

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI**

Custom Appeal No. 85554 of 2019

(Arising out of Order-in-Appeal No. MUM-CUS-RN-IMP-159 &160/2018-19 dated 27.11.2018 passed by the Commissioner of Customs (Appeals) NCH, Mumbai-I)

M/s. Scania Commercial Vehicles India P Ltd. Appellant

803, Dev Corpora, Pokhran Road No.1,
Near Cadbury Junction, Thane (W),
Mumbai – 400 601.

VERSUS

Commissioner of Customs (Import)- Mumbai Respondent

2nd Floor, New Custom House,
Ballard Estate, Mumbai – 400 001.

APPEARANCE:

Shri Laxmi Menon, Advocate for the Appellant

Shri Bhushan Kamble, Authorised Representative for the Respondent

CORAM:

HON'BLE MR. AJAY SHARMA, MEMBER (JUDICIAL)

FINAL ORDER NO. A/85596/2022

Date of Hearing: 16.03.2022

Date of Decision: 24.06.2022

PER: AJAY SHARMA

This appeal has been filed impugning the order dated 27.11.2018 passed by the Commissioner of Customs (Appeals) NCH, Mumbai-I

2. The instant appeal has been filed by the appellant challenging the imposition of redemption fine of Rs.15 lakhs u/s.125, The Customs Act, 1962 and penalty of Rs.5 lakhs u/s. 112(a) ibid for misclassification of goods imported by them.

3. The relevant facts giving rise to the filing of the instant Appeal are as follows. An Amphibious bus was imported by M/s.Scania Commercial Vehicles India Pvt. Ltd. i.e. the Appellant herein. For that import Bill of Entry No.8503313 dated 10.2.2017 was filed for the

clearance of (i) one Scania 310 Chassis and (ii) one complete amphibian bus body mounted on chassis. The chassis has been shown as imported from M/s. Scania CV.AB, Sweden and Amphibian bus body has been shown as imported from M/s. Advances Ambhigious Design, USA. The total invoice value was shown as Rs.2,99,96,047/- and assessable values as Rs.3,02,96,007. The appellant claimed the classification of the amphibious bus under CTH 89019000 which pertains as per chapter Heading for "Ships, boats and floating structures" with rate of duty @10%BCD+Nil CVD +Nil Addl.CVD+2% E.Cess+1% H.S. Cess. On 16.2.2017 the Appellant paid custom duty of Rs.44,57,149/-. Since the revenue had some doubt about the classification therefore the matter was taken up for investigation by the Central Intelligence Unit (CIU). During the investigation it came to notice that the IGM No. 2156599 dt. 25.1.2017 for the goods covered under the aforesaid B/E showed number of package as one unit whereas in the B/E the said one unit has been mis-declared and splitted into two items. Since there was attempt to clear amphibious bus by mis-declaring therefore the same was seized under panchnama dated 20.2.2017. Thereafter various statements were recorded. The Revenue was of the view that Amphibious bus falls under CTH 87032410 and attract rate of duty @ 100%BCD+ 1% CCD+ 4% Infra cess+ 30% CVD(+Rs.20,000/-per unit)+2% Ed.Cess + 1% H.Ed.Cess+4%Addl.duty (Import). Accordingly duty was re-assessed under CTH 87032410 taking the assessable value of Rs.3,02,96,007/. As the appellant had already paid the duty of Rs.45,57,149/- therefore the differential duty works out to Rs.5,21,67,038/- with applicable rate of interest. Admittedly the differential duty alongwith interest had been paid by the appellant. Initially the appellant requested for

waiving of the show cause notice but later on insisted upon the show cause notice and accordingly on 16.6.2017 a show cause notice u/s. 124 of the Customs Act, 1962 was issued as to why:-

- "a) The goods described on the B/E no. 8503313 dated 10.02.2017, as one Scania 310 chassis no. YS2P4XN002116763 ENG. NO. DC09 115 L01 6902560 and one complete amphibian bus body mounted on chassis, having assessable value of Rs. 3,02,96,007/-, should not be classified as one Amphibious Bus under CTH 87032410, instead of claimed CTH 89019000 of the Customs Tariff Act, 1975 and why the said B/E should not be re-assessed under CTH 87032410 by levying applicable duty accordingly along with interest under section 17(4) of the Customs Act, 1962;
- b) The differential duty of Rs. 5,21,67,038/- and interest of Rs. 21,00,924/- already deposited by them during the investigation should not be adjusted on such re-assessment of the B/E no. 8503313 dated 10.02.2017;
- c) The goods described on the B/E no. 8503313 dated 10.02.2017 as one complete amphibian bus body mounted on chassis, having assessable value of Rs. 3,02,96,007/-, should not be confiscated as one amphibious bus under Section 111(m) of the Customs Act, 1962;
- d) Penalty should not be imposed on the importer under section 112 (a) and/or 114AA of the Customs Act, 1962;
- e) Penalty should not be imposed on CHA, M/s Hindustan Cargo Ltd (11/1139) under section 112 (a) and /or 114AA of the Customs Act, 1962."

4. The Adjudicating Authority vide Order-in-Original dated 5.7.2017 re-classified the Amphibious bus imported by the appellant under CTH 8703 and confirmed the confiscation under section 111(m) of Customs Act, 1962. The Adjudicating Authority also imposed redemption fine of Rs.15 lakhs u/s. 125(1) ibid alongwith penalty of Rs.10 lakhs u/s. 112(a) ibid on the appellant. Aggrieved, the appellant

filed appeal before the Commissioner of Customs (Appeals), NCH, Mumbai-1 and the learned Commissioner vide impugned order dated 27.11.2018 disposed of the said appeal and modified the Adjudicating Order only to the extent of reducing the penalty on the appellant u/s. 112(a) to Rs.5 lakhs. Rest of the Adjudicating Order was upheld.

5. Learned counsel submits that the appellant was granted tender by Jawaharlal Nehru Port Trust (JNPT) for supply of an amphibious bus, which is capable of travelling on land as well as in water and that they imported the bus to supply the same to JNPT. Clause 3(xi) of the letter of acceptance dated 3.6.2015 issued by JNPT pertains to payment of customs duty which states that all customs duty paid by the appellant pertaining to the imported bus will be reimbursed by JNPT and since whatever duty they have paid is to be reimbursed by JNPT, therefore there was no intention to evade duty. She further submits that the appellant merely goes by the advice of their consultant chartered accountant who advised them that amphibious bus shall be covered either under CTH 89019000 or 89069000. The opinion from the consultant was sought on 13.1.2017 whereas the B/E was filed on 10.2.2017. According to her the complete description of the item under import was described in the B/E and although two items are mentioned therein but the appellant had classified the goods under import under one item only namely 8901 and customs duty was fully discharged. According to learned counsel, an incorrect classification does not amount to mis-declaration warranting confiscation of goods u/s. 111(m) *ibid*. In support of her submission learned counsel placed reliance on the decision of the Hon'ble Supreme Court in the matter of *Northern Plastics Ltd. vs. Collector of Customs; 1998 (101) ELT 549 (SC)*. She further submits that the

penalty u/s. 112 of the Act is linked to confiscation u/s.111 and since the goods are not liable for confiscation therefore no penalty is leviable u/s. 112(a) *ibid*. Per contra learned Authorised Representative appearing on behalf of Revenue submits that the appellant resorted to mis-declaration of goods by malafidely bifurcating the description in two parts and claiming wrong classification and thus rendered the goods liable for confiscation u/s.111(m). He further submits that only one item declared in the IGM whereas the same one item has been bifurcated in two items in the B/E. He further submits that the appellant was aware of the correct classification as in the recent past from the date of the instant import they had imported the goods with the same *modus operandi* which were investigated into by DRI and the appropriate classification was held to be under Chapter 87. He also submits that for the said mis-classification JNPT has also issued show cause notice to the appellant on 06.05.2017 according to which the appellant was aware about the classification. He further submits that based on the earlier mis-classification by the appellant which was investigated by DRI, if the appellant had any doubt regarding classification, they could have inquired with the customs authorities or could have obtained the first check appraisalment which they failed to do. He further submits that the decision of the Hon'ble Supreme Court in the matter of *M/s.Northern Plastic (supra)* has been distinguished by the learned Commissioner in the impugned order. He accordingly prayed for dismissal of appeal filed by the appellant.

6. I have heard rival submissions and perused the case records including the case laws and the written submissions filed by the respective sides. The appellant herein imported one amphibious bus

body manufactured and supplied by M/s. Advanced Amphibious Design Inc. Honolulu mounted on Scania 310 chassis supplied by M/s. Scania CV AB Sweden claiming classification of goods under CTH 8901. The appellant had claimed the CTH 89019000 which pertains as per chapter Heading reads as "Ships, boats and floating structures" and further the explanatory notes to the said chapter heading clearly excludes Amphibious motor vehicles designed to travel over both land and certain tracks of water (swamps etc.) are classifiable as motor vehicles in Chapter 87. There is no dispute that mis-classification was there as the appellant have not challenged the re-classification by the revenue rather they have paid the differential duty alongwith interest before the issuance of the show cause notice and the only issue raised by the appellant is about redemption fine and penalty. The issue to be decided is whether the appellant had mis-declared/ mis-classified the goods so as to make them liable for confiscation u/s 111(m) and consequently penalty there of and whether the said mis-classification was with some malafide intention or not? The vehicle which in issue is amphibious bus which is a specialized motor vehicle which runs on road as well as on water. The heading 8703 covers " Motor cars and other motor vehicle principally designed for the transport of persons (other than those of heading 8702), including station wagons and racing cars". The HSN Note further mention that the heading 8703 covers vehicles of various type (including Amphibious Motor Vehicle) designed for the transport of the persons. The vehicles of this heading may have any type of motor (internal combustion piston engine, electric motor, gas turbine etc.)". Being specifically mentioned in HSN Explanatory Notes, the imported goods are classifiable under CTH 8703. It is further supported by the fact that heading 8703 also

includes specialized transport vehicle such as ambulance, prison van and hears. The imported goods herein is Amphibious bus which is also a specialized motor vehicle which runs on road as well as on water. Thus, being a specialized transport vehicle, it is appropriately classifiable under CTH 87 Section XVII of Custom Tariff Act, which covers vehicles, aircraft, vessels and associated transport equipment. As per para 4(b) of Section XVII, amphibious motor vehicles are classified under the appropriate heading of Chapter 8703. However in bill of entry they claimed the classification of the goods under CTH 8901. As per the appellant, they merely goes by the advice of their consultant chartered accountant who vide his opinion dated 13.1.2017 advised them that amphibious bus shall be covered either under CTH 89019000 or 89069000. But record of the case reveals that on earlier occasion also in the year 2015 there was mis-classification of chassis with cabs imported by the Appellant, which was investigated by DRI, Mumbai and adjudicated on 2.2.2017 in which differential duty of Rs.26,79,98,975/- alongwith interest & penalty was held to be recoverable from the appellant. Again similar modus operandi has been adopted by the appellant by bifurcating the amphibious bus into two parts viz. chasis and amphibious bus body and claiming a wrong CTH in order to evade custom duty. Undoubtedly the appellant was well aware about the correct classification of the imported goods and I am not in agreement with the submission made by learned counsel that the appellant goes by the advice of their consultant Chartered Accountant and filed the Bill of entry as per the advice received. For this mis-classification, JNPT had also issued show cause notice to the appellant on 6.5.2017 as according to them the appellant was aware about the correct classification. In the said show cause notice JNPT

also observed that the appellant had intentionally mis-represented the estimated customs duty payable in order to manipulate the bidding process to receive the tender from JNPT for supply of Amphibious bus and called for the explanation why the contract should not be terminated.

7. The law laid down by the Hon'ble Supreme Court in the matter of Northern Plastic Ltd. (supra) which has been relied upon by learned Counsel, will not be of any help for the appellant as the said judgment was passed since there was bonafide belief as therein the appellant's earlier consignment bearing the same description, same classification, identical claim for exemption was cleared by the Delhi Customs House for the previous year, whereas in the instant appeal looking at their earlier import which was under adjudication at the time of the instant import, if the appellant had any doubt regarding classification then instead of taking shield of opinion from their chartered account they could have requested for first check examination and could have taken advice from the customs about the correct classification of the imported goods. There was no other reason for the appellant to mis-classify the amphibious bus in the Bill of entry but for the malafide intention to evade the duty. They did not take any lesson from their earlier import with the same modus operandi which was investigated by DRI, in which differential duty was demanded from them. In the documents of import viz. IGM, Bill of Lading, the goods imported is shown as only one amphibious bus which is a specialised motor vehicle which runs on road as well as on water.

8. So many evidences are there including the show cause notice issued by JNPT which establishes that the appellant was aware of the classification under CTH 8704 but despite that the appellant claimed

classification of imported goods under CTH 8901 which shows that the mis-classification was deliberate with an intention to evade applicable Custom duty. Admittedly the appellant had paid differential duty alongwith interest before the issuance of show cause notice but that by itself cannot absolve the appellant.

9. The discussion made herein above leads to an inevitable conclusion that the appellant had mis-classified the goods with an intention to evade payment of appropriate Custom duty. The appellant resorted to mis-classification / mis-declaration of description of goods showing number of packages as two instead of manifested number of packages as one and since the goods have been deliberately mis-declared/mis-classified in the Bill of Entry they are liable for confiscation under Section 111(m) of the Customs Act, 1962 and appellants are therefore rightly held liable for penalty under Section 112(a) *ibid*. The appeal is accordingly dismissed.

(Pronounced in open Court on 24.06.2022)

(Ajay Sharma)
Member (Judicial)

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