IN THE CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT MUMBAI

Appeal No. C/259 to 261/2012

(Arising out Order-in-Appeal No. 02 to 04 (GR.VA)/2012 (JNCH)/IMP-01 to 03 dated 12.01.2012 passed by the Commissioner of Customs (Appeals), Sheva Mumbai-II)

For approval and signature:
Hon'ble Mr C J Mathew, Member (Technical)
Hon'ble Ajay Sharma, Member (Judicial)

1.	Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	No
2.	Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	No
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

M/s. Godrej & Boyce Mfg Co Ltd — Appellant

Vs.

Commissioner of Customs (Import), Nhava Sheva — Respondent

Appearance:

Shri A. Hidayatullah, Sr. Advocate with Shri Makrand Joshi, Advocate for the appellant
Shri R.K. Dwivedi, Addl.Comm (AR) for the respondent

CORAM:
Hon'ble Mr C J Mathew, Member (Technical)
Hon'ble Ajay Sharma, Member (Judicial)

Date of hearing : 15-02-2019
Date of decision : 15-02-2019

O R D E R No: A/85299-85301/2019

Per: C J Mathew

These three appeal lie against orders-in-appeal nos. 02 to 04 (GR.VA)/2012 (JNCH)/IMP-01 to 03 dated 12th January 2012 of Commissioner of Customs (Appeals), Sheva Mumbai-II and the dispute in these pertains to goods that were imported against bills of entry no. 846452/17.09.2010, 688697/29.01.2011 and 766755/29.07.2010 that were declared to be 'L2 corded 20 scrubber' and classified under heading no. 8479 8999 of First Schedule to the Customs Tariff Act, 1975. The original authority ordered the goods to be re-classified under heading no. 8508 6000 of the First Schedule to the Customs Tariff Act, 1975.

2. The two rival descriptions, as can be perceived from the Tariff, are that of the residual entry under 'other machines and mechanical appliances having individual functions, not specified or included elsewhere in this chapter' and that under 'other vacuum cleaner' (not enabled with self-contained electric motor). It is the contention of Learned Senior Counsel appearing for the appellant that the imported goods are designed for use on floors, boasting of numerous 'footfalls', and that these operate with a 'vacuum motor' which is amply evident

in the literature pertaining to the goods. According to him, the classification sought by lower authorities, *viz.*, ‘vacuum cleaner’ would not accurately describe the product which performs the task of cleaning but with multiple actions and the description that has been sought to be fastened excluded such vacuum cleaner as are powered by electrical motors. The classification sought by Revenue, he argues, being incorrect and there being no other alternative classification proposed, that which has been described in the bill of entry should, by default, be accepted. It is his further contention all consignments imported thereafter had been assessed to duty at 7.5% by acceptance of the declared classification instead of 10% confirmed in the impugned goods.

3. Learned Authorised Representative pointed out that the impugned order has given a clear finding that the machine, being multi-functional, was to be deployed for scrubbing and to vacuum out the scrubbed dirt taking it outside the description claimed by appellant which is distinguished by reference to individual function. He also pointed out that as long as the goods meet the description as ‘vacuum cleaner,’ there is no requirement to consider any other classification.

4. It is clear that the goods, operating as a vacuum cleaner, is equipped with electric motor. It, therefore, cannot be fitted within the description sought by the customs authorities. It is also clear that

subsequent consignments have been assessed without any objection to the classification declared by the appellant. These were not altered then or challenged subsequently.

5. In these circumstances, we find no reason to sustain the impugned orders which are set aside. Appeals are allowed.

(Operative part pronounced in Court)

(Ajay Sharma) **Member (Judicial)**	**(C J Mathew)** **Member (Technical)**

//SR1502180222022502