CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI

REGIONAL BENCH - COURT NO. I

Customs Appeal No. 85186 of 2014

(Arising out of Order-in-Appeal No. 928 (Gr.V)/2013(JNCH)/IMP-713 dated 25.09.2013 passed by the Commissioner of Customs (Appeals), Mumbai-II)

Commissioner of Customs (Import), Nhava Sheva .... Appellant
JNCH, Nhava Sheva, P.O. – Uran,
Raigad – 400 707

Versus

M/s Rex Polyextrusion Ltd. .... Respondent
Unit-I, Plot – L8 & L9, MIDC, Kupwad Area,
Kupwad, Sangli,
Maharashtra

Appearance:

Shri D.S. Mann, Authorized Representative for the Appellant

Shri Prashant Patankar, Advocate for the Respondent

CORAM:

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

FINAL ORDER NO. A/85364/2025

Date of Hearing: 06.02.2025
Date of Decision: 06.02.2025

PER: S.K. MOHANTY

Heard both sides and perused the case records.

2. The respondent herein had imported goods namely, "*Mastenboke Drainage Machine for Agricultural Sports Ground Soil Reclamation*", in classifying the same under Customs Tariff Item (CTI) 8432 10 90. The Bill of Entry (B/E) filed by the respondent was self-assessed under Section 17(1) of the Customs Act, 1962. However, the self assessed B/E was re-assessed by the Department under CTI 8430 69 00 in terms of sub-section (4) of Section 17 ibid. As a result of re-assessment of the B/E, the proper

officer (original authority) had confiscated the imported goods and also imposed redemption fine of Rs.1,00,000/- and penalty of Rs.25,000/- on the respondent. The Order-in-Original dated 15.04.2013 was appealed against by the respondent before the learned Commissioner of Customs (Appeals), Mumbai-II, which was disposed of vide impugned order dated 25.09.2013 by way of allowing the appeal in favour of the respondent. Feeling aggrieved with the impugned order dated 25.09.2013, Revenue has assailed the same before the Tribunal.

3. Revenue has contended that the Commissioner (Appeals) has travelled beyond the scope of the adjudication order inasmuch as the said order had classified the imported goods under CTI 8430 69 00, whereas the learned Commissioner (Appeals) has re-classified the said goods under a different classification of CTI 8432 80 90. Thus, Revenue has contended that the impugned order passed by the learned Commissioner (Appeals) cannot be sustained on the ground that he is not competent to change the classification made by the importer and subsequently assessed by the Department by classifying the goods under different tariff item.

4. On examination of the case records, we find that the learned Commissioner (Appeals) has not specifically recorded the finding with regard to the classification claimed by the respondent-importer and the Department. Rather, he has proceeded entirely on different ground to classify the imported goods under altogether a different tariff item, which was not the subject matter of the dispute before the original authority and not the ground urged by the respondent in the appeal filed before him. Therefore, we are of the view that the matter is required to be examined once again by the learned Commissioner (Appeals) for a proper fact finding, whether the imported goods should be classifiable under CTI 8432 1090, as claimed by the respondent-importer or under CTI 8430 69 00, as claimed by the Department.

5. In view of the above, the impugned order is set aside and the appeal is allowed by way of remand to the learned Commissioner of Customs (Appeals) for passing of a speaking order in terms of our observation made herein above. Needless to say that both the parties should be afforded with a reasonable opportunity for presenting their case.

6. In the result, the appeal is allowed by way of remand.

(Dictated and pronounced in open court)

(S.K. MOHANTY)
MEMBER (JUDICIAL)

(M.M. PARTHIBAN)
MEMBER (TECHNICAL)

Sinha