# (2023) 5 Centax 228 (Tri.-Bom) [09-09-2022]

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**IN THE CESTAT, WEST ZONAL BENCH, MUMBAI**

S/SHRI C.J. MATHEW, MEMBER (T) AND AJAY SHARMA, MEMBER (J)

**CROMPTON GREAVES CONSUMER ELECTRICALS LTD.**

*Versus*

**COMMISSIONER OF CUSTOMS (NS-V), RAIGAD**

*Final Order No. A/85876 of 2022-WZB in Appeal No. C/86852 of 2021, decided on 9-9-2022*

**CUSTOMS : Metal-clad Printed Circuit Boards coated with an additional layer of aluminium/copper for heat dissipation to prevent breakdown and intended for use in manufacture of lamps was specifically classifiable under Tariff Item 8534 00 00 instead of Tariff Item 9405 99 00 of Customs Tariff Act, 1975 even though importer had earlier classified goods under later entry**

**CUSTOMS : Tariff emerging from recommendations of GST Council cannot be deemed to interpret classifications to be adopted for assessment in Customs**

**Printed Circuit Boards (PCBs) - Classification of -Imported metal-clad PCBs was coated with an additional layer of aluminium/copper for heat dissipation to prevent breakdown and was intended for use in manufacture of lamps - Department, based on classification of goods by appellant-importer for an earlier period under Chapter 94 and its intended use, classified said goods under Tariff Item 9405 99 00 of Customs Tariff Act, 1975 as against Tariff Item 8534 00 00 claimed by appellant-importer - Proximate provocation for re-classification were two fold; that importer had resorted to Heading in Chapter 94 in past and that 'circuit boards' were intended for use in manufacture of lamps - Adoption of classification which is appropriate and more beneficial to assessee, is not forbidden - Hence, classification of goods under a particular Tariff Chapter by department merely on ground that importer had earlier classified same under that Chapter, could not be justified - As regards intended use of goods, same could not necessarily be a determinative factor for classification of goods as settled by Supreme Court - Description i.e. 'printed circuits' claimed by importer was specifically covered under Heading 8534 and not under Heading 9405 - Applying Rule 3(a) of General Rules for Interpretation of Import Tariff, imported good despite addition of aluminium/copper layer was correctly classifiable under Tariff Item 8534 00 00 instead of Tariff Item 9405 99 00 - Rule 3(c) ibid relied upon by department was relevant for comparison at Heading level only and not at Tariff Item level - Description at Sl. No. 227 of Schedule II to Notification No. 1/2007-I.T. (Rate), dated 28-6-2017 relied upon by department was relevant for specific purpose of levy of IGST on inter-State supply of goods and it could not supplant responsibility thrust upon assessing authority under section 12 of Customs Act, 1962 for determination of classification of goods in Customs - Section 12 of Customs Act, 1962.** *[paras 4 to 9]*

**Classification in Customs - Tariff emerging from recommendations of GST Council cannot be deemed to interpret classifications to be adopted for assessment in Customs.** *[para 6]*

***Appeal allowed in favour of assessee***

**CASES CITED**

Dunlop India Ltd. & Madras Rubber Factory v. Union of India — 1983 (13) E.L.T. 1566 (SC) — *Referred* [Para 2]

LM Wind Power Blades (India) Pvt. Ltd. v. Commissioner — 2015 (327) E.L.T. 641 (Tri. - Chennai) — *Referred* [Para 2]

Larsen & Toubro Ltd. v. Commissioner — 2005 (189) E.L.T. 439 (Tri. - Mum.) — *Referred* [Para 2]

Hindustan Ferodo Ltd. v. Collector — 1996 taxmann.com 174 (SC)/1997 (89) E.L.T. 16 (SC) — *Relied on* [Paras 2, 8]

Hindustan Coca-Cola Beverages Pvt. Ltd. v. Commissioner — 2016 (42) STR 696 (Tri. - Delhi) — *Referred* [Para 2]

Indian Aluminium Cables Ltd. v. Union of India — 1985 (21) E.L.T. 3 (SC)/1985 taxmann.com 427 (SC) — *Relied on* [Para 4]

Commissioner v. Carrier Aircon Ltd. — 2006 (199) E.L.T. 577 (SC)/2006 taxmann.com 606 (SC) — *Relied on* [Para 4]

Ortho Clinical Diagnostics India Pvt. Ltd. v. Commissioner — [Final Order No. A/85710/2022, dated 12-8-2022] — *Relied on* [Para 8]

HPL Chemicals v. Commissioner — 2006 (197) E.L.T. 324 (SC) — *Relied on* [Para 8]

**NOTIFICATION CITED**

*REPRESENTED BY : Shri Sanjeev Nair, Adv., for the Appellant.*
*Shri Manoj Kumar, Commissioner (AR), for the Respondent.*

**[Order per : C.J. Mathew, Member (T)].** - M/s. Crompton Greaves Consumer Electricals Ltd. had filed bill of entry no. 6027089/10-12-2019 for the import of goods described as 'MC PCB-MC PCB NBL 7W9 S1P to 835 V1.0 25*25*1 mm 7*13 Panel Tc=1W/m Copper thickness 0.5 Oz (FOR MFG OF LED LAMP' and classified for rate of duty corresponding to tariff item 8534 00 00 of First Schedule to Customs Tariff Act, 1975. The re-classification by the assessing authority against tariff item 9405 99 00 of First Schedule to Customs Tariff Act, 1975 was not acceptable to the importer and, the matter having been carried to the first appellate authority and upheld by order-in-appeal no 585 (Gr.VA)/2021 (JNCH)/Appeals dated 22nd July 2021 of Commissioner of Customs (Appeals), Mumbai-II, the dispute is now impugned before us.

**2.** The impugned goods, sought to be classified against the tariff item intended for 'printed circuit boards', are 'printed circuit boards' that are metal clad and it is contended by Learned Counsel for the appellant that product performs the same function as the goods described in the classification claimed by them with the sole difference that an additional layer of metal, either aluminium or copper, is incorporated for thermal management (heat dissipation) to prevent breakdown of devices. According to him, the lower authorities said erred in not complying with note 2 (*a*) in section XVI - covering chapter 84 and chapter 85 - of First Schedule to Customs Tariff Act, 1975 requiring 'parts' that are goods themselves as included in any of the headings in the said chapters to be classified in their respective headings. He further contends that the heading sought to be substituted with incorporates 'parts' only to the extent of not being specified or included elsewhere. It is also argued by him that one of the reasons assigned in the order of the original authority, *viz.*, that earlier consignments had been cleared by claiming classification in heading 9405 of First Schedule to Customs Tariff Act, 1975, is not acceptable in view of the decision of the Hon'ble Supreme Court in *Dunlop India Ltd. & Madras Rubber Factory* v. *Union of India and ors* [1983 (13) ELT 1566 (SC)]. Learned Counsel points out that reliance upon the description in notification no. 1/2017-Integrated Tax (Rate) dated 28th June 2017 to determine classification mandated under section 12 of Customs Act, 1962 is inappropriate for which the decision of the Tribunal in *LM Wind Power Blades (India) Pvt. Ltd.* v. *Commissioner of Customs, Tuticorin* [2015 (327) ELT 641 (Tri-Chennai)] has been cited. He contends that the opinion of the expert from Indian Institute of Technology, Bombay had been discarded without taking into account the judicial ruling in *Larsen & Toubro Ltd.* v. *Commissioner of Central Excise Mumbai II* [2005 (189) ELT 439 (Tri-Mumbai)] on the relevance of such opinion. It was also contended that the onus devolving on tax authorities for substitution of classification, as held by the Hon'ble Supreme Court in *Hindustan Ferodo Ltd.* v. *Collector of Central Excise, Bombay* [1996 taxmann.com 174 (SC)/1997 (89) ELT 16 (SC)] and by the Tribunal in Hindustan Coca-Cola Beverages Pvt. Ltd. [2016 (42) STR 696 (Tri-Del)], has not been discharged.

**3.** Learned Authorised Representative submits that the adjudicating authority had drawn upon the technical material available in Wikipedia to distinguish the impugned goods from 'printed circuit board (PCB)' and that the scope of note 6 in the Explanatory Notes relating to heading 8534 of First Schedule to Customs Tariff Act, 1975 restricts the coverage of any 'circuit board' with extraneous material. Likewise, that appellant had been seeking classification as tariff item 9405 40 90 in the past makes it abundantly clear, according to Learned Authorised Representative, that the goods merit classification within heading 9405 of First Scheduled to Customs Tariff Act, 1975. He drew attention to the specific finding that the later of the two entries must prevail accordance with rule 3(*c*) of General Rules for Interpretation of the Import Tariff appended to Customs Tariff Act, 1975. Urging us to rely upon the inclusion of products specifically enunciated at serial no. 227 in Schedule II of notification no. 1/2007-Integrated Tax (Rate) dated 28th June 2017 corresponding to 'metal core printed circuit board' and heading 9405, as was found relevant in the orders of the lower authorities for ascertaining legislative intent, Learned Authorised Representative sought for dismissal of the appeal.

**4.** From a perusal of the records, it would appear that the proximate provocation for re-classification are two fold: that the importer had resorted to heading in chapter 94 of First Schedule to Customs Tariff Act, 1975 in the past and that the 'circuit boards' were intended for use in manufacture of lamps. As far as the first is concerned, adoption of the classification which may be more beneficial, and, which, is only a claim, is not forbidden by law; indeed, the test of appropriateness is the responsibility of the assessing authority. As far as the latter influence is concerned, in *Indian Aluminium Cables Ltd.* v. *Union of India* 1985 (21) ELT 3 (S.C.)/1985 taxmann.com 427 (SC)/[1985 AIR 1201], it has been held by the Hon'ble Supreme Court that

> 'To sum up the true position, the process of manufacturer for product and the use to which it is put, cannot necessarily be determinative of the classification of that product under a fiscal schedule like the Central Excise Tariff. What is more important is whether the broad description of the article fits in with the expression used in the Tariff… The process of manufacture is bound to undergo transformation with the advancement in science and technology. The name of the end-product may, by reason of new technological processes, change but, the basic nature and quality of the article may still answer the same description.…'

which was reiterated in *Commissioner of Central Excise, Delhi* v. *Carrier Aircon Ltd.* [2006-TIOL-69-SC-CX]/2006 (199) ELT 577 (S.C.)/2006 taxmann.com 606 (SC) thus

> 'End use to which the product is put to by itself cannot be determinative of the classification of the product. See *Indian Aluminium Cables Ltd* v. *Union of India and Others*, 1985 (3) SCC 284. There are a number of factors which have to be taken into consideration for determining the classification of a product. For the purposes of classification the relevant factors *inter alia* are statutory fiscal entry, the basic character, function and use of the goods. When a commodity falls within a tariff entry by virtue of the purpose for which it is put to, the end use to which the product is put to, cannot determine the classification of that product.'

The law as settled is abundantly clear. The classification has to be determined on the lines laid out in the decisions *supra*.

**5.** The lower authorities have laid emphasis on the entry in the rate notification pertaining to levy of goods and services tax (GST) as is applicable to imports within the confines of section 3(7) of Customs Tariff Act, 1975. In this context, it may be worthwhile referring to the decision of the Tribunal in *Ortho Clinical Diagnostics India Pvt Ltd* v. *Commissioner of Customs (Import), ACC, Mumbai* [final order no. A/85710/2022 dated 12th August 2022 disposing off customs appeal no. 85868 of 2020 against order-in-original no. CC-VA/12/2020-2021 ADJ(I) ACC dated 2nd July 2020 of Commissioner of Customs-III (Import), ACC Mumbai] holding that

> '15. The effect of the proposition of Revenue, in support of the adjudication order, on the part of Learned Authorized Representative is that the impugned goods are not specifically emplaced in the claimed Schedules or in Schedules IV, V and V of the 'integrated tax' rate notification with consequent application of the residuary serial no. 453 corresponding to 'goods which are not specified in Schedules I, II, IV, V and VI' with columnar reference to any Chapter of the First Schedule to Customs Tariff Act, 1975. The question that begs an answer, and in the context of the rules for interpretation of the Customs Tariff Act, 1975 as well as the *Explanation*s therein being applicable to the placement of goods in the Schedules to the 'integrated tax' rate notification combined with absence of such residuary entry in the First Schedule to Customs Tariff Act, 1975, is the significance of the very resort that Revenue seeks shelter within. From the scheme of the 'integrated tax' rate notification, it appears that the rates enumerated therein are to be read as corresponding to the tariff items in the First Schedule to Customs Tariff Act, 1975 and with the default rate or residuary rate of 18% to be read as corresponding to any tariff item lacking in such rates. This follows from the mandate of Article 269A of the Constitution and the provisions of section 5 of Central Goods and Services Tax (CGST) Act, 2017 that eliminates any scope for perceiving the rates as an exemption notification - which the adjudicating authority appears to have adopted as the guiding prism.'

**6.** The description upon which the lower authorities have relied should be read in the design of the First Schedule to Customs Tariff Act, 1975 as a specific entry for the specific purpose of levy of Integrated Goods and Services Tax (IGST) on inter-State supply made applicable to imports. It cannot supplant the responsibility thrust upon the assessing authority in section 12 of Customs Act, 1962. Moreover, the tariff that emerges from the recommendations of the Goods and Services Tax (GST) Council cannot, in any way, be deemed to interpret the classification to be adopted for assessment under Customs Act, 1962.

**7.** The lower authorities have taken the two rival entries and applied rule 3(*c*) of The General Rules for the Interpretation of the Import Tariff which is relevant at the heading, and not to the descriptions at the tariff item level. The provisions for interpretation required identification of the heading at the four digit level for the purposes of comparison between two rival claims. That sought by the appellant herein is

> 'printed circuits'

corresponding to heading 8534 of the First Schedule to Customs Tariff Act, 1975 while that adopted by the assessing authority is

> 'lamps and lighting fittings including searchlights and spotlights and parts thereof, not elsewhere specified or included; illuminated signs, illuminated name-plates and the like, having permanently fixed light source, and parts thereof not elsewhere specified or included'

corresponding to heading 9405 of First Scheduled to Customs Tariff Act, 1975. The specificity of description in the claimed classification is not anywhere matched by the description within which the assessing authorities have sought to place the impugned goods. Moreover, it is clear from the description that 'parts', if at all finding fitment within heading 9405 of First Schedule to Customs Tariff Act, 1975, should not be specified or included elsewhere. In the light of the specific description, notwithstanding the addition of a metallic layer which does not find elaboration in the rival heading too, rule 3 (*a*) of The General Rules for the Interpretation of Import Tariff offers the solution without having to proceed further.

**8.** In re Hindustan Ferodo Ltd, it has been held that

> '3. It is not in dispute before us, as it cannot be, that the onus of establishing that the said rings fell within Item 22F lay upon the Revenue. The Revenue led no evidence. The onus was not discharged. Assuming therefore, that 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)], the Hon'ble Supreme Court has held that

> '29. 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. On the one hand, from the trade and market enquiries made by the Department, from the report of the Chemical Examiner, CRCL and from HSN, it is' quite clear that the goods are classifiable as "Denatured Salt" falling under Chapter Heading No. 25.01. The Department has not shown that the subject product is not bought or sold or is not known or is dealt with in the market as Denatured Salt. Department's own Chemical Examiner after examining the chemical composition has not said that it is not denatured salt. On the other hand, after examining the chemical composition has opined that the subject matter is to be treated as Sodium Chloride.'

**9.** We take note from our analysis *supra* that the onus devolving on the assessing authorities has not been discharged in accordance with the law as held. The classification adopted by the assessing authorities fails in the face of the specific entry

which the respondent herein has not been able to demonstrate as having been excluded from the claimed description. Consequently, we *set aside* the impugned order and allow the appeal.

(Order Pronounced in the open court on 9-9-2022)

TIWARI