CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

WEST ZONAL BENCH

CUSTOMS APPEAL NO: 86542 OF 2016

[Arising out of Order-in-Original No: 8448/2015-16 NS-III dated 31st March 2016 passed by the Commissioner of Customs (NS-III), Nhava Sheva.]

Larsen & Toubro Ltd
16, Powai Works, Saki Vihar Road, Mumbai 400072 … ***Appellant***

versus

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

APPEARANCE:

Shri Suyog Bhave, Advocate for the appellant

Shri D S Maan, Deputy Commissioner (AR) for the respondent

CORAM:

HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)
HON'BLE MR AJAY SHARMA, MEMBER (JUDICIAL)

FINAL ORDER NO: 86720/2025

DATE OF HEARING: 24/04/2025
DATE OF DECISION: 22/10/2025

PER: C J MATHEW

In this appeal of M/s Larsen & Toubro Ltd, against order[1] of Commissioner of Customs (NS-III), Nava Sheva, three sets of imports

[1] [order-in-original no. 8448/2015-16 NS-III dated 31st March 2016]

– one consignment in bill of entry no. 7288799/03.07.2012, two consignments imported *vide* bill of entry no. 4570688/07.09.2011 and no. 5956535/09.02.2012, and two consignments imported *vide* bill of entry no. 883363/22.08.2007 and no. 883362/22.08.2007 - the duty liability thereon are in dispute.

2. On the first consignment, valued at ₹ 7,72,12,898.29, differential duty of ₹ 46,31,909 was sought to be fastened, while in the second consignment, valued at ₹ 9,91,10,587 differential duty of ₹ 58,55,480 and on the third, differential duty of ₹ 18,65,702 were ordered to be recovered under section 28(4) of Customs Act, 1962 even as the goods covered by the first two sets of imports were held as liable for confiscation under section 111(m) of Customs Act, 1962 with option to redeem the former on payment of fine of ₹ 40,00,000 under section 125 of Customs Act, 1962. In addition, penalty of ₹ 12,35,091 was imposed under section 114A Customs Act, 1962. In demanding the differential duty and confiscation of the goods, the imports of 'welded titanium tubes (SB338) grade II', sought to be classified under tariff item 8108 9010 of the First Schedule to the Customs Tariff Act, 1975, was re-determined as chargeable to rate of duty corresponding to tariff item 8108 9090 of First Schedule to Customs Tariff Act, 1975.

3. Learned Counsel for the appellant submitted that the goods imported by them were, in reality, of 'wrought titanium' that the

original authority had incorrectly sought to shift the classification to a residual entry without any support for doing so in terms of rules of classification.

4. We have heard Learned Authorized Representative.

5. Heading 8108 of First Schedule to Customs Tariff Act, 1975 is intended to cover

> *'titanium and articles thereof, including waste and scrap'*,

with '*unwrought titanium, powders'* and *'waste and scrap'* as the specific sub-headings and with 'titanium, wrought' and 'others' corresponding to tariff item 8108 9010 and tariff item 8108 9090 respectively within 'other' corresponding to sub-heading 8108 90 of First Schedule to Customs Tariff Act, 1975. As the dispute is clearly identifiable within the framework of 'residual description other than waste and scrap and unwrought titanium', it only remains for ascertainment of the goods as articles that are neither 'unwrought titanium' nor 'wrought titanium'.

6. It is admitted in the impugned order that 'wrought' has not been assigned meaning as far as heading 8108 of First Schedule to Customs Tariff Act, 1975 is concerned and, instead, resort was had to the distinction drawn for 'tungsten' in tariff heading 8101 of First Schedule to Customs Tariff Act, 1975. The finding in consequence

was that

‘49. The definition of 'Wrought' has not been clarified under CTH 8108, however the same has been explained under heading 8101 in respect of Tungsten (wolfram) which is as follows:

i) Unwrought metal, e.g., in blocks, ingots, sintered bars and rods, or as waste and scrap (for the latter see the Explanatory Note to heading 72.04);

ii) Wrought metal, e.g., rolled or drawn bars; profiles, plates and sheets, strip or wire;

As the term 'Wrought' has been explained in the HSN to include items at heading 8101 for Tungsten, the same is squarely applicable to the goods covered under heading 8108 tor the purpose of classification. It is obvious that under the catagorv "wrought metal" goods like rolled or drawn bars, profiles, plates and sheets, strip or wire and the goods like Titanium Coil/Strip are covered which have not been processed further.

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51. It has also been noticed that M/s Larsen & Toubro Limited has also imported similar goods i.e Titanium Tubes in past by classifying as finished goods under CTH 8108 9090 vide Bills of Entry No. 922015 dated 21.03.2009, 541298 dated 09.05.2010, 4158353 dated 23.07.2011, 4711155 dated 21.09.2011, 4206379 dated 28.07.2011, 5766015 dated 18.01.2012, through Air Cargo Customs, Sahar, vide Bill of Entry No. 941689 dated 04.01.2010 through New Custom House, Mumbai and vide Bills of Entry Nos. 215559 dated 07.06.2010, 114765 dated 27.01.2010 through Air Cargo Customs, Chennai Customs, however while importing the same goods at JNCH, the importer has classified them under CTH 8108 9010 and this fact has also been accepted by Sh. N.K. Ravindran, Manager M/s

> *Larsen & Toubro Ltd., during his statement recorded under Section 108 of the Customs Act, 1962 and it has been admitted that it was their mistake to classify Titanium Tubes/Pipes under CTH 8108 9010 as wrought. It is clear that the modus operandi of the importer was that wherever the quantity of the imported goods i.e Titanium Tubes/Pipes was small, they have classified them under CTH 8108 90 90 however wherever the quantity of the imported goods was huge, the importer has intentionally classified the similar goods i.e Titanium Tubes/Pipes under different tariff heading 8108 90 10 to evade payment of legitimate duty of Customs.'*

to conclude the goods as being not 'wrought titanium' and, therefore, by default in the residual category.

7. The rules for engagement of classification places the onus solely on customs authorities in terms of decisions of Hon'ble Supreme Court in *Hindustan Ferodo Ltd v. Collector of Central Excise [1997 (89) ELT 16 (SC)]*, wherein it was held 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……'*

8. It would, therefore, appear that the reliance placed upon the distinction between 'wrought' and 'unwrought', and contextually relevant for 'tungsten' that has its own segregation have been erroneously drawn upon to conclude that the imported goods are not 'wrought' but worked further. In terms of the decisions of the Hon'ble Supreme Court *supra*, it devolved on the respondent-Commissioner to conclude that classification in the residual 'others' corresponding to tariff item 8108 9090 survives on its own before any comparison may be made with the classification claimed by the importer. This onus has not been duly discharged and, considering the limited remit in the show cause notice, is not amenable to fresh adjudication. Accordingly, the revised classification does not find fitment within the law as judicially determined and the impugned order is set aside to allow the appeal.

(Order pronounced in the open court on 22/10/2025)

(AJAY SHARMA)
Member (Judicial)

(C J MATHEW)
Member (Technical)

**/as*