CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
West Block No.2, R.K.Puram, New Delhi

<u>COURT-I</u>

Date of hearing: 05.09.2017
Date of Decision: 21.09.2017

Appeal No. C/52383/2016 (DB)
[Arising out of the Order-in-Original No. 09/Pr. Commr/ADJ/2016 issued vide C.No. VIII/ICD/TKD/6/Adj/Pr.Commr./24/2015 dated 13/05/2016, passed by Principal Commissioner of Customs (Imports), New Delhi]

M/s JBM Auto Ltd. … Appellant

Vs.

CC, New Delhi … Respondent

Appearance:
Present Shri M.P. Gupta, Advocate for the appellant
Present Shri Govind Dixit, DR for the respondent

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

Final Order No._56678/2017___

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

1. The appeal is filed against the Order in Original No. 9/2016 dated 12/05/2016. The appellant is engaged in the manufacture of tools and dies. They imported various goods which were cleared by filing 13 bills of entry, during the period 18/04/2011-07/04/2014. The goods were assessed as parts/components/ accessories of various tools/dies under customs tariff sub-heading no. 84543090/84549000/84612019/84663020/84669310 and paid basic customs duty @ 7.5 % adv. After clearance of the goods the appellant's factory was taken up for post clearance audit, when it was observed that the imported goods were interchangeable tools classifiable under correct sub-heading 82073000/82075000 which were chargeable to basic custom duty

@ 10% adv. Show cause notice was issued alleging mis-declaration of the imported goods. After due process of adjudication, the impugned order was passed in which the adjudicating authority ordered reclassification of the goods under Customs Tariff Heading 8207 and confirmed the demand of differential Customs Duty to the extent of Rs.1,58,37,247/- along with interest and penalty of an amount equal to customs duty. Aggrieved by the impugned order the preset appeal has been filed.

2. With this above background we heard Shri M.K. Gupta, Ld. Advocate for the appellant as well as Shri Govind Dixit, Ld. DR for the Revenue.

3. We heard both sides at length and perused the record. The main submissions made on behalf of the appellant are summarized below.

   i. All the goods covered by the 13 bills of entries have been summarily classified under Custom Tariff Heading 82073000/82075000. This is not justified as majority of them were electrical panels, pattern and moulds, jigs and fixtures tools, components of machines complete dies/ die sets and other goods.

   ii. The imported goods merit classification under individual Customs Tariff sub-headings and all cannot be classified under 8207. Many of the imported goods were complete dies/dies sets etc which were not parts.

   iii. The Adjudicating Authority has wrongly taken the purchase order received from M/s Honda Siel Cars India Ltd, as applicable for goods covered under all the 13 bills of entry. 6 Bills of entry were filed prior to the receipt of the purchase order dated 24/08/2012. Further in the rest of the bills of entry, many goods were imported for captive consumption and not for supply Honda Siel.

iv. The appellant has submitted a table giving details of bills of entry-wise goods imported, their nature and purpose for which these have been imported along with the correct classification. It has been submitted that the goods have been rightly classified and further that they were not classifiable as held by the department.

v. The Adjudicating Authority has wrongly relied on Note-2 of Chapter 82 of Customs Tariff Act, 1975. None of the goods imported were in the nature of parts. What was imported was dies sets and other goods. The appellant also sought to distinguish the case laws on which the adjudicating authority has relied.

vi. 'Press dies' imported by the appellant cannot be regarded as interchangeable classifiable under 8207.

vii. Extended period of limitation was not invocable, since the customs authorities used to examine the same goods imported by the appellant even prior to 08/04/2011 when self assessment was introduced. Even after this date goods have been examined many times by customs.

viii. Many goods, other than dies, dies sets have also been classified under interchangeable tools which are required to be reclassified and deleted from demand.

4. The Ld. DR justified the with impugned order. He argued that the imported goods have been used for manufacture of dies and jigs for supply to M/s Honda Siel Car Ltd. He further submitted that the department found that part imported goods to be supplied to

M/s Honda as per the P.O tallies with the code numbers of parts of tools and dies declared in 13 bills of entry which confirms that the goods under import were parts specifically meant for use in design, and manufacture of tools/ dies to be supplied to M/s Honda Siel Car Ltd. It is his further argument that such parts covered by the 13 bills of entry are required to be classified under Chapter heading 8207 by virtue of Note-2 of chapter 8.

5. The Appellant imported various goods under the 13 bills of entry covered in present case. At the time of import the goods were classified under different customs tariff heading and basic customs duty was paid at the rate of 7.5% and cleared the appellant's factory. During the course of post clearance audit undertaken at the factory, it was noticed that the imported goods were used by the appellant for manufacture of certain tools/ dies as per the purchase order placed by M/s Honda Siel Car Ltd. The case of the department is that the imported goods can be identified as parts to be used for manufacture of tools/dies for M/s Honda Siel Car Ltd. Accordingly, all the goods imported are required to be classified under CTH 8207 in terms of Note-2 of chapter 82.

6. The Ld. Appellant strongly argued that such summary classification of the goods imported under 13 bills of entry cannot be done. They have submitted a table before the Adjudicating Authority as well as before us, giving the details, bill of entry-wise, of the goods imported, their classification as well as the nature of goods. They have also indicated where such goods have been used. The adjudicating authority does not seem to have taken cognizance of this detailed submission. Upon perusal of the table, we note that many goods imported were not meant for use

in the P.O of M/s Honda Siel Cars Ltd. but for captive consumption in the appellant's factory. Many other imported goods are in the nature of finished dies/ jigs and other parts thereof. It has been claimed by the appellant that none of the goods imported are in the nature of parts of dies.

7. Note-2 to chapter 82 is reproduced below:-

   "Parts of base metal of the articles of this Chapter are to be classified with the articles of which they are parts, except parts separately specified as such and tool-holders for hand tools (heading 84.66). However parts of general use as defined in Note 2 to Section XV are in all cases excluded from this Chapter.

   Heads, Blades and cutting plates for electric shavers and electric hair clippers are to be classified in heading 85.10."

   The above note specifies that parts of base metal of the articles of this chapter are to be classified with the articles with which they are part. The appellant has contended that the above Chapter note cannot be used against them to classify all imported goods in the same classification as to the goods to be supplied to M/s Honda.

8. We find considerable force in this argument advanced by the appellant. We note that a significant portion of the imported goods are meant for captive consumption and not intended for manufacture of tools/ dies for M/s Honda. Goods falling in this category include items such as complete sets of dies checking fixtures, inspection jigs and various other such items. Such items are definitely required to be classified individually taking note of the nature of the goods imported and its individual classification.

9. In respect of goods which have been imported for use in the design and manufacture of tools/ dies to be supplied to M/s Honda, we are of the view that these are required to be assessed as presented at the time of import. If such goods are identifiable as classifiable under any of the headings/ sub-headings of Customs Tariff Heading, they are to be classified therein. Only those goods which are specifically identifiable as parts of base metals which are not specifically covered separately under any of headings/ sub-headings, will be classified under 8207.

10. In view of the above discussion the impugned order is set aside and matter remanded to Adjudicating Authority for passing de novo order in the light of our observation above, after extending an opportunity of hearing to the appellant. Additional evidence may be admitted as per law.

11. In view of above appeal is allowed by way of remand.

[Order Pronounced in the open court on_ 21/09/2017_]

(Justice Dr. Satish Chandra)
President

(V. Padmanabhan)
Member (Technical)

Rekha