

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH – COURT NO. – IV

Customs Appeal No. 53219-53220 of 2018

[Arising out of a common Order-in-Original No. DLI/CUS
PREV/OPD/COMMR/07/2018 dated 09.06.2018 passed by the Principal
Commissioner of Customs (Preventive), New Delhi]

M/s. SPL Technologies Pvt. Ltd.

&

Manoj Kumar Sharma, Director of

M/s. SPL Technologies Pvt. Ltd.

...Appellants

LG-77-80

Shiv Vihar West

Vikas Nagar

New Delhi

Vs.

**Principal Commissioner of
Customs (Preventive)**

...Respondent

New Customs House

Near IGI Airport

New Delhi

APPEARANCE:

Shri Virendra Kumar, Advocate for the Appellants

Shri Rakesh Kumar, Authorised Representative for the Respondent

Coram: HON'BLE MR. C. L. MAHAR, MEMBER (TECHNICAL)
HON'BLE MRS. RACHNA GUPTA, MEMBER (JUDICIAL)

FINAL ORDER No. 50961-50962/2019

DATE OF HEARING : 29.04.2019

PRONOUNCED ON : 01.08.2019

RACHNA GUPTA

Both these Appeals arise out of a common Order-in-Original No. DLI/CUS-PREV/OPD/COMMR/07/2018 dated 09.06.2018. The relevant facts for adjudication of these Appeals are that M/s. SPL Technologies Private Limited was in the business of importing and trading of parts and components of Laser Land Leveller. The importer filled Bill of Entry No. 9298900 dated 20 May, 2015 at Air Cargo Complex, New Delhi through their CHA M/s. Signal Logistics

Pvt. Ltd. to seek clearance of goods declared as AG 401 Laser Level Transmitter with battery pack and charger etc. at a total declared assessable value of Rs. 1,06,72,548.47. Two invoices bearing No. 25613524 dated 08.05.2015 and 25613521 dated 07.05.2015 as issued by M/s. Trimble Europe B.V. Netherland were submitted by the importer. The goods were classified under CTH 84328090 and the benefit of Notification No. 12/2012-Customs dated 17 March, 2012 was availed.

2. At the time of assessment of the aforesaid Bill of Entry, Department observed that initially the goods were rightly classified by the importer under CTH 90 & 85 attracting BCD @ 7.5% & 10% whereas subsequently, the importer had wrongly classified the goods under CTH 8432 as "Agriculture Machinery" attracting BCD only @ 2.5% by virtue of the said Notification. It was also noticed by the Department that the importer sometimes imported one of the above said items and sometimes two or three of them and not the complete set of Laser Land Leveller. Accordingly, an opinion was formed that the appellant were not entitled for the exemption of the Notification. Resultantly, a show cause notice No. 7406 dated 07.06.2016 was served upon the appellant proposing the recovery of customs duty amounting to Rs. 2,37,74,326/-. Being the concession/exemption wrongly availed and thus being a short paid duty for a period w.e.f. 01.11.2011 to 31.03.2016. The amount of Rs. 50,27,509/- as was already deposited was proposed to be recovered. Interest at the appropriate rate and the proportionate penalties were also proposed to be imposed upon the importer as well as the Director of the importing Company namely Shri Manoj Kumar Sharma/ the appellant

in Customs Appeal No. 53219 of 2018. The said proposal was absolutely confirmed vide the Order under challenge. Being aggrieved, the appellant is before this Tribunal.

3. We have heard Shri Virendra Kumar, learned Advocate for the Appellants and Shri Rakesh Kumar, Authorised Representative for the Department.

4. It is submitted on behalf of the appellant that the importing Company has imported Laser Level transmitter, laser receivers, control boxes, connecting cables and rechargeable battery packs which are assembled at site by connecting through cables and to function as Laser Land Leveller classifiable under CTH 84328090. Though as per their initial understanding they had classified it under CTH 9015, however, after arriving at the correct classification they have availed the concessional rate of duty in terms of serial No. 399(A) of Notification No. 12/2012 dated 01 March, 2002. It is impressed upon that there is no mis-declaration on the part of the appellant as is alleged. The equipment imported by the appellant are in the nature of agricultural machinery for soil preparation or cultivation and thus the same are appropriately classifiable under CTH 84329090. The said classification is absolutely in terms of Rule 3(a) of General Rules for the Interpretation of Customs Tariff. It is further submitted that all the parts which have been imported need a simple cable connection at the site of land levelling for those part to function as Laser Land Leveller. Hence, the benefit of aforesaid Notification has also been rightly availed. The proposed recovery has, therefore, wrongly been confirmed. The Order under challenge is prayed to be set aside. Appeal is accordingly prayed to be allowed.

5. While rebutting these arguments it is submitted that the appellants admittedly have imported parts and components of Laser Land Leveller. As such, the article do not qualify serial No. 399(A) of the Notification No. 12 dated 17.03.2012. Thus, there is no infirmity holding these being parts and components and not the agricultural machinery as described under Serial No. 399(A). For the products rather under serial No. 399(B) of the said Notification, condition No. 5 has to be complied with i.e. a procedure as set out in the Customs (import of goods at concessional rate of duty for manufacture of excisable goods) Rules, 1996 has to be followed. Admittedly, the appellants have no manufacturing unit nor are the manufacturer hence, the condition No. 5 stands unfulfilled. Thus, there is no infirmity in the Order. Appeal is, therefore, liable to be rejected.

6. After hearing both the parties and perusing the entire record we are of the opinion as follows:

6.1 The question to adjudicate in this Appeal is as to:

6.1.1 Whether the appellant Company/ importer is entitled for the benefit of the Notification No. 12/2012 for the products imported by him being agricultural machinery as named in Serial No. 399(A) of the said Notification.

6.1.2.For the purpose, Notification is to be looked into. It reads as follows:

<u>Sl. No.</u>	<u>Chapter or heading or sub-heading of tariff item</u>	<u>Description of goods</u>	<u>Standard Rate</u>	<u>Addl. Duty Rate</u>	<u>Condition No.</u>
1	2	3	4	5	6
399.	84 or any other Chapter,	(A) The following goods, namely:- (i)Paddy transplanter;	2.5%	--	--

	85364900	(ii)Laser land leveller; (iii)Reaper-cum-binder; (iv)Sugarcane harvester; (v) Straw or fodder balers; (vi) Cotton picker; (vii) Track used for manufacture of track type combine harvesters; (viii) Sugarcane planter; (ix) Root or tuber crop harvesting machines; (x) Rotary tiller/weeder			
		(B) Parts and components required for manufacture of goods specified at (A)	2.5%	--	5

6.2 Perusal makes it clear that the exemption is available either to those machines as are mentioned under sub-clause (A) of Sl. No. 399 i.e. if the machines as mentioned therein are imported, the importer has to pay duty only at the concessional rate of 2.5% and that no condition for this availment in addition has to be followed. Whereas, if importer is importing the parts and components required for manufacture of the machines as mentioned in 399A of the said Notification, the said concession is available subject to compliance of condition No. 5 of the aforementioned Customs Rules, 1996. Apparently and admittedly, the appellant is importing the parts and the components. However, the case of appellant is that the parts and components i.e. laser level transmitter, laser receivers, control boxes connecting cables and rechargeable battery packs constitute a complete kit of the machine to be called as laser land leveller and it is only that cable connections between these parts as are required for them to be used as agricultural machine. The cabling is impressed upon to not to be a manufacturing activity. Keeping in view the emphasis of appellant, condition No. 5 of Customs (Imports of goods at concessional rate of duty for manufacture of excisable goods) Rules is perused. It reads as follows:

5. **Procedure to be followed:**

(1) *The importer who intends to avail the benefit of an exemption notification shall provide information–*

(a) *In duplicate, to the Deputy Commissioner of Customs or as the case may be, Assistant Commissioner of Customs having jurisdiction over the premises where the imported goods shall be put to use for manufacture of goods or for rendering output service, the estimated quantity and value of the goods to be imported and the part of import in respect of a particular consignment for a period not exceeding one year.*

7. Thus, for imported goods to avail benefit of the notification Sr. No. 399(B) should be such as have to undergo the process of manufacture for being called as agricultural machine at Sr. No. 399(A) of the Notification. Hence, it is foremost important to check as to whether cabling of various parts of agricultural machine so as to let them function as a complete machine amounts to manufacture or not. Section 2F of Central Excise Act, 1944 defines manufacture to include any process:

- (i) incidental or ancillary to the completion of a manufactured product.
- (ii) ---
- (iii) ---

8. The Hon'ble Supreme Court in the case of **Union of India Vs. Keshedeo Shivprasad 2002 (145) ELT A 163 (S.C.)** has held that incidental or ancillary process must be an integral and inextricable part of production or manufacture resulting in presenting a finished or manufactured product bearing a distinct name. In this case, it was held that duty on packaged tea packed from fully manufactured loose tea was not sustainable.

*"However, the definition or test more commonly used for ascertaining whether 'manufacture' for the purpose of attracting Central excise Levy has taken place or not is the one evolved by the Hon'ble Supreme Court in **U.O.I. Vs. Parle Products Ltd. – 1994 (74) E.L.T. 492 (S.C.)** and **Ujagar Prints Vs. U.O.I. – 1988 (38) ELT 535 (S.C.)**, according to which the activity or process in order to amount to "manufacture" must lead to emergence of a new commercial product, different from the one with which the process*

started. In other words, it should be an article with different name, character and use. Thus, a process which simply changes the form or size of the same article or substance would not ordinarily amount to manufacture and no excise duty would be payable unless in a particular case by Section Note or Chapter Note of the Tariff or by wording of the relevant heading or sub-heading the said process has been specified as amounting to manufacture. But an apparently similar process in another case may give rise to emergence of a commercially new and different product in which case the process would amount to manufacture. It is thus not the nature of the process or activity which determines the issue but the end result of that process or activity i.e., whether or not a new and different commercial product comes into existence thereby. [Empire Industries Ltd. Vs. U.O.I. – 1985 (20) ELT 179 (S.C.)] "Every type of variation of the goods or finishing of goods would not amount to manufacture unless it results in emergence of new commercial commodity." [State of Maharashtra Vs. Mahalaxmi Stores – 2003 (152) ELT 30 (S.C.)]"

9. High Court of Andhra Pradesh in the case of **XI Telecom Limited Vs. Superintendent** reported in **1999 (105) ELT 263** has held that putting together different duty paid items in a kit or box does not amount to manufacture. This Tribunal in the case of **Space Age Engineering Projects Pvt. Ltd. Vs. Commissioner 1999 (78) ELT 544** has held that simple collection of parts even partly self-made and partly brought out at the site by itself does not amount to manufacture of new goods in SKD/CKD/disassembled condition. Above all, it has been classified by the Hon'ble Apex Court in the case **Collector Vs. Steel Strips Ltd. 1995 (77) ELT 248 (S.C.)** that onus to establish manufacture lies on the Department.

10. Applying this entire case law to the facts of the present case, apparently and admittedly, the appellant is importing different parts in a kit form/disassembled condition for which mere cable connection is required for said kit to constitute one single machine called as laser levelling machines. Those parts need simple cabling at the site, to be levelled, to function as a complete machine of laser land leveller. The said activity of cabling is already held to not to be called as manufacture. Those observations take the impugned imported

products out of the ambit of serial No. 399(B) of Notification No. 12/2012. The allegation that these parts are not always in the term of kit are also not opined to be sustainable as is apparent from the invoices. The extra parts imported are for previously so imported machines, in addition to complete kit. There seems no reason to repeat the contention of the appellant that along with the kit the extra parts were imported for the other machines which were already in use.

11. Coming to the controversy of classifying the impugned goods initially under CTH 90153090 and subsequently, for availing the exemption, under CTH 84328090, we are of the opinion that the Rules of Interpretation shall help to adjudicate this controversy as per Rule 2(a) of General Rules of Interpretation Customs Tariff Act.

"Any reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, as presented, the incomplete or unfinished article has the essential character of the complete or finished article. It shall also be taken to include a reference to that article complete or finished (or failing to be classified as complete or finished by virtue of this Rule), presented unassembled or disassembled."

12. Note 3 and Note 4 to Section XVI of Customs Tariff Act, 1975 covering Machinery and Mechanical Appliances of Chapter 84 and Chapter 85 read as under:-

"3. Unless the context otherwise requires, composite machines consisting of two or more machines fitted together to form a whole and other machines designed for the purpose of performing two or more complementary or alternative functions are to be classified as if consisting only of that component or as being that machine which performs the principal function."

4. Where a machine (including a combination of machines) consists of individual components (whether separate or interconnected by piping, by transmission devices, by electric cables or by other devices) intended to contribute together to a clearly defined function covered by one of the headings in Chapter 84 or Chapter 85, then the whole falls to be classified in the heading appropriate to that function."

13. Applying these Rules to the products in question, the above said findings for the imported articles to be a laser land levelling machine stands corroborated. Thus, we are of the opinion that the parts and components as have been imported by the appellants since do not require any activity which can be called as manufacture, but when cabled at the site they can be used as a laser land levelling, an agricultural machine, the product qualifies to fall under serial No. 399(A) of the Notification No. 12/2012 dated 17.03.2012 to which a concessional/exceptional duty @ 2.5% is applicable. Hon'ble Supreme Court also has supported these observations in the case of **Commissioner of Central Excise Vs. BHEL 2018 (010) GSTL 3 (S.C.)** wherein it was held that although the product imported being the components of boilers are cleared as part but since those are capable to put into operation as a complete boiler without any activity of manufacture, the Rules of Interpretation and HSN notes about incomplete and unassembled machines have been rightly relied upon for classifying the goods under the respective heading for the complete boilers.

14. In this case, the machine is laser land leveller. Keeping in view all the said observations, opinions and findings we hold that Department has wrongly held the articles imported to be the articles falling under either Chapter 9015 instead of Chapter 8432 and under Serial No. 399(B) of Notification No. 12/2012 by forming a rigid opinion about the products imported to merely be the parts and components of the impugned agricultural machines. The findings are therefore hereby set aside, also for the reason that the Department has failed to discharge its onus to prove the activity of the appellant

as manufacture while putting the imported parts/components into the agricultural machine called laser land leveller.

15. Finally coming to the issue of another Appeal i.e. about the penalty upon the Director of the importer, we are of the opinion that it is very much apparent from the statement of the Director recorded on 10.07.2015 that since they were using the parts and components hence were under bonafide impression to classify them under Chapter 90153 but after the Notification and exemption thereof came to their notice, and that they are not registered with Central Excise for manufacture, that they rightly classified their product under CTH 8432. From the findings as above, we have already opined that there is no fault in the classification arrived at by the importer. Thus, the bonafide as pleaded is hereby accepted. Otherwise also, there is no positive evidence by the Department to prove any malafide intent of the appellant while claiming the impugned concession that the same has been done with an intent to evade the duty.

16. According to **Hindustan Steel Ltd. Vs. State of Orissa 1978 E.L.T. 154** penalty will not ordinarily be imposed unless the party obliged either acted deliberately in defiance of law and was guilty of conduct concamacious or dishonest or acted in conscious disregard of its obligation. The Hon'ble Court further held that even if a minimum penalty is prescribed the authority competent to impose penalty will be justified in refusing to invoke penalty when there is a technical or venial breach of the provisions of the Act or where the breach flows from the bonafide belief that the offender is not liable to act in the manner prescribed by the statute. Thus, on the same analogy the second appellant, Mr. Manoj Kumar Sharma is not liable for any penal

action and so the penal proceedings initiated in the show cause notice merits to be dropped.

17. In view of the entire above findings, we hereby set aside the impugned Order. Both the Appeals accordingly stand allowed.

[Order pronounced in the open Court on 01.08.2019]

(C. L. MAHAR)
MEMBER(TECHNICAL)

(RACHNA GUPTA)
MEMBER(JUDICIAL)

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