Customs and Special Additional Duty of Customs, respectively. The impugned order allowed the

concession for Basic Customs Duty. The claim for exemption under Central Excise notification was rejected and there is no finding regarding exemption under Notification 21/2012-CUS.

3. It is noted that there is no dispute regarding classification of imported items under Heading 71101900. The said heading is for platinum, unwrought or in semi-manufactured form, or in powder form – platinum - - other. First, we consider the claim for exemption under Notification 12/2012-CUS. The entry relevant for the present case is Sl. No. 328 which reads as below :-

Sl. No.	Chapter of heading or sub heading or tariff item	Description of goods	Standard Rate	Additional Rate of duty	Condition No.
1	2	3	4	5	6
328	7110 11 or 7110 19 00	Platinum	4%	-	-

The classification of the product and the description of the product are appropriately applicable to the impugned goods imported by the appellant. We find no reason for denial of the exemption in terms of the above entry to the appellant. We note in the appeal by the Revenue it is contested that while the description of the goods is "Platinum" the exemption cannot be made available to Platinum – Rhodium (alloy) as imported by the appellant/assessee. The objection of the Revenue is that while the classification of the imported item is as per entry in the exemption notification, the description will not match. We are not in agreement with such proposition. Admittedly, the product mentioned in the notification as well as the product as imported by the appellant/assessee are to be classified as Platinum under Heading 71101900. The Platinum/Rhodium wire imported by the appellant/assessee has been classified as Platinum (wires) under the Tariff Heading 71101900 and, as such, the exemption claimed by the appellant/assessee is rightly available. The impugned order cannot be faulted on this.

4. Regarding the exemption for Additional Duty of Customs, we note that the relevant entry in the notification is as below :-

Sl. No.	Chapter of heading or sub heading or tariff item of the first schedule	Description of excisable goods	Rate	Condition No.
1	2	3	4	5
193	71	Platinum, palladium, rhodium, iridium, osmium and ruthenium in their primary forms, that is to say, any unfinished or semi-finished form including ingots, bars, blocks, slabs, billets, shots, pellets, rods, sheets, foils and wires.	Nil	-

The impugned order rejected the claim for exemption only on the ground that the exemption benefit is available only to Platinum in primary form and will not be available to Platinum alloys. Here, we note that the Appellate Authority erred in examining the description of the goods mentioned in column 3 of the entry in the notification. First of all, the description clearly states that Platinum, Palladium, Rhodium etc. in their primary form, that is to say, any unfinished or semi-finished form including, ingots, foils and wires it is very clear that Platinum/ Rhodium wires are eligible for such concession. The notification borrows the language of Heading 71.10 itself and, as such, we find no reason for denial of the exemption. Here we note that in terms of Chapter Note 4 (B) of Chapter 71, the expression Platinum means Platinum, Iridium, Platinum and Rhodium and Ruthenium. The presence of Rhodium in the imported wire does not change the classification of the product as anything other than Platinum.

5. Regarding the exemption claimed for Special Additional Duty, we note that the impugned order did not give any findings. Exemption from Special Additional Duty is claimed in terms of Sl. No. 77 of Notification 21/2012-CUS. The said entry is granting exemption for goods falling under Chapter 71 (Except 7113) with a description “all goods (other than articles of jewellery)”. Admittedly, the product imported are falling under Chapter 71 and not covered by any exclusion made in the said entry. Accordingly, we find that the exemption claimed by the appellant/assessee is available to them. Here, we note that the appellant/assessee have been importing these items for the past 5 years claiming the benefit of this notifications and no objections have been raised earlier by the Revenue.

6. In view of the above discussion and analysis, we find merit in the appeal filed by the appellant/assessee and accordingly allow the same. The appeal by the Revenue is dismissed. Impugned order modified accordingly.

(Order pronounced in the open court on 06/07/2017.)

(Justice Dr. Satish Chandra)
President

(B. Ravichandran)
Member (Technical)

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