CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

REGIONAL BENCH - COURT NO. 1

Customs Appeal No. 87740 of 2016

[Arising out of Order-in-Appeal No.124(Gr.VII-H)/2016(JNCH)-Appeal-I dated 30.08.2016 passed by the Commissioner of Customs (Appeals-I), JNCH, Nhava Sheva, Mumbai Customs Zone-II.]

Commissioner of Customs, NS-II .... **Appellant**
Nhava Sheva Customs Commissionerate-II
Jawaharlal Nehru Custom House (JNCH)
Nhava Sheva, Taluka Uran, District Raigad
Maharashtra – 400 707.

Versus

Voltas Limited .... **Respondent**
UPBG Unit-1, Plot No.2-5 Sector-8
Pant Nagar, Udam Singh Nagar,
Uttarakhand.

Appearance:

Shri Krishna Murari Azad, Authorized Representative for the Appellant

Shri Akhilesh Kangasia along with Ms. Madhura Khandekar, Advocates for the Respondent

FINAL ORDER NO. A/86019/2026

Date of Hearing: 06.04.2026
Date of Decision: 06.04.2026

Per: M.M. PARTHIBAN

This appeal has been filed by the Commissioner of Customs, NS-II, JNCH, Nhava Sheva (herein after, referred to as "the appellant", for short) in pursuance to Review Order No.11/2016 dated 16.12.2016 passed by Committee of Commissioners of Customs assailing the Order-in-Appeal No. 124(Gr.VII-H)/2016(JNCH)-Appeal-I dated 30.08.2016 (herein after, referred to as "the impugned order") passed by the Commissioner of Customs (Appeals-I), JNCH, Nhava Sheva, Mumbai Customs Zone-II, in the appeal preferred before him by respondent-importer M/s Voltas Limited, Uttaranchal/ Uttarakhand.

2.1 Brief facts of the case, leading to this appeal, are summarized below:

2.2. The respondent herein in an importer of 'Split type Air Conditioner' and its parts through the port of JNCH, Nhava Sheva. For the purpose of import and clearance of 'Split Type Air Conditioner' imported from overseas supplier, the respondent had filed the Bills of Entry (B/E) No. 6094709 dated 14.07.2014 and No.6122059 dated 16.07.2014 by classifying the goods under Customs Tariff Item (CTI) 8415 9000 and declared the value of goods as Rs.3,67,31,389/- and Rs.3,53,24,436/-, respectively. The B/E No. 6094709 for imported goods was facilitated by Risk Management Systems of the department for allowing customs clearance. However, since the importer respondent found that the levy of Education cess in the said B/E No. 6094709 has been done incorrectly, they had requested the department to recall the assessment of said B/E for proper assessment by the department. During such process, the customs assessment assessing group officials found that the classification declared by the respondent for 'Split Type Air Conditioner' is incorrectly shown as CTI 8415 9000 which is applicable for 'parts' and the correct CTI for the air-conditioner is CTI 8415 1090, and the said goods are subjected to levy of additional duty of customs (CVD) on the basis of Maximum/Retail Sale Price (MRP/RSP). Therefore, the department had assessed the goods provisionally. The mis-classification of the imported goods was interpreted by the department as an attempt by the respondent importer to evade CVD leviable on the basis of MRP/RSP and thus adjudicated the case. During the personal hearing before the original authority, the respondent had submitted that the imported goods had been properly declared with the description; however, their Custom House Agent handling the import of parts had handled such consignment, and thus the classification was incorrectly mentioned which relates to parts of air-conditioner, rather than the whole air conditioner. They also submitted that they had fully paid the differential duty of Rs.54,45,392/- and requested to take lenient view on the basis of aforesaid explanation offered by them. In adjudication of the case, the original authority vide Order-in-Original dated 30.03.2015, finalised the provisional assessment by appropriating the differential duty paid by the respondent importer; further, he confiscated the goods by invoking Section 111(m) of the Customs Act, 1962 and allowed the same for redemption fine of Rs.70,00,000/- and also imposed penalty of Rs.7,00,000/- on the respondent importer under Section 112(a) ibid. Being aggrieved with the said order of the original authority, the respondent had filed an appeal before the Commissioner of Customs (Appeals). In deciding the case, learned Commissioner of Customs (Appeals) vide impugned order had modified the order of original authority by setting aside the redemption fine and penalty imposed on the respondent importer. Feeling aggrieved with such order, the appellant department has filed this appeal before the Tribunal.

3. Learned Authorized representative appearing for Revenue stated that mis-classification of air-conditioner to that of parts cannot be considered as an inadvertent error on the part of respondent-importer, as they had imported the complete air conditioner units along with MRP/RSP labels, owner manuals and accessories, and therefore it has to be construed as mis-declaration with an intention to evade payment of MRP/RSP based CVD on such goods. He further stated that in terms of Section 17 ibid the importer is required to self-assess the duty leviable on imported goods properly and any failure on proper payment of duty would indicate malafide intent on their part. Therefore, he justified the appeal filed by Revenue for setting aside the impugned order.

4. On the other hand, Learned Counsel stated that since the description of the goods have been properly declared as 'Complete Air Conditioners unit - Split type' in the B/Es and in the import documents such as invoice, packing list and the respondent importer themselves sought to recall the B/Es already cleared by the department, and also paid the differential duty even before adjudication of the case, there is no ground for confiscation of goods and for imposition of penalty. The entire details submitted by them have been properly appreciated by the learned Commissioner of Customs (Appeals) and hence he submitted that the appeal filed by Revenue is not sustainable. Learned Counsel in support of the above plea, relied upon the judgement of the Hon'ble Supreme Court in the case of *Northern Plastic Vs. Commissioner of Central Excise* - 1998 (101) E.L.T. 549 (S.C.) and the order of the Tribunal in the case of *Oberoi Constructions Limited and Oberoi Realty Private Limited Vs. Commissioner of Customs (Import), Nhava Sheva* – 2022 (12) TMI 1339 – CESTAT MUMBAI.

5. We have heard both learned Authorized Representative of the Department and the learned Counsel appearing for the respondent and perused the case records and the synopsis given in the form of written submissions.

6. The following issues arise for determination before the Tribunal:

(i) whether the respondent importer has mis-declared the classification of the imported goods and whether the imported goods are liable for confiscation under Section 111(m) of the Customs Act, 1962 and the respondent importer is liable for imposition of penalty under Section 112(a) ibid or not;

(ii) whether the impugned order modifying the order of original authority in setting aside the redemption fine and penalty is legally sustainable or not;

7. The dispute between the respondent-importer and the department lies in narrow compass of determining whether there was any element of mis-declaration by the respondent in the impugned importation of goods under Section 111(m) of the Customs Act, 1962 and whether the imported goods are liable for confiscation and the respondent is liable for penalty under the various provisions of Customs Act, 1962.

8.1 Before we consider the issues under dispute along with the submissions made by both sides, it is important to note that the undisputed facts with the respect to the factual matrix of the case are as follows:

(i) the respondent-importer had declared complete description of the imported goods as 'Complete Air Conditioners unit - Split type', which was also mentioned in the import documents such as invoice, packing list;

(ii) the respondent-importer had themselves recalled the B/Es filed by them after clearance of the imported goods, as they found that the education cess was incorrectly assessed;

(iii) since the classification was incorrectly mentioned in the B/E by their CHA/CB, the respondent importer paid the differential duty of Rs.54,45,392/-at the time of provisional assessment adopted by the department;

8.2 In the impugned order, learned Commissioner of Customs (Appeals) had recorded his findings as follows:

(i) the respondent-importer had by oversight and clerical error had mentioned the incorrect CTI while they declared complete description of the imported goods as 'Complete Air Conditioners unit - Split type', which was the same as mentioned in the import documents such as invoice, packing list, bill of lading and thus there cannot be any mis-declaration;

(ii) the importer themselves had recalled the B/E for re-assessment of education cess and thus it is evident that they had no malafide intent;

(iii) the customs assessment officers having knowledge of the goods, while re-assessment did not change the classification which is appropriate for the description of 'Complete Air Conditioners unit

- Split type', and thus have failed to properly carry out re-assessment under Section 17(4) ibid;

9.1 The legal provisions of sub-section (1) of Section 17 of the Customs Act, 1962 provide for self-assessment of the imported goods by filing requisite Bill of Entry under Section 46 ibid. Upon filing of such B/E, in terms of sub-section (2) to Section 17 ibid, the proper officer of Customs may verify such self-assessment made by the importer or the declaration may be verified by risk evaluation through appropriate selection criteria under Customs Risk Management System. For the purpose of verification of the self-assessment, the proper officer may also call for any document or information from the importer in terms of sub-section (3). Where it is found by the proper officer of customs that on verification, examination or testing of the goods or otherwise that the self-assessment has not been done correctly, then he is required to re-assess the duty leviable on the imported goods in terms of sub-section (4) of Section 17 ibid. From the factual matrix of the case, it is evident that the respondent themselves had re-called the self-assessment made by them, as the education cess was incorrectly assessed and sought for re-assessment by the department. While examining the case for re-assessment, the proper officer of customs had noted that the description of the goods being 'Complete Air Conditioners unit - Split type', is in variation with the CTI declared in the B/E as the same is for 'parts of air-conditioner' and thus he ordered for examination of the imported goods to verify whether these are complete unit. This fact has been recorded in paragraph 2 of the Order-in-Original dated 30.03.2015. It is obvious that when the declaration of the goods has been specifically mentioned as complete air conditioners of split type and the same is also evident in all the import documents such as invoice, packing list, bill of lading etc., the officer of customs performing the re-assessment is required to change the classification in tandem with the available documents and declarations made in the B/E, for determining the correct duty payable on imported goods. On the other hand, the inadvertent error in incorrect indication of the customs tariff item in the B/E, has been projected by the department as mis-declaration with intention to evade payment of duty, in order to justify the need for imposition of redemption fine consequent to confiscation of imported goods and for imposition of penalty on respondent.

9.2 In this regard, we have examined the relevant tariff entries appearing in the First Schedule to the Customs Tariff Act, 1975 for the air conditioning machines and their parts. The relevant entries are extracted and given below:

Tariff item	Description
8415	**Air conditioning machines, comprising a motor-driven fan and elements for changing the temperature and humidity, including those machines in which the humidity cannot be separately regulated**
841510	**-** *Of a kind designed to be fixed to a window, wall, ceiling or floor, self-contained or "split system":*
8415 1010	**-** Split system
8415 1090	**-** Other
xxx	xxx
841590	**-** *Parts*
8415 9010	**---** Separately presented indoor units or outdoor units for split-system air conditioning machines
8415 9090	**---** Other

9.3 From plain reading of the above tariff entries, we find that when the description of the imported goods is provided in full, as it appear in the customs tariff and the import documents, how the mis-match in relevant tariff item at the eight digit level alone could not be identified either by the Customs Risk Management System or by the appraising officers of customs. This is more obvious when the respondent importer had re-called the B/E for re-assessment, what the department had missed in the first time of verification of self-assessment process should have been corrected. But instead they had proceeded to initiate proceedings for confiscation of the imported goods and for imposition of penalty on the appellants. Such action on the part of the department is in absolute non-compliance with the provisions of Section 17(4) ibid and therefore the entire proceedings for confiscation of imported goods and for imposition of redemption fine on Section 125 ibid and for imposition of penalty on the respondent importer is not legally sustainable. Therefore, we find that the department had not made out a case for mis-declaration of the goods by the appellant importer in terms of Section 111(m) ibid for confiscation of the imported goods and for imposition of resultant penalty on the respondent importer.

9.4 In this regard, we find that this Bench of the Tribunal in the case of *Oberoi Constructions Limited* (supra) dealing with identical facts of the present case, have held that where the description of imported goods in the Bill of Entry is correct, there is no mis-declaration or intent to evade duty. Thus it was held in that referred case that confiscation under Section

111(m) ibid and consequent levying of redemption fine and penalty under Section 125 and 112(a) ibid cannot be sustained. The relevant paragraph of the said order is extracted and given below:

> *"5. The facts are not under dispute that the description of the goods namely 'Aluminium Profiles' indicated in the import documents was the same as declared by the appellants in Bills of entry filed before the authorities at the port of import. Insofar as change in classification of the product in question is concerned, the appellants bonafidely believed that the product should appropriately be classified under 76042990 and accordingly, filed the Bills of entry classifying the product under the said CTH. It is not the case of Revenue that the appellants had mis-declared the goods with an intent to evade payment of duty. Since, Section 111(m) ibid provides for confiscation of the goods in the eventuality of misdeclaration of the goods, which are absent in the present case, we are of the view that redemption fine and penalty cannot be imposed on the appellants. With regard to confiscation of goods, imposition of redemption fine and penalty, the Hon'ble Supreme Court in the case of Northern Plastic Limited (supra) have held that when the description of goods have been correctly furnished in the Bills of entry, the said statutory provisions do not apply for penalizing the importer-appellants."*

10. In view of the above analysis of the statutory provisions vis-à-vis the factual matrix of the case, and our observations and findings on such issues, we are of the opinion that the redemption fine imposed on the imported goods and penalty imposed against the respondent-importer in the order of original authority are not sustainable. Accordingly, we find that the impugned order passed by the learned Commissioner (Appeals) is modifying the order of the original authority does not require any interference.

11. In the result, the impugned order dated 23.08.2016 sustains and the appeal filed by Revenue is dismissed.

(Operative portion of the Order pronounced in open court.)

(S.K. MOHANTY)
MEMBER (JUDICIAL)

(M.M. PARTHIBAN)
MEMBER (TECHNICAL)

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