CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

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

<u>COURT-I</u>

Date of hearing: 11.08.2017
Date of Pronouncement: 21.09.2017

Appeal No. C/51076/2017-CU[DB]
[Arising out of the Order-in-Appeal No. CC/A/CUS/D-I/117/2017 dated 09.03.2017, passed by the Commissioner of Central Excise, New Delhi]

M/s. TS Tech Sun India Pvt. Ltd. … Appellant

Vs.

C.C. New Delhi ... Respondent

Appearance:

Present G.P. Singh, Consultant for the appellant
Present Shri Govind Dixit, DR for the respondent

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

<u>FINAL ORDER No. 56661/2017</u>

<u>Per V. Padmanabhan:</u>

The present appeal is against the Order-in-Appeal No. 117/2017 dated 09.03.2017.

2. The appellant filed the Bill of Entry No. 7783753 dated 23.12.2014 for clearance of goods declared as "CNC cutting machine spare parts" and classified the different spare parts under the different heading falling under Chapter 84 & 85. The Bill of Entry was cleared under RMS with no assessment and no examination order. However, when the Bill of Entry was scrutinized in the import shed, the custom officers observed that

the classification of some of the spare parts was not indicated correctly by the appellant in the Bill of Entry. It was noticed that some of the items were classified under Chapter 39, 73, 68 and 40. Accordingly, the Department proceeded to recover the differential duty. The Adjudicating authority, in addition to demanding differential duty also confiscated the imported goods and imposed redemption fine of Rs.3.4 lakhs and penalty of Rs. 50,000/- alleging mis-declaration. When the importer challenged the order by the Commissioner (A), he upheld the order except for reducing the amount of redemption fine to Rs. 2 lakhs. Aggrieved by the impugned order present appeal has been filed.

3. With the above background, we have heard G.P. Singh, Consultant for the appellant and Shri Govind Dixit, DR for the respondent.

4. The Ld. Consultant argued that the importer had indicated classification of various items and spare parts of CNC machine, to the best of his knowledge. The Department has re-classified some of the items which resulted in additional duty. He argued that classification given to their understanding cannot be a reason for alleging mis-declaration and confiscation of the imported goods. He relied on the following case laws:-

i) Saint Gobain Glass India Ltd. Vs. CC Chennai 2014 (313) ELT 680 (Tri-Chennai)

ii) CC Mumbai Vs. R.K. Impex 2010 (259) ELT 725 (Tri-Mum)

5. The Ld. DR supported the impugned order.

6. After hearing both the sides and on perusal of record, we find that the classification of some of the items imported by the appellant, were changed by the customs officers. This resulted in extra duty required to be paid in respect of these items. It has been argued that the difference in percentage of the classification between the appellant as well as the Department should not be considered as a reason for alleging mis-declaration. We find considerable force in this argument. The Tribunal has also taken a similar view in the case laws cited by the appellant. In the case of ***Saint Gobain Glass India Ltd. (Supra)***, the Tribunal has held as follows:

"6. The apprehension of the Ld. DR that under the new system of assessment based on computerization and risk management system, if the assessees do not indicate the correct classification and rate of duty, there is likelihood of revenue loss is well founded. But, I find that no change in the law has been made to take into account such apprehension, and hence, however well founded the same may be, in the absence of any legal change, I am unable to accept either the Ld. DR's argument or the finding of the adjudicating Commissioner that the ratio of the case laws cited by the appellants will not be applicable to the facts of this case. It has been the consistent view of the various Benches of the Tribunal that the determination of the tariff heading and the applicable rate of duty is the ultimate job of the customs authorities and if an assessee tentatively indicates a wrong classification according to his understanding, then no motive can be attributed to him and neither the goods can be confiscated nor penalty can be imposed. It is up to the department to bring suitable changes in the legislation, if the intention is to cast some

responsibility on the assessees to indicate correct classification and rate of duty for quick clearance under the liberalized system specially made applicable to accredited clients of the department.

7. As such, following the ratio of the precedent decisions cited above, I set aside the impugned order in so far as it relates to the confiscation of the impugned goods, imposition of redemption fine and imposition of penalty."

7. In view of the above, we are of the view that the appellant will be liable to pay differential duty as computed by the lower authorities. However, the order of confiscation of goods and imposition of redemption fine and penalty are set aside.

8. Accordingly, appeal filed by the appellant is partly allowed.

[Order Pronounced in the open court on 21.09.2017]

(Justice Dr. Satish Chandra)
President

(V. Padmanabhan)
Technical Member

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