CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI
REGIONAL BENCH
COURT No. 1

Customs Miscellaneous Application (EH) No. 85339 of 2022
(On behalf of Appellant)
Customs Appeal No. 85872 of 2022

(Arising out of Order-in-Appeal No. MUM-CUSTM-AMP-1552-2021-22 dated 24.01.2022 passed by the Commissioner of Customs (Appeals), Mumbai-III)

M/s. Trithi Robotics Pvt. Ltd. **Appellant**
869, 1st Floor, 11th A Cross, 23rd Main,
Bengaluru 560 078.

Vs.

Commissioner of Customs (Import) - Mumbai (Air Cargo Import) **Respondent**
Air Cargo Complex, Navpada, Sahar Village,
Andheri (E), Mumbai 400 099.

Appearance:

Shri R.V. Shetty, Advocate, for the Appellant
Shri S.K. Hatangadi, Assistant Commissioner, Authorised Representative for the Respondent

CORAM:

HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR. M.M. PARTHIBAN, MEMBER (TECHNICAL)

Date of Hearing: 11.05.2023
Date of Decision: 11.05.2023

FINAL ORDER NO. 85898/2023

PER: S.K. MOHANTY

Heard both sides and examined the case records.

2. Applicant-appellant has filed this miscellaneous application, seeking early hearing of appeal. On going through the averments made in the said application, we are of the view that the prayer made in support of out-of-turn hearing of appeal can be considered and accordingly, the said application is allowed. Since, the issue lies in a narrow compass, with the consent of both sides, the appeal is taken up for hearing and disposal today.

3. In this case, the appellant herein has imported goods, declaring the same as "Precision Agri Spray Equipment, Charger and Smart Battery". The classification of the said goods was claimed under Customs Tariff Item 8424 8200. However, on examination of the goods on the second check basis the Shed Officer found that the goods were misdeclared by the appellant inasmuch as the imported goods were "Remotely Piloted Aircraft (RPA) which are appropriately classifiable under CTH 8804. On the basis of examination, the matter was adjudicated by the learned Deputy Commissioner of Customs vide order dated 18.01.2021, wherein he had confiscated the goods under Section 111(d) and 111(m) of the Customs Act, 1962. The adjudication order also imposed penalty on the appellant under Section 112(a) *ibid*. Being aggrieved by the said adjudication order, the appellant preferred appeal before the learned Commissioner (Appeals) which was disposed of vide the impugned order dated 24.01.2022 in confirming the adjudication order passed by the original authority and rejecting the appeal filed by the appellant. Feeling aggrieved by the impugned order, the appellant has preferred this appeal before the Tribunal.

4. In support of the contentions that the goods imported by the appellant was "Precision Agri Spray Equipment/Drone", learned Advocate appearing for the appellant drew our attention to paragraph 6 in the grounds of appeal annexed to the appeal memorandum. The said paragraph is extracted herein below:-

"6. Foreign trade policy exempts import for Research and Development from import restrictions

6.1 Item 1 under import - Precision Agri Spray Equipment / Drone:

The Appellant submit to state that in the state/condition of its import, this item is unable to fly and could not be remotely controlled and therefore, the same is semi-finished / underdeveloped. There are certain activities to be carried out *after importation, such as, hardware integration and software integration and only thereafter, it become capable of/ ready for testing and to fly qualifying for certification. In the condition in which it is under import NOW, the same is 'NOT READY TO FLY'. In its present state/condition, it is requiring further development and therefore, there is no role of DGCA and resultantly DGFT. After importation, there should be hardware and software integration and carrying out of tests as to its fitness to fly, and thereafter, the role of DGCA begins. The Appellant made available DGCA letter dated 23.10.2020 [Copy is produced herewith as Annexure 'L'] from their file reference: AV.14015/RPAS/04/2020-AT-1 to learned adjudicating authority. The project is in the knowledge of DGCA. Even presuming that license/ authorisation is a requirement, the Appellant submit to state that it falls under exception category being covered by para 2.24 / 2.29 of FTP pertaining to import of samples/ goods for R&D purpose with self-declaration to the said effect by the Importer. Para 2.29 of FTP is reproduced for ready reference.*

"2.29 Import of Prototypes: Import of new / second hand prototypes / second hand samples may be allowed on payment of duty without an Authorisation to an Actual User (industrial) engaged in production of or having industrial license / letter of intent for research in item for which prototype is sought for product development or research, as the case may be, upon a self-declaration to that effect, to satisfaction of Customs authorities."

The Appellant state that the impugned Order-in-Appeal skipped/ avoided discussion on this ground as discussion of it would have resulted in to set aside the Order of the learned Respondent Authority."

5. On reading of the submissions made above vis-à-vis the observations recorded in the original as well as the impugned orders, we find that the department has not considered the submissions made by the appellant in the appeal memorandum

filed before the Tribunal. Further, we are also surprised to know that how can a Shed Officer posted in the port of import without a detailed examination of goods, either by taking the assistance of technical expert or chartered engineer, can certify about a product and on the basis of such certification, the department will proceed against the importer for confirmation of duty demand or for confiscation of the goods. Since the issue requires a detailed examination by an expert or specialist in the concerned field, we are of the view that the appeal is required to be allowed by way of remand to the original authority for carrying out an effective and meaningful adjudication.

6. Therefore, while setting aside the impugned order, we allow the appeal by way of remand to the original authority for fresh fact finding on the issue involved in this appeal. For the said purpose, the original authority should refer the matter to the approved agencies for proper certification with regard to the nature, purpose and functional test of the goods in question, in order to determine the correct classification under the appropriate Tariff Head. Needless to say, that opportunity of personal hearing be granted to the appellant before deciding the matter afresh.

7. In the result, the appeal is allowed by way of remand in above terms.

(Order dictated and pronounced in the open court)

(S.K. MOHANTY)
MEMBER (JUDICIAL)

(M.M. PARTHIBAN)
MEMBER (TECHNICAL)

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