## CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

## WEST ZONAL BENCH

## CUSTOMS APPEAL NO: 86367 OF 2017

[Arising out of Order-in-Appeal No: 117(Gr.IV)/2017/(JNCH)-Appeal-II dated 27th February 2023 passed by the Commissioner of Customs (Appeals)-II, Mumbai-II.]

**Kwality Animal Feeds Pvt Ltd**
Kwality House, 12 Mache Industrial Area
Jamboti Road, Belgaum- 590 014 … ***Appellant***

*versus*

**Commissioner of Customs (NS-III)**
Jawaharlal Nehru Customs House, Nhava Sheva,
Tal: Uran, Dist: Raigad, Maharashtra – 400 707

***…Respondent***

*APPEARANCE:*

Shri Vinay Ansurkar, Advocate for the Appellant

Shri Ram Kumar, 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 / 87062/2023**

DATE OF HEARING: 16/10/2023
DATE OF DECISION: 16/10/2023

*PER: C J MATHEW*

In this appeal of M/s Kwality Animal Feeds Pvt Ltd against order[1] of Commissioner of Customs (Appeals)-II, Mumbai–II, upholding the order of the original authority, the essence of the dispute is the 'rate of duty' applicable to two sets of machinery purportedly for preparation of 'animal feedstuff' imported *vide* bill of entry no. 70262179/10.10.2014 at a declared value of € 1,66,600/-.

2. The impugned order discarded the classification claimed to be conforming to the description corresponding to tariff item 8436 1000 that was not acceptable to customs authorities and revised the goods as corresponding to description against tariff item 7309 0090 of First Schedule to Customs Tariff Act, 1975. According to Learned Counsel for the appellant, the description in the bill of entry has not been disputed by the lower authorities but its utilization exclusively for the purpose of 'poultry keeping' has been.

3. Learned Authorised Representative submitted that the usage, implicit in the heading within which the appellant had sought classification, does not apply to the imports in dispute.

4. We have perused the submissions of both the sides and it would appear to us that the description claimed by the appellant, *viz,*

> *'other agricultural, horticultural, forestry, <u>poultry-keeping</u> or bee-keeping machinery including germination plant fitted*

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[1] [order-in-appeal no. 117(Gr.IV)/2017/(JNCH)-Appeal-II dated 27th February 2023]

> *with mechanical or thermal equipment poultry incubators and brooders.'* *(emphasis supplied)*

would be applicable only if the contention of Learned Counsel that the appellants are in the business of 'poultry keeping' and that the 'animal feed' produced by deployment of the equipment imported by them was, in addition to supply to the market, also used for feeding of their own produce is found to be correct. We find that this proposition had not been submitted before the original authority and, consequently, had not been examined for the determination of the correctness of the classification.

5. This aspect requires scrutiny and in order to enable that, we set aside the impugned order for remanding the matter back to the original authority for a fresh decision within three months from the date of receipt of this order.

*(Operative Part of the Order Pronounced in Open Court on 16th October, 2023)*

**(AJAY SHARMA)**
***Member (Judicial)***

**(C J MATHEW)**
***Member (Technical)***

**/as*