# CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

West Block No.2, R.K.Puram, New Delhi

**COURT-I**

**Date of hearing: 09.06.2017**

**Appeal No. C/54390/2015-CU[DB]**

[Arising out of the Order-in-Appeal No. CC/A/Cus/Import/957/2015 dated 21.07.2015 and passed by the Commissioner of Central Excise, New Delhi]

C.C.E. New Delhi … Appellant

Vs.

M/s. Mittal International ... Respondent

Appearance:

Present Shri R.K. Manjhi, DR for the appellant
Present Ms. Neelam Murpana, Advocate, for the respondent

**Coram:** **Hon'ble Mr. Justice (Dr.) Satish Chandra, President**
**Hon'ble Mr. V. Padmanabhan, Technical Member**

**FINAL ORDER No. 55103/2017**

Per V. Padmanabhan:

The present appeal has been filed by the appellant against the Order-in-Appeal No. 957/2015 dated 21.07.2015.

2. The respondent imported certain goods and filed Bill of Entry no. 5990735 dated 02.07.2014 and declared the goods as 'blenders' of three different models and claimed classification of the goods under CTH 8438 80 90 as machinery for the industrial preparation of food or drink. The imported goods were subject to examination on first check basis and were found as per

declaration. Revenue was of the view that the goods are more appropriately classifiable under CTH 8509 as electric, mechanical domestic appliances with self contained electric motor. The original adjudicating authority finalized classification of the goods under CTH 8509, but also confiscated the goods under section 111 (m) of the Customs Act 1962 and allowed for redemption on payment of fine and penalty. However, when the issue was called before the Commissioner (A), he set aside the impugned order in toto. Hence the Revenue is in appeal.

3. With the above background, we have heard Shri R.K. Manjhi, DR for the appellant Ms. Neelam Murpana, Advocate, for the respondent.

4. The ld. DR submitted the print out of the features of one of the models of the blenders imported and argued that such goods are meant for domestic use and accordingly merit classification under CTH 8509.Hence he sought to set aside the impugned order and reinstate the order in original.

5. The Ld. Counsel for the respondent supported the impugned order. He argued that the goods are not meant for domestic use, and have been imported for supplying for use in commercial or industrial purpose. Accordingly, he argued that the goods have been rightly classified under CTH 8438.

6. The imported goods have been described as 'blenders' and the importer declared classification of the goods under 8438 80

90 which covers machines for the industrial preparation of food. However, Revenue seeks classification of the goods under CTH 8509 as electric, mechanical and domestic appliances with self contained electric motor. It is not in dispute that the imported goods, described as 'blenders' contained electric motors. However, the point of dispute is whether these machines are to be considered as domestic appliances or are meant for industrial preparation of food. In the impugned order, Commissioner (A), after considering the product specification from the brochure and website of the imported goods, has recorded that these goods comprise of electric motor and are meant for commercial and industrial clients and not for domestic segment. Further, he has recorded that the suppliers of "Vitamix" brand of blenders restrict themselves to the supply of blenders only for Commercial or industrial purpose in India.

7. In view of the above findings in the impugned order, we find no reason to interfere with the declared classification under 8438. In any case Revenue has not placed any other facts before us justifying the change in classification to 8509.

8. It is seen from the records of the case that the dispute is with reference to correct classification of the goods. In view of the two competing classifications under customs tariff, the difference in opinion cannot be considered as mis declaration. Consequently, there is no justification for confiscation of the imported goods which is set aside.

9. In view of the above discussions, impugned order is sustained and appeal filed by Revenue is dismissed.

[Operative part of the order pronounced in the open court]

(V. Padmanabhan) (Justice Dr. Satish Chandra)
Technical Member President

Bhanu