CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
<u>MUMBAI</u>

WEST ZONAL BENCH, MUMBAI

Customs Appeal No. 351 of 2010

(Arising out of Order-in-Appeal No. 11/Mumbai-III/2010 dated 22.01.2010 passed by the Commissioner of Customs (Appeals), Mumbai-III.)

M/s Essor Oil Ltd. ....Appellant
P. O. Box No. 24,
P.O. Khambhalia Dist.,
Jamnagar, Gujarat – 361 304

VERSUS

Commissioner of Customs ....Respondent
(Export), Mumbai
New Custom House, Ballard Estate,
Mumbai – 400 001

<u>APPERANCE:</u>

Shri Karan Sawravgi, Chartered Accountant for the Appellant

Shri K.M. D'souza, Assistant Commissioner (AR) with
Ms. Trupti Chauhan, Assistant Commissioner, Authorised Representative for the Respondent

CORAM:

HON'BLE MR. C J MATHEW, MEMBER (TECHNICAL)
HON'BLE DR. SUVENDU KUMAR PATI, MEMBER (JUDICIAL)

ORDER NO. A/85909/2019

Date of Hearing: 22.01.2019
Date of Decision: 17.05.2019

PER: DR. SUVENDU KUMAR PATI

Rejection of appeal by the Commissioner of Customs (Appeals), Mumbai-III of the appellant upholding the order of the confiscation of shafts as restricted item along with option for redemption with reduced penalty is assailed in this appeal.

2. Brief facts of the appellant's case, as reveals from the appeal memo, is that appellant had earlier imported centrifugal pump vide Bill of Entry No. F-35 dated 15.06.2006, classified under Customs Tariff Heading 84.13. It had imported from M/s CRYOSTAT S.A.S., France, parts of the pump including shafts vide Bills of Entry No. 837708 dated 27.12.2008 and classified it under Chapter Tariff Heading No. 84831099 under authority of letter of credit dated 29.02.2008 having validity for shipment upto dated 27.01.2009. Customs Authorities classified the same under Tariff Heading No. 84831099 by treating the same as transmission shafts and order for its confiscation as goods were falling under Heading CTH 84831099 which were restricted goods as per DGFT Notification No. 63/(RE-2008)/2004-2009 dated 21.11.2008 for which specific licence was required and confiscation order under Section 111(d) of Customs Act along with penal action under Section 112 of the Customs Act, 1962 was passed which was appealed before the Commissioner (Appeals) that yielded no fruitful result excepting reduction of fine amount from Rs. 20,000/- to Rs. 10,000/-. Hence the appeal.

3. In the memo of appeal and during the course of hearing of appeal, learned Counsel for the appellant Shri Karan Sawravgi submitted that such classification by the Customs Authorities was wrong as those were parts of centrifugal pumps classifiable under Customs Tariff Heading 84.13. He had drawn our attention to only one of the meanings of the word "shaft" as given in the Oxford Advanced Learner's dictionary basing on which the Commissioner had arrived at his finding and transitional provisions of para 1.5 of the Foreign Trade Policy was completely disregarded by him. He further pointed out that import of shafts was restricted only for the period from 21.11.2008 to 07.01.2009 as vide Notification No. 76(RE-2008)/2004-2009 and the same restriction was withdrawn. Learned Counsel for the appellant further urged interference by the Tribunal as without any material or record or any observation in the examination report dated 05.02.2009, which had been relied upon by the Commissioner (Appeals), he hold a finding that imported goods in question were not parts of centrifugal pumps but are shafts meriting classification under CTH 84831099 and even accepting the same to be such, appellant was in possession of letter of credit having validity up to 27.01.2009 for shipment, for which such confiscation order was uncalled for.

4. In response to such submissions, learned Authorised Representative for the respondent-department Shri K.M. D'souza, Assistant Commissioner with Ms. Trupti Chauhan, Assistant Commissioner pointed out that a clear finding is given by the

Learned Commissioner (Appeals) with reference to dictionary meaning of shafts and since "transmission shaft" was restricted for import at the relevant time and the shipment was done after commencement of such restriction period, no irregularity or illegality can be attributed to the order of the Commissioner (Appeals) that would require interference by the Tribunal.

5. We have heard the submissions made by both the sides and gone through the case record. It is a settled principle that goods are to be assessed in the way, it is presented unless the contrary is established. Invoice copy annexed to the appeal indicates 4 varieties of shafts being imported from M/s CRYOSTAT S.A.S., France and it is not understood as to why all those 4 categories of shafts which appellant claims to have been parts of its centrifugal pumps were all classified as transmission shafts, thus attracting policy restriction and why provision contained in para 1.5 of the Foreign Trade Policy cannot be pressed into services on the ground that shipment was done after the restriction was imposed. It appears that Commissioner (Appeals) had lost sight of provision content in para 1.5 of the Foreign Trade Policy which is reproduced below:-

> *"In case an export or import that is permitted freely under FTP is subsequently subjected to any restriction or regulation, such export or import will ordinarily be permitted not withstanding such restriction or regulation, unless otherwise stipulated, provided that shipment of export or import is made within original validity with respect to available balance and time period of an* ***irrevocable commercial letter of credit*** *established before date of imposition of such restriction. However, a*

time limit for operationalisting such LCs may be prescribed."

6. From the plain reading of such provision contained in FTP, it can very well be said that if shipment is made within original validity of irrevocable commercial letter of credit established before the date of imposition of such restriction of import/export, then such export or import is permitted under FTP upto the time limit prescribed in such letter of credit. Therefore, we are of the considered view that both in classification and application of restriction for such imports during the validity of letter of credit, the order of the Commissioner (Appeals) is unsustainable and the same is liable to be set aside. Hence the order.

ORDER

7. The appeal is allowed with consequential relief and the order passed by the Commissioner of Customs (Appeals), Mumbai-III vide Order-in-Appeal No. 11/Mumbai-III/2010 dated 22.01.2010 is hereby set aside.

(Order pronounced in the court on 17.05.2019)

(Dr. Suvendu Kumar Pati)
Member (Judicial)

(C J Mathew)
Member (Technical)

Prasad