CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL MUMBAI

REGIONAL BENCH - COURT NO. I

Customs Appeal No. 89024 of 2014

(Arising out of Order-in-Appeal No. 2595 (Gr.IV)/ 2014(JNCH)/ IMP-2493 dated 16.06.2024 passed by the Commissioner of Customs (Appeals), JNCH, Sheva, Mumbai-II)

ABB Ltd. **.... Appellant**
19 Mfg. Plot No.79, Street No.17,
MIDC Industrial Area, Nasik,
Maharashtra- 422 007.

Versus

Commissioner of Customs, **.... Respondent**
Nhava Sheva
Jawaharlal Nehru Custom House,
Taluka- Uran, District- Raigad,
Maharashtra- 400 707.

APPEARANCE:

Shri Akhilesh Kangsia, Ms Madhura Khandekar a/w Shri T. Vishvanathan, Advocates for the Appellant

Shri Rajeev Ranjan, 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/85067/2025

Date of Hearing: 20.01.2025
Date of Decision: 22.01.2025

Per: S.K. MOHANTY

Briefly stated, the facts of the case are that the appellants herein had imported 'high conductivity copper bus bars' and filed the Bills of Entry (B/Es) before the jurisdictional customs authorities for assessment and clearance of the said imported goods. The appellants had classified the said goods under Customs Tariff Item (CTI) 7407 21 20 and also claimed the Free Trade Agreement (FTA) benefit provided under Notification No.46/2011-Customs dated 01.06.2011 [Serial No.979], which covers 'all goods' covered under CTH 740721 to 740729. During the course of examination of the imported goods, the customs authorities found that the said articles were made of 'copper' and not of 'coppery alloys', as claimed by the appellants. Thus, the classification of the imported goods was sought to be revised by the department from CTI 7407 21 20 to CTI 7407 10 30 and for denial of the FTA benefit. Further, in support of change of classification, the department had also referred to the analysis certificate submitted by the appellants, confirming that the imported articles contain ‘99.99% of copper’. On the basis of such examination, the matter was adjudicated vide Order dated 26.08.2018, wherein the learned Additional Commissioner of Customs, Appraising Group-IV, JNCH, Nhava Sheva had classified the subject goods under CTI 7407 10 30 and denied the duty exemption claimed by the appellants under Notification No. 46/2011-Customs dated 01.06.2011; confiscated the goods covered under the B/Es dated 07.06.2013, 29.05.2013, but no redemption fine was imposed owing to the reason that the goods covered under the said B/Es were not available for confiscation; confiscated the goods covered under B/E dated 26.06.2013 under Section 111(m) of the Customs Act, 1962, providing the option to redeem the same on payment of redemption fine of Rs.2,00,000/- under Section 125 *ibid*. The original order had also imposed penalty of Rs.50,000/- under Section 112(a) *ibid* on the appellants. Appeal filed against the adjudication order dated 26.08.2013 was upheld and the appeal filed by the appellants was rejected by the learned Commissioner of Customs (Appeals), Mumbai-II vide the impugned order dated 16.06.2014. Feeling aggrieved with the impugned order, the appellants have preferred this appeal before the Tribunal.

2. Learned Advocate appearing for the appellants submitted that there is no mis-declaration of the description of the imported goods and based upon the certificate of origin issued by the Department of Foreign Trade, Government of Thailand, the classification of the imported goods was claimed under CTI 7407 21 20. Further, he has also submitted that on the basis of Mill Test certificate submitted by the appellants, the classification of the goods was changed by the department to CTI 7407 10 30. Thus, it was contended that in absence of mis-declaration or *malafide* intention on the part of the appellants, the provisions of Section 111(m) *ibid* cannot be invoked and resultantly, no redemption fine or penalty can be imposed on the appellants. In support of such contentions, learned Advocate has relied upon the order passed by the Tribunal in the following cases:

(i) *Sahil International Vs. Commissioner of Customs (Import), Nhava Sheva* – 2019 (369) E.L.T. 1397 (Tri. – Mumbai)

(ii) *Satron Vs. Commissioner of Customs (Import), JNCH, Nhava Sheva* – 2020 (371) E.L.T. 565 (Tri. – Mumbai)

(iii) Midas Fertchem Impex Pvt. Ltd. *Vs. Principal Commissioner of Customs, ACC (Import), New Delhi* – 2023 (397) E.L.T. 1397 (Tri. – Del.)

(iv) Kirti Sales Corporation *Vs. Commissioner of Customs, Faridabad* – 2008 (232) E.L.T. 151 (Tri. – Del.)

3. On the other hand, learned Authorised Representative (AR) appearing for the Revenue reiterated the findings recorded in the impugned order. Further, he had stated that the appellants had knowingly classified the disputed goods under CTI 7407 21 20, in order to avail the FTA benefits provided under the Notification No.46/2011-Customs dated 01.06.2011, which was otherwise not available to them inasmuch as the imported article contained '99.99% of copper' is classifiable under CTI 7407 10 30. Further, it was also stated that the appellants did not contest the classification adopted by the department and have also deposited the differential duty along with interest attributable to the imported goods. Therefore, it was contended that the provisions of Section 111(m) *ibid* are attracted in the circumstances of the present case and the appellants are exposed to the penal consequences provided under Section 125 *ibid* and Section 112(a) *ibid*.

4. Heard both sides and examined the case records.

5. On careful reading of the case records, we find that the appellants had filed the B/Es in respect of the goods i.e. 'high conductive bus bars', by claiming the classification under CTI 7407 21 20. However, on the basis of the available documents and upon examination of the goods, the department had observed that the imported goods in question should be classifiable under CTI 7407 10 30. To support such change in the classification, the department has mainly referred to the composition of the imported article, having copper content of 99.99%. Since, the composition of the imported article is relevant for consideration of the appropriate tariff classification, we are of the view that change in classification of the goods made by the department is proper and justified. The appellants had claimed that the 'Mill Test certificate' and the certificate of analysis were submitted by them at the time of examination of the goods by the department. However, we find that the B/Es filed by the appellants did not show the 'copper content' in the imported article, which was detected by the department at the time of examination of the goods. Insofar as confiscation of improperly imported goods are concerned, Section 111 *ibid*, in clause (m) has dealt with the situation of furnishing the correct particulars in the entry made in the B/E. In the present case, since the appellants had incorrectly mentioned the tariff classification and also claimed the FTA benefit provided under notification dated 01.06.2011 (supra), which otherwise was not available to the goods under CTI 7407 10 30, the imported goods, in our considered view, are liable for confiscation and accordingly, the appellants are also exposed to the penal consequences provided under the statute i.e., for payment of redemption fine and penalty. The Orders (supra) passed by the Co-

ordinate Bench of this Tribunal, as relied upon by the learned Advocate for the appellants, are distinguishable from the facts of the present case, inasmuch as change in classification of goods by the department and acceptance of the said changed classification by the importer was not the subject matter of dispute before the Co-ordinate Benches. Further, in the case in hand, the appellants have not specifically pleaded that they were not liable to pay the differential duty attributable to the change in classification of goods, which is evident from the fact that the said amount was paid by them *suo motto* before adjudication of the matter and the amount was also duly appropriated in the adjudication proceedings.

6. However, considering the fact that the appellants had filed the B/Es by describing the imported goods as per the invoice and other certificate(s) obtained from the originating country, we are of the view that the quantum of redemption fine and penalty imposed on the appellants can be reduced in the interest of justice. Therefore, imposition of redemption fine of Rs.2,00,000/- under Section 125 *ibid* and penalty of Rs.50,000/- under Section 112(a) *ibid* in the original order dated 26.08.2013, and upheld in the impugned order dated 16.06.2014, is modified and the quantum is reduced to the extent of Rs.50,000/- and Rs.10,000/- respectively.

7. In the result, the appeal is partly allowed in the above terms.

(Order pronounced in open court on 22.01.2025)

(S.K. Mohanty)
Member (Judicial)

(M.M. Parthiban)
Member (Technical)

SM