CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

WEST ZONAL BENCH

CUSTOMS APPEAL NO: 86266 OF 2021

[Arising out of Order-in-Appeal No: 497(Gr.IIC-F)/2021(JNCH)/Appeals dated 21st June 2021 passed by the Commissioner of Customs (Appeals), Mumbai–II.]

Prakash International
309, Ascot Centre, Opp. Grand Maratha Hotel, Sahar Road, Andheri (East), Mumbai - 400099 … ***Appellant***

versus

Commissioner of Customs (NS-I)
Jawaharlal Nehru Custom House, Nhava Sheva
Tal: Uran, Dist: Raigad - 400707 ***…Respondent***

WITH

CUSTOMS APPEAL NO: 87381 OF 2021

[Arising out of Order-in-Original No: 11/2021-22/Commr/NS-I/JNCH dated 6th October 2021 passed by the Commissioner of Customs (NS-I), Nhava Sheva.]

Prakash International
309, Ascot Centre, Opp. Grand Maratha Hotel, Sahar Road, Andheri (East), Mumbai - 400099 … ***Appellant***

versus

Commissioner of Customs (NS-I)
Jawaharlal Nehru Custom House, Nhava Sheva
Tal: Uran, Dist: Raigad - 400707 ***…Respondent***

APPEARANCE:

Shri Sanjay Singhal, Advocate for the appellant

Shri DS Maan, Deputy Commissioner (AR) and Shri Deepak Sharma, 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: 87118-87119/2024

DATE OF HEARING: 03/06/2024
DATE OF DECISION: 28/11/2024

PER: C J MATHEW

The issue in these two appeals of M/s Prakash International, arising from import of 'opagel CMT (cement mortar additive)' that was alleged to be more appropriately covered by 'dextrins and other modified starches' corresponding to tariff heading 3505 of First Schedule to Customs Tariff Act, 1975, is the claim of the importer that 'prepared additives for cements, mortars or concretes' of heading 3824 of First Schedule to Customs Tariff Act, 1975 is most apt description. The genesis of the dispute is the declaration of the goods valued at ₹ 40,33,463 sought to be cleared *vide* bill of entry no. 7226661/13.03.2020 to be subjected to rate of duty corresponding to tariff item 3824 4090 of First Schedule to Customs Tariff Act, 1975. During the course of investigation, stemming from inclusion of heading 3505 of HS classification in the accompanying certificate of origin, sample of goods were tested and, on the report of the chemical examiner reporting the presence of 'starch' and small amount of inorganic additives as well as technical literature from the website of the manufacturer and other similar producers available in the public domain, notice was issued proposing re-classification under sub-heading 3505 10 of First Schedule to Customs Tariff Act, 1975 as also for confiscation under section 111(m) of Customs Act, 1962 and imposing penalty under section 112 thereof.

2. In a parallel proceedings pertaining to 29 imports effected between 26th December 2015 and 30th April 2020 on goods valued at ₹ 6,34,74,129, Principal Commissioner of Customs, Nhava Sheva-I, Jawaharlal Nehru Custom House, *vide* order[1], confirmed recovery of differential duty of ₹ 1,06,73,161 under section 28 of Customs Act, 1962 besides imposing penalty of like amount under section 14A of Customs Act, 1962.

3. In the proceedings relating to the single consignment, the original authority ordered recovery of differential duty consequent upon re-determination of classification against tariff item 3505 1090 of First Schedule to Customs Tariff Act, 1975 besides confiscating the goods under section 111(m) of Customs Act, 1962 that were offered for redemption thereof under section 125 of Customs Act, 1962 on payment of fine of ₹6,00,000 besides imposing penalty of ₹ 50,000 under section 112 of Customs Act, 1962. This was challenged before Commissioner of Customs (Appeals), Mumbai – II, Jawaharlal Nehru Custom House, Nhava Sheva who, *vide* order[2], found no reason to interfere.

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[1] [order-in-original no. 11/2021-22/Commr/NS-I/JNCH dated 6th October 2021]
[2] [order-in-appeal no. 497(Gr.IIC-F)/2021(JNCH)/Appeals dated 21st June 2021]

4. As both these issues arise from identical set of facts and appealed against on identical grounds, these two appeals are disposed off together. The issue in question is only that of classification between the two competing sub-headings set out *supra.* Commissioner of Customs (NS-I) as well as Commissioner of Customs (Appeals) who affirmed the findings of the original authority, have relied upon technical literature, information available in the public domain, test results and certificate of origin to discard the declared classification owing to which differential duty was ordered for recovery and other detriment visited on the appellant herein.

5. We have heard Learned Counsel for the appellant and Learned Authorised Representative at length. In our view, the principles of classification set out in General Rules for Interpretation of Import Tariff appended to the Customs Tariff Act, 1975 and the onus devolving on customs authorities, as set out by the Hon'ble Supreme Court in *Hindustan Ferodo Ltd v. Collector of Central Excise [1997 (89) ELT 16 (SC)]* that

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

> *allowed.'*

and in *HPL Chemicals Ltd v. Commissioner of Central; Excise, Chandigarh [2006 (197) ELT 324 (SC)]* that

> *'28. 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……'*

are crucial for deciding on the appeal.

6. The classification adopted by the customs authorities pertain to goods that conforming to description 'dextrins and other modified starches; glues based on starches or on dextrins or other modified starches' corresponding to heading 3505 of of First Schedule to Customs Tariff Act, 1975. The show cause notice proposed classification as sub-heading 3505 10 which is intended for 'dextrins and other modified starches' which are either 'esterified starches' and 'other' and in adjudicating the proposal, the Commissioner of Customs has not gone beyond the six digit level which is patently incorrect inasmuch as there is no duty corresponding to 'six digit level' description. On that ground itself, it can be held that the adjudication process has failed to meet the test of law and judicial

determination as set out above. Furthermore, as pointed out by the Learned Counsel for the appellant, the adjudicating authority has placed emphasis on nature of the starches without the backing of any test report or expert opinion.

7. Though the first appellate authority had affirmed the classification against tariff item 3505 1090 of First Schedule to Customs Tariff Act, 1975, it would again appear that the finding therein was devoid of any support to indicate that the goods are 'other modified starches' or other than 'dextrins' with the sub-heading. On the other hand, the claim of the appellant herein that the product is exclusively used as additives to cement and mortar and, therefore, appropriately classifiable within heading 3824 of First Schedule to Customs Tariff Act, 1975 has not been examined at all. The said heading corresponding to

> *'prepared binders for foundry moulds or cores; chemical products and preparations of the chemical or allied industries ..... not elsewhere specified or included'*

has a peculiar connotation within the First Schedule to Customs Tariff Act, 1975. Though intended as a residuary item and with the description of the heading indicating as much, the description below are so specific as to exclude the generality of the heading itself. It appears obvious to us that

> *'prepared additives for cements, mortars or concretes'*

set out as sub-heading 3824 40 of First Schedule to Customs Tariff Act, 1975 is a clear intent of a specific description within the residuary category. The usage of the impugned goods as additives for cements, mortars of concrete has been specifically declared in the bill of entry. There is no technical information, laboratory analysis or even information garnered from the public domain to counter this contention and so essential in the light of the several specific sub-classifications set out within heading 3824 of First Schedule to Customs Tariff Act, 1975.

8. A plain understanding of the enumeration in the said heading makes it abundantly clear that it is not intended as a residuary but also one in which the specific description outweigh any other less specific description in terms of rule 3 of General Rules for Interpretation of the Import Tariff appended to Customs Tariff Act, 1975. There is no doubt that the show cause notice had proposed to alter the classification but only at sub-heading level. Notwithstanding that, it was obligatory, and indeed acceptable, to isolate the relevant tariff item within such classification with appropriate justification. Neither is there any such justification nor indeed, as pointed out *supra*, has the Commissioner of Customs narrowed down the classification at the tariff item level. In view of this, assessment under section 17, and recovery under section 28, of Customs Act, 1962 required to be re-determined. Needless to say such determination should be

comprehensive and not by mere reliance on a few isolated expressions deployed in the test report or technical literature or information at the public domain. In order to this may be carried out, we set aside the impugned orders and restore the notices back to the respective original authorities for fresh adjudication.

9. Appeals are, thus, allowed by way of remand.

(Order pronounced in the open court on 28/11/2024)

(AJAY SHARMA)
Member (Judicial)

(C J MATHEW)
Member (Technical)

**/as*