

**IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL
WEST ZONAL BENCH AT MUMBAI
COURT No. I**

APPEAL Nos. C/86950,86951/2016

(Arising out of Order-in-Original No. 02/2016-17/Comm-NS III/JNCH dated 9.5.2016 passed by Commissioner of Customs (Import), NS-III, JNCH, Nhava Sheva)

**Pooja Hardware Pvt. Ltd.
Divyesh M. Shah**

Appellant

Vs.

Commissioner of Customs (Nhava Sheva-III), Mumbai Respondent

Appearance:

Shri Jhamman Singh, Advocate, for appellant
Shri Roopam Kapoor, Commissioner (AR), for respondent

CORAM:

**Hon'ble Mr. S.K. Mohanty, Member (Judicial)
Hon'ble Mr. Sanjiv Srivastava, Member (Technical)**

Date of Hearing: 26.12.2018
Date of Decision: 26.12.2018

ORDER No. A/**88170-88171/2018**

Per: S.K. Mohanty

Both these appeals are directed against the impugned order dated 09.05.2016 passed by the Commissioner of Customs (NS-III), JNCH, Nhava Sheva.

2. Brief facts of the case are that M/s. Pooja Hardware Pvt. Ltd. (for short, the appellant company) is the importer of aluminium profiles and other hardware materials and imports the said goods mostly from China

and Europe, through the Nhava Sheva Port and the Air Cargo Complex, Mumbai. Based on specific intelligence that the said appellant had been importing aluminium profiles from China, classifying the same under Chapter Heading No.7604, instead of appropriately classifying under 8302 of CTA, 1975, the department investigated into the matter and recorded statements from various persons, including Shri Divyesh Madhukant Shah, Managing Director of the appellant company (the appellant No.2 herein). On the basis of investigation, the department initiated show cause proceedings against the appellant, seeking for confirmation of duty demand and for imposition of penalties. The matter was adjudicated vide the impugned order dated 9.5.2016, wherein the declared classification of aluminium profiles under CTH 76042990 was rejected and the same was reclassified under CTH 83021090 of CTA, 1975. In respect of imports made through Nhava Sheva, Mumbai, the impugned order has confirmed the differential duty demand of Rs.1,26,62,564/- along with interest and equal amount of penalty was imposed on the appellant company. Besides, penalty of Rs.12,00,000/- was imposed on the appellant No.2 under Section 112(a) of the Customs Act, 1962. In respect of the imports made through Air Cargo Complex, Sahar, Mumbai, the impugned order has confirmed differential duty demand

of Rs.2,07,047/- along with interest and also imposed equal amount of penalty on the appellant company. The said order also imposed penalty of Rs.20,000/- on the appellant No.2.

3. The appellants have assailed the impugned order mainly on the ground that the aluminium profiles imported by them should merit classification under CTH 76042990 and the reclassification made by the department under CTH 83021090 of CTA, 1975 is not proper and justified. Thus, it has been contended by the appellants that the change in classification of the subject goods and resultant confirmation of the adjudged demands by the adjudicating authority cannot be sustained.

4. Heard both sides and perused the records.

5. The show cause notice dated 30.9.2014, in paragraph 3, has referred to the statement recorded from the appellant No.2, who is the Managing Director of the appellant company. The said statement was recorded under Section 108 of the Customs Act, 1962. Pursuant to summon, the appellant No.2 had stated that the aluminium profiles imported are finished item and sold as such to the customers and that no further processing is done on the imported goods and that the

appellant company dispatched those goods directly, in the condition as is being imported. The said statement furnished by the appellant No.2 clearly shows that the disputed goods were intended for specific use, i.e. for furniture fittings. Thus, the imported goods in question, should appropriately be classifiable under CTH 830219090, instead of CTH 76042990, as claimed by the appellant inasmuch as the former chapter only deals with the fittings or accessory of furniture, which the appellant had imported in this case. We find that the learned adjudicating authority by referring to the signed catalogue of "Aluminium Profiles" furnished by the appellant, has recorded specific findings in para 12 at pages 9, 10 and 11 in the impugned order to support the stand of classification of subject goods under CTH 830219090. The appellants have not adduced any material evidence to counter such claim by Revenue. Further, we find that the voluntary statement recorded under summon was never retracted by the appellant at any point of time before adjudication of the matter. Thus, it cannot be said that the product in question should be classifiable under CTH 76042990, instead of CTH 83021090 of CTA, 1975. Hence, we are of the considered view that the adjudged demands confirmed on the appellant company is sustainable under the law.

6. Initially, classification of the disputed goods was highly contentious and there were different views within the department, whether to classify the same under Chapter Heading 7604 or 8302 of the CTA, 1975. Thus, under such circumstances, the provisions of Section 112(a) of the Act cannot be invoked for imposition of penalty on the appellant No.2, who is the Managing Director of the appellant company. Therefore, we are of the view that imposition of penalties on appellant No.2 will not stand for judicial scrutiny.

7. In view of the foregoing discussions and analysis, the impugned order, to the extent it confirmed the duty demand along with interest and imposed penalty on the appellant company, sustains and the appeal to such extent by the appellant company is dismissed. However, the impugned order, so far as it imposed penalty on appellant No.2, is set aside and the appeal is allowed in his favour.

8. The appeals are disposed of in above terms.

(Pronounced in court)

(Sanjiv Srivastava)
Member (Technical)

(S.K. Mohanty)
Member (Judicial)