

**IN THE CUSTOMS, EXCISE AND SERVICE TAX
APPELLATE TRIBUNAL
WEST ZONAL BENCH AT MUMBAI**

APPEAL NO: C/16/2011

[Arising out of Order-in-Appeal No: 292 (GR.VA)/2010 (JNCH)/
IMP-273 dated 13th October 2010 passed by the Commissioner of
Customs (Appeals), Mumbai – II.]

For approval and signature:

**Hon'ble Shri C J Mathew, Member (Technical)
Hon'ble Shri Ajay Sharma, Member (Judicial)**

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1. Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982? : Yes
 2. Whether it should be released under Rule 27 of CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not? : Yes
 3. Whether Their Lordships wish to see the fair copy of the Order? : Seen
 4. Whether Order is to be circulated to the Departmental authorities? : Yes
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Sharp India Ltd

... Appellant

versus

Commissioner of Customs (Imports)
Nhava Sheva

...Respondent

Appearance:

Shri Sagar Kulkarni, Advocate for appellant

Ms Trupti Chauhan, Assistant Commissioner (AR) for respondent

CORAM:

Hon'ble Shri C J Mathew, Member (Technical)
Hon'ble Shri Ajay Sharma, Member (Judicial)

Date of hearing: 20/12/2018
Date of decision: 20/12/2018

ORDER NO: A/88271 / 2018

Per: C J Mathew

Order-in-appeal no. 292 (GR V A)/2010 (JNCH)/IMP-273 dated 13th October 2010 of Commissioner of Customs (Appeals), Mumbai-II now impugned before us by M/s Sharp India Ltd pertains to finalisation of 18 bills of entry that had been assessed provisionally between April 2008 and September 2008. The appellant had sought clearance of 'refrigerator' classifying the goods under heading no. 84182100 of the First Schedule to the Customs Tariff Act, 1975 entitled to claim benefit of notification no. 85/2004-Cus dated 31st August 2004. The original authority, on finalization of the assessment, classified the goods under heading no. 84181090 of First Schedule to the Customs Tariff Act, 1975 thus denying eligibility for the concession and ordering recovery of differential duty which was deposited by the appellant.

2. The primary claim of the appellant is that the declared classification was the same as the code in the 'certificate of origin'

issued by the competent authority in the country of export and that it is not within the competence of the assessing officer to alter such classification.

3. We have heard Learned Counsel for the appellant and Learned Authorised Representative.

4. The imported goods, though claimed to be 'refrigerators', were found to be 'combined refrigerator freezer' and, hence, neither covered by the claimed heading nor eligible for the claimed exemption. It is admitted by the appellant that the declaration was made on the basis of the code in 'certificate of origin'; section 12 of Customs Act, 1962 requires that the rate of duty be determined in accordance with Customs Tariff Act, 1975 and a code in a certificate cannot be the sole basis for such determination. No other detriment has been visited upon the appellant. The appellant has discharged the duty liability, as revised in the finalised assessment, and has not mounted a serious challenge to the findings of the lower authorities.

5. In the circumstances, we find no reason to entertain the appeal which is dismissed.

(Pronounced in Court)

(Ajay Sharma)
Member (Judicial)

(C J Mathew)
Member (Technical)