

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

WEST ZONAL BENCH

CUSTOMS APPEAL NO: 85527 OF 2020

[Arising out of Order-in-Original No: 75/2019-20/Commr/NS-V/CAC/JNCH dated 26th December 2019 passed by Commissioner of Customs (NS-V), Nhava Sheva.]

IFB Industries Limited

L-I, Verna, Goa-403722

... Appellant

versus

Commissioner of Customs (NS-V)

Jawaharlal Nehru Customs House, Nhava Sheva,
Tal: Uran, Raigad-400707

...Respondent

APPEARANCE:

Shri O P Khanduja, Advocate for the appellant

Shri S B Hatangadi, Assistant Commissioner (AR) for the respondent

CORAM:

**HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)
HON'BLE MR AJAY SHARMA, MEMBER (JUDICIAL)**

FINAL ORDER NO: A / 86215/2023

DATE OF HEARING: 26/04/2023

DATE OF DECISION: 23/08/2023

PER: C J MATHEW

The dispute in this appeal of M/s IFB Industries Ltd against order
of Commissioner of Customs (NS-V), Jawaharlal Nehru Custom House

(JNCH), Nhava Sheva, though one pertaining to ‘rate of duty’, is restricted to the levy of ‘integrated tax’ at the rate of ‘integrated goods and service tax (IGST)’ on imports effected by them between July 2017 and January 2019. The issue to be resolved is about the extent of intervention permissible to officer of customs under the authority of Customs Act, 1962 for re-determination of ‘rate of duty’ in a levy empowered by section 3(7) of Customs Tariff Act, 1975.

2. The tax which came into effect from 1st July 2017, consequent upon subsuming all domestic levies on trade in goods and services within ‘goods and services tax (GST)’, is legacy driven and was legislated thereupon in lieu of ‘additional duty of customs’ – corresponding to levy on manufacture of such goods in India - empowered to be collected under section 3(1) of Customs Act, 1962. The procedure on import of goods prescribed in section 46 of Customs Act, 1962, requiring declaration of tariff item, in addition to declaration of tariff item in First Schedule to Customs Tariff Act, 1975 for assessment to ‘basic customs duty’, corresponding to appropriate description in Schedule to Central Excise Tariff Act, 1985, remained unaltered. However, there is substantial variation in the legislative articulation that may not be out of place to set forth here.

3. Additional duty was leviable, prior to 1st July 2017, under the authority of

‘(1) Any article which is imported into India shall, in addition, be liable to a duty (hereinafter in this section referred to as the additional duty) equal to the excise duty for the time being leviable on a like article if produced or manufactured in India and if such excise duty on a like article is leviable at any percentage of its value, the additional duty to which the imported article shall be at that percentage of the value of the imported article.’

in section 3 of Customs Tariff Act, 1975 and independent of any other law, including Customs Act, 1962, imposing taxes or duties. With erasure of excise duty on manufacture of most goods, the replication of this equalizing provision thus

‘(7) Any article which is imported into India shall, in addition, be liable to integrated tax at such rate, not exceeding forty per cent, as is leviable under section 5 of the Integrated Goods and Services Tax Act, 2017 on a like article on its supply in India, on the value of the imported article as determined under sub-section (8) or sub-section (8A), as the case may be...’

was incorporated in section 3 of Customs Tariff Act, 1975.

4. The appellant, upon import 232 consignments of ‘pumps’ of several types and ‘pump filter’ for ‘washing machines’ and ‘dishwashers’, claimed classification against tariff item 8413 9190 of First Schedule to Customs Tariff Act, 1975. For goods imported under heading 8413 in the First Schedule to Customs Tariff Act, 1975, three rates, at 5% (at sl no. 231 of Schedule I), 12% (at sl no. 192 of Schedule

II) and 28% (at sl no. 117 of Schedule IV) existed as per notification no. 01/2017-Integrated Tax (Rate) dated 28th June 2017 which, with effect from 14th November 2017, was expanded to incorporate yet another rate of 18% (at sl no 317A of Schedule III). Clearance of the imported goods on discharge of integrated tax at 12%, with corresponding short-payment of ₹1,07,57,653, instead of at 18% intended, at sl no. 453 of Schedule III, for any ‘goods which are not specified in Schedule I, II, IV, V or VI’ was the bone of contention in the notice issued to the appellant.

5. The order¹ of the adjudicating authority disallowed the claim for non-conformity of imported goods with

‘power driven pumps primarily designed for handling water, namely centrifugal pumps (horizontal and vertical), deep tube-well turbine pumps, submersible pumps, axial flow and mixed flow vertical pumps’

corresponding to sl no. 192 of Schedule-II or other descriptions pertaining to ‘pumps’ in notification no. 01/2017-Integrated Tax (Rate) dated 28th June 2017 for all the varieties save ‘circulation pump’ in 40 consignments and ‘washing pump’ in 7 consignments to confirm liability of ₹ 51,53,961 under section 28 of Customs Act, 1962, along with interest as applicable under section 28AA of Customs Act, 1962, which is in appeal before us.

6. For the purposes of ‘basic customs duty’, heading 8413

¹ [order-in-original No: 75/2019-20/Commr/NS-V/CAC/JNCH dated 26th December 2019]

corresponds to

‘pumps for liquids, whether or not fitted with a measuring device; liquid elevators’

and comprising

‘pumps fitted or designed to be fitted with a measuring device:’

at sub-heading 8413 11 and 8413 19,

‘hand pumps, other than those of sub-heading 8413 11 or 8413 19’

at sub-heading 8413 20 (doubling as tariff item 8413 20 00),

‘fuel lubricating or cooling medium pumps for internal combustion piston engines:’

at sub-heading 8413 30,

‘other reciprocating positive displacement pumps:’

at sub-heading 8413 50,

‘other rotary positive displacement pumps:’

at sub-heading 8413 60,

‘other centrifugal pumps’

at sub-heading 8413 70 and

‘other pumps – liquid elevators’

at subheading 8413 81 and 8413 82 (doubling as tariff item for ‘liquid elevators’) in addition to

‘parts’

at sub-heading 8413 91 of First Schedule to Customs Tariff Act, 1975.

7. The appellant was placed on notice of recovery under section 28 of Customs Act, 1962 on the ground that the classification claimed by them did not quite fit the bill as the ‘pumps’ were not to be used exclusively for handling water and that the classification claimed by them for the purpose of section 12 of Customs Act, 1962 was for ‘parts’ which called for levy of integrated tax at 18%. There was, however, no proposal for reclassification of the impugned goods under the appropriate sub-heading in chapter 84 of First Schedule to Customs Tariff Act, 1975 thus demonstrating unacceptable inconsistency.

8. In *Ortho Clinical Diagnostics India Pvt Ltd v. Commissioner of Customs (Import)*² against order³ of Commissioner of Customs-III (Import), ACC, Mumbai, the Tribunal had examined the extent and scope of empowerment as well as prejudicial effect on exchequer insofar as levy under section 3(7) of Customs Tariff Act, 1975 is concerned and it was held that

‘9. *In resolving that dilemma, it would be appropriate to*

² [final order no. A /85710 2022 dated 12th August 2022 in appeal C/85868/2020]

³ [order-in-original no. CC-VA/12/2020-2021 ADJ(I) ACC dated 2nd July 2020]

take stock of the nature of the levy, the source of the authority to collect and the extent to which the 'revenue neutral' paradigm shift of July 2017 has left its mark on the determinative contours of assessment under Customs Act, 1962. Before the transition to goods and services tax (GST), the basic customs duty authorized to be collected under section 12 of Customs Act, 1962 was, inter alia, supplemented by 'additional duty' – equal to 'excise duty ...on a like article if produced or manufactured in India' – and 'special additional duty' – as would 'counter-balance the sales tax, value added tax, local tax or any other charges for the time being leviable on a like article on its sale, purchase or transportation in India...at a rate not exceeding four per cent of the value..' under the authority of section 3 of Customs Tariff Act, 1975. The latter involved simple application of the said rate, across the board, on a value specified under the same provision which offered no scope for dispute on the valuation already accepted by the assessing authority for determination of 'basic customs duty' under section 14 of Customs Act, 1962. The former, too, did not offer any discretionary determination as far as value was concerned and, even with multiplicity of rates of duty, the scope for dispute on classification was non-existent owing the alignment of the relevant schedules in content and design. No 'proper officer' worth his salt would have considered separate tariff items under the respective schedules for any imported goods. But it appears that, not by the content but with the presentation, there is some template discordance in the tariff of Goods and Service Tax (GST) offering traction for disputes such as this.

10. *It is in the light of this incompatibility that Mr Lakshmikumaran submitted that the notifications impugned in this order constitutes the tariff comprising of schedules that*

are mutually exclusive and incorporating a residuary entry for the 'almost' highest rate of duty which is where the adjudicating authority chose to place the impugned goods to their detriment. We may also be permitted the luxury of indulging in speculation that the contrarian, and even antipodal, perspective on classification has ceased to be of consequence in the altered paradigm of tax. Before the introduction of goods and service tax (GST), the 'special additional duty' was being refunded to merchant-importers upon undertaking sale of such goods and 'additional duty' paid was available as credit to manufacturer-importers for offsetting duties of central excise; collection of the duties was the sole filtration of those entitled to relief from respective burden one way or the other. Under the new tax regime, subsuming both the levies for counter-balancing domestic duties and tax, manufacture and actual use are not relevant to the tax and, with supply as the 'taxable event', all importers, save that miniscule for personal use, are entitled to avail the credit of such duties for offsetting tax payable on supply further down the line. Excess tax is thus no burden in the ultimate analysis. Nonetheless, the lack of substantive detriment cannot justify approval of levy in excess of that authorized by law or by excess of jurisdictional competence. It is also to be borne in mind that this context makes it apparent that there is next to no revenue available to the exchequer from this levy and the parallel universe of record was intended to carry forward the erstwhile mechanism in the scheme of assessment without particular consequence. Having accommodated the levy by proviso in section 5 of the Integrated Goods and Services Tax (IGST) Act, 2017, any proposition that such collection is essential to the integrity of the scheme of the tax does not hold either.

11. *Despite the incorporation in Customs Tariff Act, 1975*

of the parallel world corresponding to the new regime, the legality of

‘7) Any article which is imported into India shall, in addition, be liable to integrated tax at such rate, not exceeding forty per cent. as is leviable under section 5 of the Integrated Goods and Services Tax Act, 2017 on a like article on its supply in India, on the value of the imported article as determined under sub-section (8).’

in section 3 appears to need the simultaneous support of

‘Provided that the integrated tax on goods imported into India shall be levied and collected in accordance with the provisions of section 3 of the Customs Tariff Act, 1975 on the value as determined under the said Act at the point when duties of customs are levied on the said goods under section 12 of the Customs Act, 1962.’

in section 5 of the Integrated Goods and Services Tax (IGST) Act, 2017– not considered essential for the erstwhile authority to charge either of the additional duties. The legislative intent in placement of the said proviso, as a particular departure from

‘5. (1) Subject to the provisions of sub-section (2), there shall be levied a tax called the integrated goods and services tax on all inter-State supplies of goods or services or both, except on the supply of alcoholic liquor for human consumption, on the value determined under section 15 of the Central Goods and Services Tax Act and at such rates, not exceeding forty per cent., as may be notified by the Government on the recommendations of the Council and collected in such manner as may be prescribed and shall be paid by the taxable person:’

of Integrated Goods and Services Tax (GST) Act, 2017, indicates that section 3(7) of Customs Tariff Act, 1975 needs to carefully examined for its scope. Doubtlessly, it charges a liability on the goods under import but circumscribed by section 5 of Integrated Goods and Services Act, 2017 which, ordinarily, applies to ‘inter state supply’ for levy at a notified rate on value determined in accordance with section 15 of Central Goods and Services Tax (CGST) Act, 2017. Supply of goods from outside India, envisaged to be at par with ‘inter state supply’ of goods, is treated

differently under the authority of the proviso to be levied and collected in accordance with section 3 of Customs Tariff Act, 1975 with its own attendant valuation mechanism supplementing the valuation of such goods in accordance with section 14 of Customs Act, 1962 and treating the levy of duties under Customs Act, 1962 as the point at which the 'integrated tax' liability is fastened on imported goods. It is not collected as a duty of customs and the authority conferred by section 3(7) of Customs Tariff Act, 1975 requires charging at the rate as is leviable under section 5 of Integrated Goods and Services Tax (IGST) Act, 2017. The legislated bundle for implementation of the scheme of goods and services tax (GST) is founded on self-assessment by adopting the value envisaged in section 15 of Central Goods and Services Tax (CGST) Act, 2017 to which the rate as notified under the relevant statutes is applied by the assessee for discharge of liability that is reflected in the return which, in turn, is scrutinized by the 'central tax officer' for correctness.

12. *The scheme of rule 3(7) of Customs Tariff Act, 1975, therefore, imposes 'integrated tax' on imported goods, at a rate as prescribed under the authority of section 5 of Integrated Goods and Services Tax (IGST) Act, 2017, on value as prescribed in section 3(8) therein which is the arithmetical addition of duties of customs to value for assessment of imported goods and posing no discretionary authority therein. In the light of this being a distinct 'integrated tax', and not an additional duty of customs equal to another duty charged and collected under a scheme of assessment, the adoption of rate claimed by an importer can be disputed only by such officers conferred with authority to do so. Such officers with jurisdiction to intrude into self-assessment are central tax officers. The enabling of levy of 'integrated tax' in Customs Tariff Act, 1975 does not confer any power to intrude upon rate claimed in the bill of entry and 'proper officer', invoking power of assessment or power of*

recovery under Customs Act, 1962, would be in excess of jurisdiction to venture into determination of rate of duty under a law that is outside jurisdictional competence. This perspective on the enabling provision is not prejudicial to revenue for reasons discussed supra and it is only such prejudice that may prompt an alternative perspective. Learned Authorized Representative has not been able to demonstrate so.

13. The rate of duty for levy of 'integrated tax' is prescribed under the authority of section 5 of Integrated Goods and Services Tax (IGST) Act, 2017. Our appellate jurisdiction is limited, as far as 'rate of duty' is concerned, to those prescribed in Customs Tariff Act, 1975, Central Excise Tariff Act, 1985 or in Finance Act, 1994. This appellate jurisdiction originates with exercise of adjudicatory authority under Customs Act, 1962, Central Excise Act, 1944 and Finance Act, 1944 thereby binding the original, and first appellate, authorities therein to such jurisdictional circumscribing. 'Central tax officers' appointed under Central Goods and Services Tax (CGST) Act, 2017 are subject to a different appellate structure. We would consider it inappropriate for us to venture into the exercise of classification under a law that is beyond our jurisdiction and the adjudicating authority should also have been similarly cautious. The arguments of Learned Senior Counsel and of Learned Authorized Representative on the merit of their respective stands on the classification of the impugned goods are, thus, deliberately not being taken up for decision on correctness or otherwise. In adverting so, we desist also from elaborating upon the obvious inadequacy of domain knowledge of a tax law that is extra jurisdictional. However, the legal framework for re-classification is not beyond such appellate jurisdiction and we may subject the impugned order to that test.

14. We find that, for assessment to basic duties of customs, the

declared heading has not been disputed in the notice. The adjudicating authority has subjected all goods in the impugned bills of entry to revision by adoption of the ultimate residuary description; the absence of specific and detailed discussion on each of the articles separately is a grave want in the impugned order. The impugned goods are 'ELISA kits', 'CLIA kits', 'diagnostic reagents on a backing', 'calibrators', 'controls' and others such as 'wash solutions', 'wash buffers', 'reference fluid', 'diluent packs', 'maintenance packs' and 'marker kits' with claim for coverage under serial no. 180 of Schedule I in the 'integrated tax' rate notification owing to specific enumeration in List 1 for the first two items and under serial no. 80 of Schedule II in the 'integrated tax' rate notification owing to description corresponding to it. It is seen that the columnar reference to First Schedule to Customs Tariff Act, 1975 is to 'Chapter 30 or any other chapter', insofar as the former is concerned, and to 'heading 3822' as far as the latter is concerned; considering the specifics therein, the claim for application of these rates of 'integrated tax' respectively is not to be brushed aside.

15. *The effect of the proposition of Revenue, in support of the adjudication order, on the part of Learned Authorized Representative is that the impugned goods are not specifically emplaced in the claimed Schedules or in Schedule IV, V and V of the 'integrated tax' rate notification with consequent application of the residuary serial no. 453 corresponding to 'goods which are not specified in Schedule I, II, IV, V and VI' with columnar reference to any Chapter of the First Schedule to Customs Tariff Act, 1975. The question that begs an answer, and in the context of the rules for interpretation of the Customs Tariff Act, 1975 as well as the Explanations therein being applicable to the placement of goods in the Schedules to the 'integrated tax' rate notification combined with absence of such residuary entry in the First Schedule to Customs Tariff Act, 1975, is the significance of*

the very resort that Revenue seeks shelter within. From the scheme of the 'integrated tax' rate notification, it appears that the rates enumerated therein are to be read as corresponding to the tariff items in the First Schedule to Customs Tariff Act, 1975 and with the default rate or residuary rate of 18% to be read as corresponding to any tariff item lacking in such rates. This follows from the mandate of Article 269A of the Constitution and the provisions of section 5 of Central Goods and Services Tax (CGST) Act, 2017 that eliminates any scope for perceiving the rates as an exemption notification – which the adjudicating authority appears to have adopted as the guiding prism.

16. *It is not the case of Revenue that any or all of the impugned goods do not find fitment in heading 3822 of the First Schedule to Customs Tariff Act, 1975 or that the 'integrated tax' rate at serial no. 80 of Schedule II is, by the corresponding description, unquestionably excluded from every tariff item comprising heading 3822 of the First Schedule to Customs Tariff Act, 1975. Nor is it the case of Revenue that the 'kits' at serial no. 180 of Schedule I of the 'integrated tax' rate notification do not find placement in chapter 38 of First Schedule to Customs Tariff Act, 1975.*

17. *The Hon'ble Supreme Court, in HPL Chemicals Ltd v. Commissioner of Central Excise, Chandigarh [2006 (197) ELT 324 (SC), has held that*

'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 claimed by the assessee, the Department has to adduce proper evidence and discharge the burden of proof. In the present case the said burden has not been discharged at all by the Revenue. On the one hand, from the trade and market enquiries made by the Department, from the report of the Chemical Examiner, CRCL and from HSN, it is' quite clear that the goods are classifiable as "Denatured Salt" falling under Chapter Heading No. 25.01. The Department has not

shown that the subject product is not bought or sold or is not known or is dealt with in the market as Denatured Salt. Department's own Chemical Examiner after examining the chemical composition has not said that it is not denatured salt. On the other hand, after examining the chemical composition has opined that the subject matter is to be treated as Sodium Chloride.'

and further in Hindustan Ferodo Ltd v. Collector of Central Excise, Bombay [1997 (89) ELT 16 (SC)] that

'3. It is not in dispute before us, as it cannot be, that the onus of establishing that the said rings fell within Item 22F lay upon the Revenue. The Revenue led no evidence. The onus was not discharged. Assuming therefore, that the Tribunal was right in rejecting the evidence that was produced on behalf of the appellants, the appeal should, nonetheless, have been allowed.

XXXX

7. Learned Counsel for the Revenue submitted that the matter be remanded to the Tribunal so that the evidence on record may be reappreciated. As we have stated, no evidence was led on behalf of the Revenue. There is, therefore, no good reason to remand the matter.'

stipulating the rules of engagement in adversarial contentions on classification of goods for assessment. Hence, the classification proposed, and adopted, in the impugned proceedings must first pass muster as an appropriate description of the impugned goods before revision can be approved.

18. The exercise in classification undertaken in adjudicating the proposal to take recourse to an alternate entry should have adhered to the judicially established rules of engagement. Instead of deliberating on the validity, and appropriateness, of a tariff item in the First Schedule to Customs Tariff Act, 1975 other than that claimed in the bills of entry after due notice to the importer, the adjudicating authority adopted a process of elimination of the enumeration of descriptions in the Schedules to the 'integrated tax' rate notification, and ignoring the scheme of its presentation, with the erroneous assumption of jurisdiction to place goods

within the ambit of the residuary entry in Schedule III of the 'integrated tax' rate notification.

19. We, therefore, hold that, insofar as the imported goods are concerned in the light of statutory circumscribing of levy of 'integrated tax' as discussed *supra* and there being no prejudice to interests of revenue thereby, the declared classification of the imported goods prevails. Legislative intent is not imposition of burden of 'integrated tax' on the person importing goods and the onus for altering classification has not been discharged. The charge of misdeclaration of goods does not sustain and hence confiscation and penalty are also set aside.'

9. It appears to us that essential onus devolving on customs authorities for re-classification set out by the Hon'ble Supreme Court spelt out in decision *supra* has not been discharged in the impugned proceedings. Consequently, and respectfully following the order of the Tribunal in *re Ortho Clinical Diagnostics Pvt Ltd*, the impugned order is set aside to allow the appeal.

(Order pronounced in the open court on 23/08/2023)

(AJAY SHARMA)
Member (Judicial)

(C J MATHEW)
Member (Technical)