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Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench At Ahmedabad

REGIONAL BENCH- COURT NO.3

Customs Appeal No.11769 of 2018

(Arising out of OIA-KDL-CUSTM-000-APP-053-054-17-18 dated 28/03/2018 passed by Commissioner of CUSTOMS-AHMEDABAD)

Ravi Technoforge Pvt Ltd **........Appellant**
Survey No. 211, Plot No. 7/8, Essen Road, Rajkot Gondal National Highway No. 27, Shapar (Veraval),
RAJKOT, GUJARAT

VERSUS

C.C.-Kandla **.......Respondent**
Custom House,
Near Balaji Temple, Kandla, Gujarat

With

Customs Appeal No.10587 of 2021

(Arising out of OIA-MUN-CUSTM-000-APP-026-21-22 dated 13/05/2021 passed by Commissioner of CUSTOMS-AHMEDABAD)

RAVI TECHNOFORGE PVT LTD **........Appellant**
S No 50/P-1 Near Toll Plaza Village Pipalia
Rajkot, Gujarat

VERSUS

C.C.-MUNDRA **.......Respondent**
Office Of The Principal Commissionerate Of Customs, Port User Buld. Custom House Mundra, Mundra
Kutch, Gujarat-370421

And

Customs Appeal No.11770 of 2018

(Arising out of OIA-KDL-CUSTM-000-APP-053-054-17-18 dated 28/03/2018 passed by Commissioner of CUSTOMS-AHMEDABAD)

Alamcheril Philips Mathew **........Appellant**
Vice President (Commercial), M/S Ravi Technoforge Pvt Ltd.,
Survey No. 211, Plot No. 7/8, Essen Road, Rajkot Gondal National Highway No. 27, Shapar (Veraval),
Rajkot, Gujarat

VERSUS

C.C.-Kandla **.......Respondent**
CUSTOM HOUSE,
NEAR BALAJI TEMPLE, KANDLA, GUJARAT

APPEARANCE:
Shri Paresh Dave & Shri Paresh Sheth, Advocates for the Appellant
Shri Vinod Lukose, Superintendent (AR) for the Respondent

CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR
HON'BLE MEMBER (TECHNICAL), MR. RAJU

Final Order No. A/ 11185-11187 /2022

DATE OF HEARING: 01.08.2022
DATE OF DECISION: 06.10.2022

RAMESH NAIR

M/s. Ravi Technoforge Pvt. Ltd. and Shri A Philip Mathew have filed these appeals being aggrieved with the Order-in-Appeal dated 28.03.2018 and 13.05.2021 under which the Commissioner (Appeals) has upheld the Order -In-Original dated 23.11.2016 and 24.03.2020 and the Appeals were rejected.

02. The brief facts of the case are that appellant had exported Alloy Steel Forging Rings. Prior to October 2011 the goods were classified under CTH 84829900 and they claimed the DEPB. From October 2011 the Appellant started classifying the goods under CTH 73261990 and claimed the drawback. The department does not agree with the classification and self assessment of exported goods. Consequent to investigation a show cause notice dated 03.09.2014 was issued proposing to reject the classification claimed by the Appellant under CTH 73261990 and to classify the same under 84829900 of Customs Tariff Act, 1975 . It was also proposed to recover excess drawback claim. Goods exported by the Appellant was proposed to be confiscated as per the provisions of Section 113(ii) of Customs Act, 1962. It was also proposed to impose penalty on Appellant under Section 114(iii)/114AA of the Customs Act, 1962.The Adjudicating authority vide OIO dated 23.11.2016 decided the case and re-classified the goods under the proposed classification and sr. number of drawback schedule and held the goods liable for confiscation and imposed redemption fine; ordered recovery of excess drawback; imposed penalty on the Appellant and Shri A Philip Mathew, Vice president of Appellant. Being aggrieved Appellants filed appeals before the Commissioner (Appeals) who vide impugned order rejected the Appeals of Appellant and upheld the OIO dated 23.11.2016. Hence the Appellants are before us.

2.1 Another second show cause notice dated 16.03.2017 was also issued to the Appellant by Additional Commissioner of Customs, proposing to reject the classification of goods under CTH 73261990 and to classify the goods

under CTH 84829900 and rejection of drawback claim. The said show cause notice adjudicated vide OIO dtd. 24.03.2020. Being aggrieved, Appellants filed appeals before the Commissioner (Appeals), who has dismissed the same vide impugned Order-In-Appeal dated 24.03.2020. Hence, appellant filed appeals before the Tribunal.

03. Shri Vinod Lukose, Superintendent (AR) appearing for the revenue has raised a preliminary objection on Trubunal's jurisdiction. He submits that this Tribunal has no jurisdiction to entertain these appeals inasmuch as the question involved relates to payment of drawback under Chapter X of the Act and the Rules made thereunder. In this connection, he has drawn our attention to the 1st proviso to sub-section (1) of Section 129A of the Act. He has further pointed out that the Appellant may, if aggrieved by the order of the Commissioner (Appeals), prefer a revision application under Section 129DD before the Revisionary Authority, Government of India and is barred by the 1st proviso *ibid* from preferring an appeal of this kind to this Tribunal. He placed reliance on the following Judgments:-

- Shivco International Pvt. Ltd. [2019-TIOL-433-CESTAT-AHM]
- Essar Overseas Co. [2017(348)ELT 171 (Tri.-Mum)]
- Jindal Stainless Steels [2012 (285) ELT118 (Tri. Del)]
- Avanti Overseas Pvt. Ltd. [2018(363)ELT 969 (Tri. Del)]
- DCS International Trading Company [2017-TIOL-2093-CESTAT-Del]
- Sri Meenakshi Apparels Pvt. Ltd. [2010 (258) ELT 481(Kar.)]
- Alembic Ltd. [2017 (357) ELT 619 (Tri. Chan.)]
- Alembic Ltd. [2017 (350) ELT 253 (Tri. LB)]
- Senthil Textiles [2015(320)ELT 143 (Tri. Chennai)]
- Mercury Exports & Adoration Convent [2021(376) ELT 242 (SC)]
- Surat Exim Pvt. Ltd. [2014 (303) ELT 68 (Guj)]
- Arcelor Mittal Project India Pvt. Ltd. [2019(28)GSTL315 (Tri. Mum)]
- Al Norri Tobacco Products India Ltd. [2004 (170) ELT 135 (SC)]

On merit he reiterated the finding of impugned orders.

04. In response to the above preliminary objection made by Revenue, Learned Counsel Shri Paresh Dave submits that the question of classification is not a question about payment of drawback and appeal against an order of the Commissioner (Appeals) is not excluded from Jurisdiction of the Appellate Tribunal if such order relates to classification of exported goods and the main controversy and/or the principal question involved in orders of the Commissioner (Appeals) was the classification of the exported goods. The first proviso to Section 129A of the Customs Act, when strictly construed, excludes only those cases where appeal was filed against order of the Commissioner (Appeals) relating to payment of drawback as provided in Chapter-X and the rule made thereunder. Recovery of Drawback already sanctioned and paid is different from payment of drawback.

4.1 He contends that while considering the jurisdiction of a forum for entertaining an appeal, the main controversy and/ or the principal question is required to be addressed, and not the consequence or the outcome of determination of the main controversy and/or the principal question. He placed reliance on the following judgments:-

- Asean Cableship PTE. Ltd. 2022(380) ELT 4 (SC)
- CC Vs. Motorola (India) Ltd. 2019(368)ELT 3 (SC)
- United India Insurance Company Ltd. Vs. Ajay Sinha and other 2008 (7) SCC 454
- State of Chhattisgarh & Anr. Vs. Chandra Bhan Singh & Other -AIR 2014 Chhattisgarh 6
- Marvel Appearels Vs. CC, Tuticorin – 2010(259) ELT 417 (Tri. Chennai)
- Web Knit Exports (P) Ltd. Vs. CC, Tuticorin – 2013(295)ELT 612 (Tri. Chennai)
- Fancy Images and Ors. Vs. CC, New Delhi – MANU/CE/0001/2017

4.2 On merits he submits that impugned order is absolutely illegal as it has been passed by the Ld. Commissioner (Appeals) without following the binding decision of jurisdictional Hon'ble Tribunal in the case of Shri Rolex Rings Ltd. Vs. Commissioner of Customs 2016(335) ELT 69 (Tri. Ahmd.), duly affirmed by the Hon'ble Supreme Court as reported at 2016(338) ELT A32(SC). The facts, circumstance and allegation in the case of Shri Rolex Rings Ltd. (Supra) are exactly identical to the case in hand. Therefore all the grounds given by the appellate commissioner for not following the binding

precedent of M/s Shri Rolex Rings Pvt. Ltd. are factually and legally incorrect and unjustified.

4.3 He further submits that a qualified Chartered Engineer has certified that the processes and the goods in both these cases are the same. The chartered Engineer has confirmed that he visited factories of both the manufactures and verified the manufacturing process as well as the machineries used. The customers have also confirmed and explained during investigation that various processes were undertaken by them on the goods purchased from the appellant, and parts of bearings were thus produced by them after such processes and such parts were then used by them for assembling bearings.

4.4 He also submits that there is no contrary evidence produced by the Revenue for establishing that the Chartered Engineer's Certification was wrong, or that the customers gave wrong information, or that the goods sold by the appellant were known in the trade as finished goods or as parts of bearings. The Appellate Commissioner has no jurisdiction to decide technical issues of classification of the goods and also about the essential character of the goods by his own reasoning and understandings, without any evidence on record.

4.5 The show cause notice issued on 03.09.2014 for export benefits allowed from October, 2011 was barred by limitation, and confiscation of the goods and imposition of redemption fine are also illegal when the goods were already exported, and were not physically available.

05. Heard both sides and perused the case records. When jurisdiction of Tribunal is challenged the same is required to be answered first before dealing with the merit of the appeal.We have seen the provision of Section129A of the Customs Act, 1962 which are also reproduced here as under :

> ***"SECTION129A. Appeals to the AppellateTribunal. -*** *(1) Any person aggrieved by any of the following orders may appeal to the Appellate Tribunal against such order -*
>
> *(a) a decision or order passed by the Commissioner of Customs as an adjudicating authority;*
>
> *(b) an order passed by the Commissioner (Appeals) under Section 128A;*

(c) an order passed by the Board or the Appellate Commissioner of Customs under Section 128, as it stood immediately before the appointed day;

(d) an order passed by the Board or the Commissioner of Customs, either before or after the appointed day, under Section 130, as it stood immediately before that day :

Provided that no appeal shall lie to the AppellateTribunal and the Appellate Tribunal shall not have jurisdiction to decide any appeal in respect of any order referred to in clause (b) if such order relates to, *-*

(a) any goods imported or exported as baggage;

(b) any goods loaded in a conveyance for importation into India, but which are not unloaded at their place of destination in India, or so much of the quantity of such goods as has not been unloaded at any such destination if goods unloaded at such destination are short of the quantity required to be unloaded at that destination;

(c) payment of drawback as provided in Chapter X, and the rules made thereunder :

Provided further that the Appellate Tribunal may, in its discretion, refuse to admit an appeal in respect of an order referred to in clause (b) or clause (c) or clause (d) where -

(i) the value of the goods confiscated without option having been given to the owner of the goods to pay a fine in lieu of confiscation under Section 125; or

(ii) in any disputed case, other than a case where the determination of any question having a relation to the rate of duty of customs or to the value of goods for purposes of assessment is in issue or is one of the points in issue, the difference in duty involved or the duty involved; or

(iii) the amount of fine or penalty determined by such order, does not exceed fifty thousand rupees.

From reading of the above provision, we find that the Appellate Tribunal does not have jurisdiction to decide the appeal in respect of order referred to in clause (c) of sub-section (1) to Section 129A of the Customs Act, which is relatable to payment of drawback as provided in Chapter-X and the rules made thereunder. However the Jurisdiction of the Appellate tribunal is not excluded as regard the appeal against any order of Commissioner (Appeals) if such order relates to recovery of drawback already sanctioned and paid arise due to classification disputes. We agree with the arguments of the Ld. Counsel that the Recovery of Drawback already sanctioned and paid is different from payment of drawback. Apart from the general legal

proposition that “payment” and ‘Recovery” are two separate events and different proceedings as well as different provisions are involved. We also noticed that in Drawback Rules, under sub-section (2) of Section 75 of the Act (which is a part of Chapter -X) also makes it clear that “payment of drawback” is separate and different from recovery of drawback and repayment of drawback paid. Rule 15 is a provision for ‘payment of drawback’ whereas Rule 17 and Rule 18 are provisions for ‘repayment of erroneous or excess payment of drawback” and “recovery of drawback” respectively. Further, we are of the opinion that the appeal filed by the appellants before the Tribunal is maintainable in view of the fact that the cause of action in the present matter is relating to the classification of goods.We find that in the impugned order, the Ld. Commissioner (Appeals) has examined the first and primarily issue whether the appellant’s goods is classified under Chapter heading 73261600 or 84829900 and held that appellant’s goods are classified under chapter heading 84829900 and therefore, dismissed their appeals. In the present matter Ld. Commissioner (Appeals) has first decided the classification issue. Therefore, in the present matter principal question for deciding the matters is “Classification of Goods” and Tribunal have jurisdiction to decide the classification issues. In this circumstances, we hold that, in terms of Section 129A, the present appeals are maintainable before the Tribunal.

5.1 We note that Section 130 of Customs Act provides for an Appeal to the High Court from every order passed by the Appellate Tribunal. Such tax appeal is, however, not maintainable against an order relating among other things, to the determination of any questing having a relation to the rate of duty of customs or to the value of goods for purpose of assessment. This exclusion of Jurisdiction of the High Court of entertaining an Appeal is strictly constructed by the Hon’ble Supreme Court because the exclusion of Jurisdiction is not to be readily inferred. We also find that in the matter of Asean Cableship PTE. Ltd. Vs. Commissioner of Customs – 2022 (380) ELT 4 (SC) dispute related to maintainability of the Appeal before the High court has come up before the Hon’ble Apex court and in the said matter the Hon’ble Apex court observed as under : -

> ***1.5*** *A preliminary objection was raised on behalf of the petitioner on the maintainability of the appeal before the High court under Section 130(1) of the Act. It was the case on behalf of the petitioner that as the principal*

question is determination of rate of duty, against the order passed by the CESTAT, Appeal under Section 130E(b) shall be maintainable to the Hon'ble Supreme Court. By the impugned order the High Court has overruled the said objection on the maintainability of the appeal before the High Court against the order passed by the CESTAT by holding that the principal question in the present case is, not in relation to the rate of duty but determining whether, vessel AE, is a foreign-going vessel or not and if the vessel AE is a foreign-going vessel, whether Section 87 of the Act would be applicable or not. Thus, according to the High Court, the principal question is not the determination of the rate of duty but that the exemption under Section 87 of the Act shall be allowable or not.

2. *Feeling aggrieved and dissatisfied by the impugned order passed by the High Court holding that against the order passed by the CESTAT dated 18-2-2020 appeal would be maintainable before the High Court under Section 130(1) of the Act, the assessee - respondent before the High Court has preferred the present Special Leave Petition.*

2.1 *Shri Mukul Rohatgi, learned Senior Advocate, appearing on behalf of the petitioner has vehemently submitted that in the facts and circumstances of the case the High Court has committed a grave error in holding that against the order passed by the CESTAT impugned before the High Court the appeal before the High Court would be maintainable under Section 130(1) of the Act.*

2.2 *It is further submitted by Shri Mukul Rohatgi, learned Senior Advocate, that an appeal shall lie to the Hon'ble Supreme Court from an order passed by the Appellate Tribunal relating, amongst other things, to the determination of any question having a relation to the rate of duty of the customs or to the value of case for purposes of assessment. It is submitted that in the present case the principal issue is the rate of duty applicable on imported stores on the vessel AE. It is submitted that as per Section 87 of the Act any imported stores on board a vessel or aircraft (other than stores to which Section 90 applies) may without payment of duty, be consumed thereon as stores during the said period such vessel or aircraft is a foreign-going vessel or aircraft. It is submitted that therefore if the stores are eligible to the exemption under Section 87 of the Act as claimed by the petitioner, the duty on imported stores will be NIL, and if not, (as per the case of the Customs Department), it will be applicable rate of duty. It is submitted that therefore, the dispute can be said to be having a relation to the rate of duty for the purpose of assessment and hence against the order passed by the CESTAT, holding that the petitioner is not liable to pay any duty applying Section 87 of the Act, appeal shall be maintainable to this Court only.*

3. *Making the above submissions, it is prayed to set aside the impugned order passed by the High Court holding that against the order passed by the CESTAT impugned before the High Court under Section 130(1) would be maintainable.*

4. *The short question to be considered in the present Special Leave Petition, is whether, against the order passed by the CESTAT impugned before the High Court the appeal would be maintainable before the High Court under Section 130(1) of the Act or the appeal before this Court would be maintainable under Section 130E(b) of the Act.*

4.1 *While considering the aforesaid issue the main controversy and/or the principal question is required to be addressed. It was/is the case on behalf of the petitioner that the vessel AE being a foreign-going vessel the imported stores are eligible to the exemption under Section 87 of the Act. Therefore, the principal question/issue is the exemption claimed under Section 87 of the Act. Whether the assessee is entitled to exemption as claimed or not, such an issue cannot be said to be an issue relating, amongst other things, to the determination of any question having relation to the rate of duty. The submission on behalf of the petitioner that the duty will be NIL and if not, which is the case of the Customs Department, it will be the applicable rate of duty and therefore, such a dispute can be said to be in relation to the rate of duty, has no substance. The dispute with respect to the exemption claimed and the dispute with regard to the rate of duty are both different, distinct and mutually exclusive. We are of the firm opinion that the dispute concerning an exemption cannot be equated with a dispute in relation to the rate of duty.*

5. *A somewhat similar question had arisen before this Court in the case of Commissioner of Customs v. Motorola (India) Ltd., (2019) 9 SCC 563 = 2019 (368) E.L.T. 3 (S.C.). The question involved in the said case was, whether, the assessee violated the conditions of the exemption notification by not utilising the imported materials for manufacturing of the declared final product and was, therefore, liable for payment of duty, interest and penalty. The High Court held that the appeals before the High Court would not be maintainable but were tenable before this Court under Section 130E of the Act. While setting aside the order passed by the High Court, this Court observed and held that neither any question with respect to determination of rate of duty arises nor a question relating to valuation of the goods for the purposes of assessment arises and the appeals also do not involve determination of any question relating to the classification of goods. By observing so, this Court observed that the High Court was not justified in holding that the appeals were not maintainable under Section 130(1) of the Act but were tenable before the Supreme Court under Section 130E of the Act.*

__6.__ Therefore, in the facts and circumstances of the present case the High Court is right in observing that the principal question in the present case is not in relation to the rate of duty but determining whether vessel AE is a foreign-going vessel or not, and if the vessel AE is a foreign-going vessel, Section 87 of the Act will be applicable or not. Therefore, with respect to such an issue, against the order passed by the CESTAT, the appeal would be maintainable before the High Court under Section 130 of the Act. We are in complete agreement with the view taken by the High Court.

5.2 Thus, we find force in argument of learned Counsel that while considering jurisdiction of a forum for entertaining an appeal, the main controversy question is required to be addressed and not the consequences. In the present matter main controversy question is whether the goods were classifiable under Tariff heading 7326 or Tariff heading 8482 and the recovery of drawback is consequential controversy. Following the above Hon'ble Apex Court judgment we hold that the present Appeals are maintainable before the Tribunal. As regard the Judgments/ decisions relied upon by the revenue, we find that the same were passed prior the above judgment of Hon'ble Apex court in Asean Cableship case (supra), hence not applicable in the present.

5.3 Coming the main issue, we find that the dispute relates to the classification of the impugned goods manufactured and exported by the Appellant whether it would be classifiable under Chapter heading 73261600 as claimed by the Appellant or 84829900 as held by the Ld. Commissioner (Appeals). As regard the classification of the disputed goods Ld. Commissioner (Appeals) held that goods which are only forged or stamped but not further worked will qualify under Tariff item 7326. CTH 7326 deals with only forged articles of Iron & Steels. Any process carried out beyond the forging would automatically go out CTH 7326. In the present case Appellant has carried out annealing, machining and turning processes after the forging of their products. Therefore the goods of the appellant would not fall under the broad heading CTH 7326. He further held that on verification of the HSN and its explanatory notes for the chapter 8482, it is found that the chapter heading covers all ball, roller or needle roller bearing which consists of Rings, cages, fixing sleeve etc. Hence the impugned goods are appropriately classifiable under 84829900.

5.4 We, for ease of reference, reproduce the description of Tariff Heading 7326 and 8482 of Customs Tariff Act as follows :

7326 Other Articles of Iron or Steel

- Forged or stamped, but not further worked:

73261100 – - Grinding Balls and similar articles for Mills

732619 – - Other :

73261990--- Other

8482 Balls or roller bearings

- Parts :

84829900 – - Others

Chapter 73 of the Customs Tariff Act covers the Articles of Iron and steel. Chapter 84 covers the parts of machinery, motor vehicles etc. The articles of Iron and steel are subjected to various processes and incomplete shape, would cover under the Chapter 73. Sub-heading No. 7326 of CTA cover other articles of Iron and Steel including forged and stamped, but not further worked. The disputed product of Appellant also unfinished and the same is also clear from the Chartered Engineer's Certificate dated 18.07.2017 produced by the Appellant, wherein he clearly certified that Appellant uses Round Bars/Rods of Alloys Steels as their raw material, and such round bars/ rods are heated at appropriate temperature in induction bar heater and cut according to required size. The cut pieces are then subjected to forging process using power press machine by 3 different strokes for upsetting, punching and piercing which is known as rough forged ring. The process of annealing carried out in Electric /gas furnace and thereafter issued for short blasting if required. Thereafter, the process of proof machining is being done. Further, the said rings are machined on CNC machines. Alloys steel forged Machined rings which are to be further subjected to heat treatment, grinding, super finishing (like honing and lapping) processes are to be done at buyers end to convert into bearing race.

5.5 The disputed goods manufactured and sold by Appellant were subjected to additional process at the buyer's end before being used in manufacture of ball or roller bearings and the said facts also clear from the statement dated 22.07.2013 of Shri Alamcheril Philips Mathew , Vice President of Appellant. Against the Q.16 he stated as under:

> *" After forging, annealing and machining, the ring is subjected to heat treatment of hardening and the ring which is then grinded upto a certain level and then the subjected to honing process before marking and packing. I also was to add that all the turned rings are subjected to heat treatment process as explained above at the customers end before assembling i.e becoming a parts of bearing."*
>
> *We also find that in the present matter Appellant also produced the certificate of customer M/s SKF Technology, wherein customer certified that they purchased the alloy Steel forgings (Machined) from the Appellant and undertakes the following process at their end.*
>
> 1. *Heat Treatment*
> 2. *Grinding Process*
> 3. *Honing Process*
> 4. *Final inspection*
> 5. *Forward for Assembly of Bearing.*

In view of above facts we are unable to accept the findings of the Adjudicating authority. The goods manufactured and cleared by the Appellant further processes required and the said goods were not ready to use i.e. Rings for Bearing etc. under Chapter 84. We are of the view that the disputed goods require further operation and such goods when not fit for being ready to use, would appropriately classifiable under Tariff item 7326.

5.6 We also note that the issue under reference is also duly covered by the case of Shri Rolex Rings Pvt. Ltd. Vs. Commissioner of Customs, Kandla – 2016(335) ELT 69 (Tri. Ahmd.) and upheld by Supreme Court *[Commissioner* v. *Shri Rolex Rings Pvt. Ltd. - 2016 (338) E.L.T. A32 (S.C.)].* Therefore, following the ratio of said decisions, in the present case also, we hold that impugned goods classifiable under chapter heading 7326 and therefore, the impugned order is not sustainable in law.

06. Accordingly, we set aside the impugned orders and allow the appeals filed by the appellants with consequential relief in accordance with law.

(Pronounced in the open court on 06.10.2022)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

Mehul