

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH AT HYDERABAD**

Division Bench

Court – I

Customs Appeal No. 1464 of 2012

(Arising out of OIA No.19/2012 (H-II) Cus dt.28.03.2012 passed by Commissioner of
Central Excise, Customs & Service Tax, Hyderabad-II)

Sneha Farms Pvt Ltd

D.No.2-40/30/1, Road No.5, Jubilee Gardens,
Kondapur, Hyderabad – 500 034

.....Appellant

VERSUS

**Commissioner of Customs
Hyderabad**

LB Stadium Road, Basheerbagh,
Hyderabad – 500 004

.....Respondent

and

Customs Appeal No. 2098 of 2012

(Arising out of OIA No.19/2012 (H-II) Cus dt.28.03.2012 passed by Commissioner of
Central Excise, Customs & Service Tax, Hyderabad-II)

**Pr. Commissioner of Customs
Hyderabad**

LB Stadium Road, Basheerbagh,
Hyderabad – 500 004

.....Appellant

VERSUS

Sneha Farms Pvt Ltd

D.No.2-40/30/1, Road No.5, Jubilee Gardens,
Kondapur, Hyderabad – 500 034

.....Respondent

Appearance

Shri G. Vidyadhar Reddy, Advocate for the Assessee.

Shri M.A. Surya, AR for the Revenue.

Coram:

HON'BLE MR. R. MURALIDHAR (JUDICIAL)

HON'BLE MR. A.K. JYOTISHI, MEMBER (TECHNICAL)

FINAL ORDER No. A/30281-30282/2023

Date of Hearing: 13.09.2023

Date of Decision: 13.09.2023

[Order per: R. MURALIDHAR]

The Assessee has imported machinery and parts thereof in respect of poultry Feed Milling machinery. They have presented their Bill of Entry classifying the product under CTH 8436 10 00, wherein, the Basic Customs Duty is levied at 7.5%. Along with the Bill of Entry they have presented the copy of Proforma Invoice, Bill of Lading, copy of Purchase Order and the

Packing List. After going through all the documentary evidence, it was opined that the goods are classifiable under CTH 9406 00 93 and not under CTH 8436 10 00. The Assessee sought Personal Hearing in the matter, wherein, the Adjudicating Authority, after giving them opportunity of being heard, confirmed the re-assessment of goods by classifying them under CTH 9406 00 93. On Appeal, the Commissioner (Appeals) has held that the imported goods are neither classifiable under CTH 8436 10 00 as claimed by the Assessee nor classifiable under CTH 9406 00 93 but actually they are classifiable under CTH 8479 90 90. Being aggrieved by such re-classification, both the Revenue and the Assessee are in Appeal.

2. In the present Appeals before us, as per the Revenue, the OIA is required to be set aside, wherein, the Commissioner (Appeals) has held that the goods are classifiable under CTH 8479 90 90 and the same should be classified under CTH 9406 00 93 as per the OIO passed. On the other hand, the Assessee submits that the OIA is required to be set aside and it should be held that the goods in question are classifiable under CTH 8436 10 00.

3. The learned Advocate appearing on behalf of the Assessee submits that CTH 8436 very clearly speaks of "the machineries in respect of poultry keeping and machineries for preparing animal feeding stuffs". Therefore, this specific entry has to be considered first before going to the residual entry under CTH 8479 90 90 as has been done by the Commissioner (Appeals).

4. He further submits that the Adjudicating Authority has held that the goods are falling under CTH 9406 00 93. He submits that CTH 9406 pertains to "Prefabricated Buildings". Under CTH 9406 00 93, which is the classification accepted by the Adjudicating Authority, the same pertains to "Silos for storing ensilage". The Assessee's submission is that the goods which have been imported are not 'Silos' at all. They are various parts of the milling machines used in the machinery, wherein, animal feeding items are manufactured. Further "ensilage" means "preserving the green food for livestock in an undried condition in airtight conditions, either in a storage silo (an airtight pit), or in plastic wrapping", which basically is used in European countries to preserve the green grass in intact condition for usage of the same subsequently in the winter months. He also produces copy of the Certificate issued by Professor and Head, Department of Animal Nutrition, Tamil Nadu Veterinary and Animal Sciences University, wherein, in respect of ensilage operation, it has been clarified that ensilage cannot be done in metal silos.

5. He takes us through the copies of the proforma invoice, packing list, Bill of Lading and Bill of Entry, wherein, it is clearly mentioned that the goods imported are parts of the animal feed milling machinery and he submits that the Department has not come up with any counter to say that the imported goods do not result in being part of such machinery. Therefore, he submits that there is absolutely no possibility of goods falling under CTH 9406 00 93. Further, he submits that when there is specific entry under CTH 8436 10 00 towards machinery for preparing animal feeds, the general entry under CTH 8479 90 90, as arrived at by the Commissioner (Appeals) cannot be preferred. Further, the Commissioner (Appeals) has gone beyond the issue before him and has come to this conclusion without giving any notice to the Assessee and hence, even on this count, the OIA is required to be dismissed.

6. In view of the foregoing, he prays that his Appeal may be allowed and the Appeal filed by the Department may be dismissed.

7. Learned AR appearing on behalf of the Department submits that the goods imported were part of 'Silos' and only on account of proper examination of all the goods imported, the officials have come to the conclusion that the goods are part of 'Silos' only. Therefore, the goods imported cannot be classified under CTH 8436 10 00 as claimed by the Assessee. They also rely on the website of the exporter, wherein, it is stated that the exporter is manufacturer of 'Silos'. Further, they submit that the Commissioner (Appeals) is in error in going into a different direction and holding that the imported goods are machinery only and has classified the same under CTH 8479 90 90. In view of the foregoing, he submits that the OIA is required to be set aside and the OIO passed, holding that the goods fall under CTH 9406 00 93, should be restored.

8. Heard both sides and perused the documents. Admittedly, the Assessee has placed the purchase order dated 19.01.2011 for "Poultry Feed Milling Machinery". For these items, the exporter has raised the proforma invoice on 10.08.2011. The packing list has been prepared by the overseas exporter for various items falling under these categories of the goods. All these documents were before the Customs Officials when the Bill of Entry was presented based on the Proforma Invoice issued by the exporter. After examining the goods, it is seen that the officials have directly held that the goods are found to be "silos" without giving any detailed findings as to how they have arrived at this conclusion. The Adjudicating Authority in the OIO has not given any detailed

findings as to how the conclusion can be drawn that the goods are 'silos' when the description given in the Bill of Entry, Proforma Invoice, Bill of Lading, Packing list, etc., specifically speak of feed milling machinery. We observe that there is direct entry at CTH 8436 which speaks of machineries used in poultry keeping. Further, CTH 8436 10 00 speaks of machinery for preparing animal feed stuff. The Department has not come out with any evidence that the imported goods have been used for any other purpose. So far as the Department's classification at CTH 9406 00 93 is concerned, it specifically speaks of "*silos for storing ensilage*". If this CTH is to be followed, not only the imported goods should be in the nature of "silos" but also they should be used for "storing ensilage". As can be seen from our discussion above, first of all, there is no categorical assertion that the goods in question fall under "silos". Further there is nothing to show by way of evidence that the imported goods have been used for "storing ensilage". Therefore, we do not agree with the classification arrived at by the Adjudicating Authority.

9. Coming to the classification arrived at by the Commissioner (Appeals), he has come to an independent and different classification which amounts to going beyond the brief available to him, without putting the importer to notice about this re-classification proposal. This also amounts to non-following of principles of natural justice. It is also clearly seen that when the specific classification is available at CTH 8436 10 00, he could not have classified them under CTH 8479 90 90. Therefore, the impugned OIA is dismissed on this count.

10. In view of the foregoing, we allow the Appeal filed by the Assessee with consequential relief, if any, as per law. We dismiss the Appeal filed by the Revenue.

11. Both the Appeals are disposed of thus.

(Dictated and pronounced in the Open Court)

(R. MURALIDHAR)
MEMBER (JUDICIAL)

(A.K. JYOTISHI)
MEMBER (TECHNICAL)