CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI

REGIONAL BENCH - COURT NO. I

Customs Appeal No. 85287 of 2022

(Arising out of Order-in-Appeal No. MUM-CUSTM-AMP-APP-781 to 815/2021-22 dated 27.10.2021 passed by the Commissioner of Customs (Appeals), Mumbai-III)

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

Versus

Commissioner of Customs (Import), Gr. IV, ... Respondent
Air Cargo Complex, Mumbai
Sahar, Andheri (E), Mumbai – 400 059

WITH

Customs Early Hearing Application No. 86330 to 86363 of 2023
(on behalf of Appellant)

In

Customs Appeal No. 85288 to 85321 of 2022

(Arising out of Order-in-Appeal No. MUM-CUSTM-AMP-APP-781 to 815/2021-22 dated 27.10.2021 passed by the Commissioner of Customs (Appeals), Mumbai-III)

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

Versus

Commissioner of Customs (Import), Gr. IV, ... Respondent
Air Cargo Complex, Mumbai
Sahar, Andheri (E), Mumbai – 400 059

AND

Customs Early Hearing Application No. 86364 of 2023
(on behalf of Appellant)

In

Customs Appeal No. 87192 of 2022

(Arising out of Order-in-Appeal No. MUM-CUSTM-AMP-APP-685 to 697/2022 dated 21.07.2022 passed by the Commissioner of Customs (Appeals), Mumbai-III)

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

Versus

Commissioner of Customs (Import), Gr. IV, ... Respondent
Air Cargo Complex, Mumbai
Sahar, Andheri (E), Mumbai – 400 059

AND

Customs Early Hearing Application No. 86318 to 86328 of 2023
(on behalf of Appellant)

In

Customs Appeal No. 87193 to 87203 of 2022

(Arising out of Order-in-Appeal No. MUM-CUSTM-AMP-APP-685 to 697/2022 dated 21.07.2022 passed by the Commissioner of Customs (Appeals), Mumbai-III)

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

Versus

Commissioner of Customs (Import), Gr. IV, ... Respondent
Air Cargo Complex, Mumbai
Sahar, Andheri (E), Mumbai – 400 059

AND

Customs Early Hearing Application No. 86329 of 2023
(on behalf of Appellant)

In

Customs Appeal No. 87233 of 2022

(Arising out of Order-in-Appeal No. MUM-CUSTM-AMP-APP-685 to 697/2022 dated 21.07.2022 passed by the Commissioner of Customs (Appeals), Mumbai-III)

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

Versus

Commissioner of Customs (Import), Gr. IV, ... Respondent
Air Cargo Complex, Mumbai
Sahar, Andheri (E), Mumbai – 400 059

AND

Customs Early Hearing Application No. 86365 to 86389 of 2023
(on behalf of Appellant)

In

Customs Appeal No. 87208 to 87232 of 2022

(Arising out of Order-in-Appeal No. MUM-CUSTM-AMP-APP-789 to 813/2022 dated 29.07.2022 passed by the Commissioner of Customs (Appeals), Mumbai-III)

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

Versus

Commissioner of Customs (Import), Gr. IV, **.... Respondent**
Air Cargo Complex, Mumbai
Sahar, Andheri (E), Mumbai – 400 059

AND

Customs Early Hearing Application No. 86390 to 86413 of 2023
(on behalf of Appellant)

In

Customs Appeal No. 87739 to 87762 of 2022

(Arising out of Order-in-Appeal No. MUM-CUSTM-AMP-APP-1450 to 1483/2022-23 dated 11.10.2022 passed by the Commissioner of Customs (Appeals), Mumbai-III)

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

Versus

Commissioner of Customs (Import), Gr. IV, **.... Respondent**
Air Cargo Complex, Mumbai
Sahar, Andheri (E), Mumbai – 400 059

AND

Customs Early Hearing Application No. 86414 to 86416 of 2023
(on behalf of Appellant)

In

Customs Appeal No. 87764, 87765 & 87767 of 2022

(Arising out of Order-in-Appeal No. MUM-CUSTM-AMP-APP-1450 to 1483/2022-23 dated 11.10.2022 passed by the Commissioner of Customs (Appeals), Mumbai-III)

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

Versus

Commissioner of Customs (Import), Gr. IV, **.... Respondent**
Air Cargo Complex, Mumbai
Sahar, Andheri (E), Mumbai – 400 059

AND

Customs Early Hearing Application No. 86417 to 86423 of 2023
(on behalf of Appellant)

In

Customs Appeal No. 87769 to 87775 of 2022

(Arising out of Order-in-Appeal No. MUM-CUSTM-AMP-APP-1450 to 1483/2022-23 dated 11.10.2022 passed by the Commissioner of Customs (Appeals), Mumbai-III)

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

Versus

Commissioner of Customs (Import), Gr. IV, **.... Respondent**
Air Cargo Complex, Mumbai
Sahar, Andheri (E), Mumbai – 400 059

AND

Customs Early Hearing Application No. 86257 to 86263 of 2023
(on behalf of Appellant)

In

Customs Appeal No. 85945 to 85951 of 2023

(Arising out of Order-in-Appeal No. MUM-CUSTM-AMP-APP-2698 to 2722/2022-23 dated 23.03.2023 passed by the Commissioner of Customs (Appeals), Mumbai-III)

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

Versus

Commissioner of Customs (Import), Gr. IV, **.... Respondent**
Air Cargo Complex, Mumbai
Sahar, Andheri (E), Mumbai – 400 059

AND

Customs Early Hearing Application No. 86265, 86266, 86268, 86269 & 86271 to 86274 of 2023
(on behalf of Appellant)

In

Customs Appeal No. 85952 to 85959 of 2023

(Arising out of Order-in-Appeal No. MUM-CUSTM-AMP-APP-2698 to 2722/2022-23 dated 23.03.2023 passed by the Commissioner of Customs (Appeals), Mumbai-III)

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

Versus

Commissioner of Customs (Import), Gr. IV, **.... Respondent**
Air Cargo Complex, Mumbai
Sahar, Andheri (E), Mumbai – 400 059

AND

Customs Early Hearing Application No. 86424 & 86276 to 86284 of 2023
(on behalf of Appellant)

In

Customs Appeal No. 85960 to 85962 & 85964 to 85970 of 2023

(Arising out of Order-in-Appeal No. MUM-CUSTM-AMP-APP-2698 to 2722/2022-23 dated 23.03.2023 passed by the Commissioner of Customs (Appeals), Mumbai-III)

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

Versus

Commissioner of Customs (Import), Gr. IV, ... Respondent
Air Cargo Complex, Mumbai
Sahar, Andheri (E), Mumbai – 400 059

AND

Customs Early Hearing Application No. 86285 to 86317 of 2023
(on behalf of Appellant)

In

Customs Appeal No. 87102 to 87134 of 2023

(Arising out of Order-in-Appeal No. MUM-CUSTM-AMP-APP-367 to 399/2023-24 dated 26.06.2023 passed by the Commissioner of Customs (Appeals), Mumbai-III)

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

Versus

Commissioner of Customs (Import), Gr. IV, ... Respondent
Air Cargo Complex, Mumbai
Sahar, Andheri (E), Mumbai – 400 059

Appearance:

Shri T. Viswanathan a/w Ms. Anjali Hirawat, Advocates for the Appellants

Shri S.K. Hatangadi, Auth. Representative for the Respondents

CORAM:

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

FINAL ORDER NO. A/87272 – 87436/2023

Date of Hearing: 20.12.2023

Date of Decision: 20.12.2023

Per: S.K. Mohanty

The issue involved in all these appeals is identical. Accordingly, the same are taken-up for hearing together and a common order is being passed.

2. Briefly stated, the facts of the case are that the appellants have filed the Bills of Entry (B/Es) for clearance of the imported goods viz., "Stainless Steel tube fitting – Tees, Crosses". The appellants have claimed the classification of the said goods under the Customs Tariff Item (CTI) 7307 2200 which attract Basic Customs duty (BCD) @10% in terms of Serial No.377 of Notification No.050/2017-Customs dated 30.06.2017. As against the said classification claimed by the appellant, the department had re-assessed the same under CTI 7307 2900, attracting BCD @25% in terms of Serial No.377A of Notification dated 30.06.2017 (supra). The re-assessment orders passed by the proper officer were appealed against by the appellants before the learned Commissioner of Customs (Appeals), Mumbai. The appeals filed by the appellants were disposed of by the learned Commissioner (Appeals) vide various Orders-in-Appeal (for short, referredto herein as 'impugned orders') in upholding the classification adopted by the department. Feeling aggrieved with the impugned orders, the appellant have filed these appeals before the Tribunal.

3. Heard both sides and examined the case records.

4. We find that the impugned order has basically referred to the Explanatory Notes to Harmonized System of Nomenclature (HSN) to conclude that the imported goods are not 'flanges' or 'threaded elbows,

bends and sleeves' and therefore, classification claimed under specific entry CTH 7307 21 and CTH 730722 are ruled out; and that the goods in question should appropriately be classified under CTH 7307 29as 'other', in the residual entry. Further, we also find that the impugned order has referred to the earlier Order-in-Appeal being No. MUM-CUSTOMS-AMP-APP-108/2021-22 dated 21.05.2021 passed by the Appellate Commissioner in confirming the original order passed by the proper officer for classification of subject goods.

5. On perusal of the case records, we find that the Order-in-Appeal dated 21.05.2021 referred to in the impugned order, has been appealed against by the appellants before this Tribunal, which was disposed of by the Tribunal vide Final Order No. A/86434/2023 dated 14.07.2023 in setting aside the said order and allowing the appeal in favour of the appellants. While allowing the appeal, the Tribunal has held that for change in classification of 'threaded elbows and sleeves', the department had not examined the goods or scrutinized any documents pertaining to the imported goods. Further, it has also been held that HSN Explanatory Notes alone cannot be relied upon for classification of the goods differently. The said order dated 14.07.2023 was passed by the Tribunal by placing reliance on the judgements of the Hon'ble Supreme Court, delivered in the case of *HPL Chemicals Limited Vs. Commissioner of Central Excise, Chandigarh*– 2006 (197) E.L.T. 324 (S.C.) and *Hindustan Ferodo Ltd. Vs. Commissioner of Central Excise, Bombay* – (1997) 2 SCC 677. The ratio arrived at in the said relied upon judgements is to the effect that in case of change in classification of goods, the department has to produce proper evidence and discharge the burden of proof.

6. In the cases in hand, we find that the goods in question imported by the appellants are fittingly fall under the CTI 7307 2200 inasmuch as the description of the product submitted by the appellants clearly demonstrate that the same are treaded elbows, bends etc. The pictorial representation of the goods submitted by the appellants are re-produced herein below:

<u>Pictorial representation of ‘Stainless Steel tube fitting – Tees’</u>

<u>Pictorial representation of ‘Stainless Steel tube fitting – Crosses’</u>

7. On looking at the pictorial representation of the impugned products, as above, it transpires that the same are distinct products, which are conduit in free flow of fluid from one point to another. Further, the said products also change the direction of the tubing by providing for bends or angles between multiple tube fittings/outlets. Considering the nature of the products, the suppliers have also correctly referred those as 'bends' in the commercial invoices issued by them. We find that the department has adopted conflicting stands insofar as the classification of the impugned goods are concerned inasmuch as in the case of another importer namely, M/s Bangalore Fluid System Components Pvt. Ltd., who had imported the identical goods from the very same supplier and classified the same under CTI 7307 2200, the same has not been objected to by the department at the time of assessing the B/Es. Therefore, it is evident that different Commissionerates have adopted conflicting stand in change of classification of the goods in question, which is not proper and justified in absence of proper substantiation on the basis of visual examination of the goods and/or verification of import documents, which admittedly has not been done in the present cases.

8. Further, the issue arising out of the present dispute is no more *res integra*, in view of the order dated 14.07.2023 of the Tribunal passed in the case of the appellants themselves with regard to the self-same products imported by them in the earlier occasions. Since, operation of the Order dated 14.07.2023 (supra) has not been stayed or overruled by the higher judicial forums, at this juncture, with similar set of facts involved in both the cases, we cannot take a contra stand in deciding these appeals differently.

9. In view of the above discussions, we do not find any merits in the impugned orders, insofar as the classification of the goods in dispute was changed from CTI 7307 2200 to CTI 7307 2900. Therefore, by setting aside the impugned orders, the appeals are allowed in favour of the appellants.

(Operative portion of the order pronounced in open court)

(S.K. Mohanty)
Member (Judicial)

(M.M. Parthiban)
Member (Technical)

Sinha