CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

WEST ZONAL BENCH

Customs Appeal No. 87105 of 2016

(Arising out of Order-in-Original No. 12/2016-17/CC/NS-I/JNCH dated 20.05.2016 passed by the Commissioner of Customs (NS-I), JNCH, Nhava Sheva)

M/s. Andreas Stihl Pvt. Ltd. **…..Appellant**
Gut No.53/1, Near Vijay Logistics,
Behind Lear Co., Kuruli Village,
Taluka Khed, Pune

Vs.

Commissioner of Customs, NS-I, Mumbai **…..Respondent**
JNCH, Nhava Sheva, Raigad

APPEARANCE:

Shri T. Viswanathan, Advocate with Shri Akhilesh Kangzia, Advocate for the appellant
Shri Ram Kumar, AC (AR) for the respondent

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

FINAL ORDER No: A/85427/2023

DATE OF HEARING : 13-02-2023
DATE OF DECISION : 13-02-2023

PER: C J MATHEW

M/s Andreas Stihl Pvt Ltd is before us challenging the classification by Commissioner of Customs (Import), JNCH, Nhava Sheva of 'earth augers', 'hedge trimmer', 'pole pruner', 'chain reel' 'BR series blower' 'cut off saw' 'brush cutter/power weeding machine', imported by them between 25th February 2009 and 16th July 2013 against several bills of entry, adopted by Commissioner of Customs (Import), JNCH, Nhava Sheva to fasten differential duty liability of ₹2,36,14,854/- under section 28 of Customs Act, 1962 in addition to confiscation of the goods under section 111(m) of Customs Act, 1962 and imposition of penalty under section 114A of Customs Act, 1962. The assessment of two other consignments, during pendency of goods imported against bills of entry no. 2684795/11.07.2013 and no. 2881483/01.08.2013 for clearance, and which prompted re-assessment of past imports in consequence of re-classification of impugned goods from heading 8432/8433 of First Schedule to Customs Tariff Act, 1975 to heading 8467 of First Schedule to Customs Tariff Act, 1975, was finalized under section 18 of Customs Act, 1962 to demand duty of ₹ 7,59,869/- under section 18 of Customs Act, 1962 and goods confiscated under section 111 of Customs Act, 1962 but permitted to be redeemed on payment of fine of ₹ 7,00,000 besides imposition of penalty of like amount under section 114A of Customs Act, 1962 by the same order[1]

2. It is submitted by Learned Counsel for the appellant that the goods had been correctly declared as classifiable under heading 8432/8433 of First Schedule of Customs Tariff Act, 1975 intended for 'agricultural machinery' as these were to be deployed for such purposes while that adopted by customs authorities was intended for

[1] [order-in-original no. 12/2016-17/CC/NS-I/JNCH dated 20th May 2016]

specialized usage but of general nature and enumerate tools for work by hand. Reliance was placed by him on the decision of the Hon'ble Supreme Court in *Collector of Central Excise, Bombay v. KWH Heliplastics Ltd [1998 (97) ELT 385 (SC)]* and in *Collector of Customs v. Kumudam Publications [1997 (96) ELT 226 (SC)]* holding that 'end use' is a determining factor in classification to the extent that the description specifies so. It was also submitted that re-determination of classification undertaken by customs authorities in other consignments of similar description imported during the period of dispute, and also adopted for determining the rate of duty determined in the impugned order, precluded resort to empowerment in section 28(4) of Customs Act, 1962 for revoking the extended period. Furthermore, Learned Counsel submitted that reliance placed upon the statement of an employee of appellant for determining classification as sufficing to invoke the extended period is not consistent with the decision of the Hon'ble Supreme Court in *Northern Plastics Ltd. v. Collector of Customs & Central Excise [1998 (101) ELT 549 (SC)]*. It was also contended that the adoption of a particular classification, even if inappropriate, in a declaration does not, of itself, lend countenance for invoking the provisions of section 24 of Customs Act, 1962 for which reliance was placed upon the Manual[2] of Central Board of Indirect Taxes & Customs (CBIC). Furthermore, the finding of declared classification being inconsistent

[2][2018 edition]

with that in invoice issued by the foreign supplier as evidence of deliberate misdeclaration was assailed for placing undue premium on irrelevant detail in a document prescribed solely as evincing transaction value. Reliance was placed on the decision of the Tribunal in *M/s ST Enterprises & Anr v. Commissioner of Customs (Chennai VII) [2021 (3) TMI 27 – CESTAT CHENNAI]* and in *Commissioner of Customs, New Delhi v. Maruti Udyog Ltd [2002 (141) ELT 392 (Tri-Del.)]*.

3. It was also pointed out by Learned Counsel that usage of impugned goods for agricultural purposes is unquestionably clear in the documents relating to grant of subsidy by Government of Karnataka and Government of Orissa.

4. According to Learned Authorised Representative, the classification adopted in the impugned order is appropriate to description of impugned goods for which he placed reliance on the *Explanatory Notes* to the HSN relating to heading 8467 of First Schedule to Customs Tariff Act, 1975. According to him, the codes in the price list for domestic sales of the impugned goods issued by the appellant that reflect the ones in the rate notification for tax under Central Goods and Service Tax (CGST) Act, 2017 also conforms to the adopted classification. He pointed out that reliance placed on the statement of the authorised person of appellant is not contrary to law.

5. The appellant has also produced copies of the examination report of goods in consignments covered by 31 bills of entry impugned in the show-cause notice to demonstrate that the goods had been cleared in accordance with section 47 of Customs Act, 1962 and, thereby, restraining the resort to the extended period.

6. We find that the primary submission of the appellant for setting aside of the impugned order is that impugned goods had been deployed for agricultural purpose for which subsidy was granted by the Government of Karnataka and Government of Orissa. It was pointed out that the documentary evidence of such can offer no conclusion but that the declared classification is undeniable. However, on perusal of the said documents, we find these to relate to a time subsequent to the period of dispute. Learned Counsel for appellant submitted that they are in possession of the documents relating to the impugned goods which they would be able to produce for our verification.

7. As the original authority was not privy to the documents, and had arrived at his conclusion without the benefit of such submission, it would not be appropriate for us to decide upon the classification without ascertainment of correctness of conclusion that the adjudicating authority may well have done in changed circumstances. The inadequacy in the impugned order to that extent should not be allowed to survive. We, therefore, set aside the impugned order and

remand the dispute back to the adjudicating authority leaving all legal issues open with liberty granted to the appellant to make available facts and documents in support of their legal proposition that usage will determine appropriate rate of duty.

8. Accordingly, appeal is allowed by way of remand.

(Operative part pronounced in Court)

(Ajay Sharma)
Member (Judicial)

(C J Mathew)
Member (Technical)

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