CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL MUMBAI

REGIONAL BENCH - COURT NO. I

Customs Appeal No. 88992 of 2014

(Arising out of Order-in-Appeal No. 2240 (Gr.V)/ 2014 (JNCH)/ IMP-2158 dated 20.05.2014 passed by the Commissioner of Central Excise & Customs, Mumbai-II)

Mahalaxmi Corporation .... **Appellant**
Plot No. 5, Fulchand Vakharia Society,
Bhestan, Surat, Gujarat- 400 055.

Versus

Commissioner of Customs, Nhava Sheva-III .... **Respondent**
Jawaharlal Nehru Customs House,
Nhava Sheva, Taluka-Uran, Dist.-Raigad,
Mumbai- 11.

APPEARANCE:

Shri S. Suriyanarayanan, Advocate for the Appellant

Shri Ram Kumar, Authorized Representative for the Respondent

CORAM:

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

FINAL ORDER NO. A/86238/2024

Date of Hearing: 08.08.2024

Date of Decision: 08.08.2024

Per: S.K. MOHANTY

Heard both sides and perused the case records.

2. Brief facts of the case are that the appellant had filed the Bill of Entry No. 9777149 dated 05.04.2013 for clearance of the imported consignments of 'Aluminum Alloy Plate', by classifying the same under CTI 76061200. Goods under such Tariff Item attract rate of import duties of 5%+12%+2%+1%+4%. On examination of the goods, it was found by the department that the imported goods were 'vehicle registration plates' and were cut to shape and size,

embossed and coloured/finished, having printing of Indian Logo. On the basis of such examination, the department had alleged that the correct classification of the imported goods should have been under the CTI 83100090, which attract rate of duties of 10%+12%+2%+1%+4%. Accordingly, proceedings were initiated against the appellants, which culminated into the adjudication order dated 10.05.2013, wherein the Original Authority had confirmed the differential duty; confiscated the goods under Section 111(m) of the Customs Act, 1962, with the option to redeem the same on payment of redemption fine of Rs.1,50,000/- and also imposed penalty of Rs.1,00,000/- under Section 112(a) *ibid* on the appellant. On appeal filed against the said adjudication order, the learned Commissioner of Customs (Appeals), Mumbai – II vide the impugned order dated 20.05.2014 has upheld the original order and rejected the appeal filed by the appellant. Feeling aggrieved with the impugned order, the appellant has preferred this appeal before the Tribunal.

3. We find that the impugned order has upheld confirmation of the adjudged demands on the ground that the appellant had mis-declared the imported goods with regard to classification and payment of applicable rate of duties, leviable for the goods under CTH 83100090. It has further been held that since the appellant had accepted the classification of goods made by the department, then no option had been provided to it for challenging such classification. However, on perusal of the case records, more particularly the ground(s) urged in the appeal memorandum at page 21, we find that the appellant has specifically raised the issue of correct classification of the imported goods. Since, the present appeal has been filed, by assailing the impugned order in changing the classification of goods, it cannot be said that the appellant had accepted the classification made by the department and such changed classification cannot be agitated at the appellate stage for proper redressal.

4. We find that the issue arising out of the present dispute with regard to proper classification of the subject goods was dealt with by the learned Commissioner (Appeals) in the case of Bajaj Auto Ltd. In the said case, classification of 'blank name plates' was made by the department under Chapter Heading 83.10 of the Central Excise Tariff

Act, 1985. The description of the goods under the said heading reads as "*sign plates, address plates and similar plates, numbers, letters and other symbols of base metal, excluding those of heading No. 94.05*". On examination of such Chapter Heading read with HSN explanatory notes, the learned Commissioner (Appeals) in the said case of Bajaj Auto has held that Chapter Heading 83.10 does not include plates not bearing letters, numbers, designs etc. The said order had also accepted the submissions of the appellant therein that the name plates manufactured by them were blank and do not bear any letters, numbers, designs etc. On the basis of such factual matrix, the learned Commissioner (Appeals) in the said case had held that the classification of the goods under Heading 83.10 as decided by the lower authority is ruled out and the order is not sustainable to that extent. We find that the said order passed by the learned Commissioner (Appeals) was appealed against by the Revenue before this Tribunal and vide Order No. A/1545/2005-WZB/C-III dated 19.07.2005 (in Appeal No. E/2923/2001), the Tribunal had rejected the appeal filed by Revenue [reported in 2005 (190 E.L.T. 389 (Tri.-Mum.)]. In the case in hand, we find that the Original Authority had referred to the Explanatory Notes appended to Chapter 8310, to conclude that the goods in question should appropriately be classifiable under CTH 83100090. However, on reading of the said Tariff Item together with the HSN and the order of the learned Commissioner (Appeals) passed in the case of Bajaj Auto Ltd. (supra), it is observed that the CTH 83.10 does not include plates not bearing letters, numbers, designs etc., and printing of Indian Logo, without carrying out such activities, cannot be considered as the goods, to be classified under CTH 8310. Though, the said order in the case of Bajaj Auto Ltd. (supra) was passed by the learned Commissioner (Appeals) for the classification of goods under the Central Excise Tariff Act, 1985, which was subsequently upheld by the Tribunal (supra), but the principles decided therein squarely apply to the classification of imported goods under the Customs Tariff Act, 1975, inasmuch as the Central Excise Tariff has been aligned with the Customs tariff at the eight digit level by amendment of the Central Excise Tariff (Amendment) Act, 2004 (5 of 2005), with effect from 28.02.2005.

5. Therefore, we do not find any merits in the impugned order, insofar as it has upheld confirmation of the adjudged demands on the appellant. Accordingly, the impugned order is set aside and the appeal is allowed in favour of the appellant.

(Operative portion of order pronounced in open court)

(S.K. Mohanty)
Member (Judicial)

(M.M. Parthiban)
Member (Technical)

SM