CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

WEST ZONAL BENCH

CUSTOMS APPEAL NO: 86627 OF 2021

[Arising out of Order-in-Appeal No: MUM-CUSTM-AMP-APP-108/2021-22 dated 21st May 2021 passed by the Commissioner of Customs (Appeals), Mumbai–III.]

Bombay Fluid Systems Components Pvt Ltd
Deccanware Housing, Shed No.3B, Survey No.69 to 72,
Post NH-4, Village-Vadgaon, Mabval, Pune - 412 106. … ***Appellant***

versus

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

APPEARANCE:

Shri Viswanathan, Advocate and Ms. Anjali Hirawat, Advocate for the appellant

Shri S K Hatangadi, Assistant Commissioner (AR) for the Respondent

CORAM:

HON'BLE MR S. K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)

FINAL ORDER NO: A / 86134/2023

DATE OF HEARING: 19/01/2023
DATE OF DECISION: 14/07/2023

PER: C J MATHEW

The short point in this appeal of M/s Bombay Fluid Systems

Components Pvt Ltd against order[1] of Commissioner of Customs (Appeals), Mumbai – III is the incorrectness of the manner in which classification under Customs Tariff Act, 1975 has been applied by the lower authorities to deny them the rate of duty corresponding to tariff item 7307 2200 of First Schedule to the Customs Tariff Act, 1975 claimed by them in the import of 'stainless steel tube fittings – couplings, tees, crosses' against bill of entry no. 5276675/14.10.2019 declared to be valued at ₹83,24,561/-. Effective rate of duty of 10% is applicable to the said goods in terms of notification no. 50/2017-Cus dated 30th June 2017 (serial no. 377).

2. We have heard Learned Counsel for the appellant and Learned Authorised Representative. It is seen that the lower authorities are both agreed upon re-classifying the impugned goods under the residual heading in tariff item 7307 2900 and it is seen from the impugned order that the first appellate authority has determined that the goods are neither 'flanges, threaded elbows, bends and sleeves' leaving no option but for resort to the residual entry. Reliance for this was placed upon HSN Explanatory Notes pertaining to heading 7307 of First Schedule to Customs Tariff Act, 1975 and the General Rules for Interpretation of the Tariff therein.

3. We find that neither of the lower authorities have examined the

---

[1] [order-in-appeal no. MUM-CUSTM-AMP-APP-108/2021-22 dated 21st May 2021]

meaning of the expression ‘threaded elbows and sleeves’ as declared and have come to the conclusion that the imported goods do not match the description therein. There is no record of any evidence that the said finding is based upon visual examination of goods or scrutiny of any documents pertaining to the import. Furthermore, it is seen that, without reference to the entries within heading 7307 of First Schedule to Customs Tariff Act, 1975, the HSN Explanatory Notes have been relied upon. Crucial to the displacement of a tariff item as declared, is the available of an alternative tariff item that must, independently conform to the goods. This has been held in the decision of the Hon’ble Supreme Court in *HPL Chemicals Ltd v. Commissioner of Central Excise, Chandigarh [2006 (197) ELT 324 (SC)]* thus

> *’29. This apart, classification of goods is a matter relating to chargeability and the burden of proof is squarely upon the Revenue. If the Department intends to classify the goods under a particular heading or sub- heading different from that claim by the assessee, the Department has to produce proper evidence and discharge the burden of proof. In the present case the said burden has not been discharged at all by the Revenue…..…’*

and in *Hindustan Ferodo Ltd v. Commissioner of Central Excise, Bombay [(1997) 2 SCC 677]* that

> *‘It is not in dispute before us as it cannot be, that owners of establishing that the said drinks fell within Item No. 22 lay on the Revenue. Revenue has led no evidence. The onus was not discharged, therefore, the Tribunal was right in rejecting the*

evidence that was produced on behalf of the appellant, the appeal should nevertheless have been allowed.'

4. With the two rival classifications at the eight digit level within the same heading the resort to one alternative classification that is a residual entry, it would appear that the lower authorities have not given any justification for discarding the claim by the appellant or preferring the revised one over the declared one.

5. Accordingly, the entire process of re-determination of the classification is not in accordance with the decision *supra* of the Hon'ble Supreme Court. For the above reason, we set aside the impugned order and allow the appeal.

(Order pronounced in the open court on 14/07/2023)

(S. K. MOHANTY)
Member (Judicial)

(C J MATHEW)
Member (Technical)

**/as*