

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
1st Floor, WTC Building, FKCCI Complex, K. G. Road,
BANGLORE-560009

COURT-2

Customs Appeal No.1626 of 2012

*[Arising out of the Order-in-Appeal No.48/2012 dated
14.03.2012 passed by the Commissioner of Customs
(Appeals), Bangalore.]*

M/s. Minebea Intec India Private LimitedAppellant

*(Formerly known as Sartorius Mechatronics India Pvt
Ltd.)*

No.69/2 & 69/3, Kunigal Road,
Jakkasandra,
NH-48, Nelamangala Taluk,
Bangalore - 562 123.

Vs.

The Commissioner of Customs

....Respondent

C. R. Building,
P.B. No.5400, Queens Road,
Bangalore - 560 001.

Appearance:

Ms. Shakee Mehta and
Mr. Nithin, Advocate

....For Appellant

Mr. K. A. Jathin, AR

.... For Respondent

CORAM:

HON'BLE MR. P. A. AUGUSTIAN, MEMBER (JUDICIAL)

HON'BLE MRS R. BHAGYA DEVI, MEMBER (TECHNICAL)

Date of Hearing: 06/09/2023

Date of Decision: 10/01/2024

FINAL ORDER No. 20037 of 2024

Per R. BHAGYA DEVI:

The appellant filed Bill of Entry dated 6.10.2009 for import of balances of sensitivity of 5 cg or better classifying the same under Customs Tariff Heading (CTH) 9031. But after

investigations, it was found to be rightly classifiable under CTH 9016. The importer in their letter dated 19.11.2009 stated that earlier also they had classified items wrongly and accordingly, differential duty with interest was paid. The appellant had not disputed the classification of the products under Chapter Heading 9016 and 8423, accepting the classification as decided by the department the differential duty along with interest was paid. But however, the Respondent alleging suppression of facts to evade payment of duty, imposed penalty under Section 114A of the Customs Act, 1962. The Original Authority had also given an option to pay the penalty, if the amount is paid within 30 days from the date of communication of the order. Against this order, an appeal was filed before the Commissioner (Appeals) stating that they are not disputing and challenging the differential duty. As they had already paid the entire duty along with interest, they requested for consideration of the benefit under Section 28(2B) for waiver of penalty. It is submitted that since complete description of the goods was provided, suppression intended to evade payment of duty cannot be alleged and accordingly, penalty need to be set aside which was rejected by the Commissioner (Appeals) and hence, this appeal before us.

2. The Learned counsel on behalf of the appellant submits that in the Bills of Entry though the Chapter Heading was wrongly mentioned but the description of the product was correctly stated as parts of weighing equipment; hence, the department cannot allege that the description was suppressed or mis-declared. He

also submits that since their office was being shifted, they had entrusted the clearance of the goods to the Customs House Agent (CHA) who had declared wrongly the classification but however, the description was correctly mentioned as per the documents on record. It is further submitted they are a regular importer of these goods and maintain an unblemished record with Customs Department. He has also relied on several decisions in the case of **International Exim Agency vs. CC: 2008-TIOL-2085-CESTAT-MAD**, and **Commissioner of Customs, (ACC & Import), Mumbai vs. R.K. Impex: 2010 (259) ELT 725 (Tri.-Bom.)** to claim that every short-payment of duty cannot be alleged as suppression or mis-statement to evade payment of duty. Having paid the duty prior to the issue of the notice, they were eligible for waiver of penalty under Section 28(2B).

3. The Authorised Representative for the Revenue reiterating the findings of the authorities submits that penalty under Section 114A was rightly invoked inasmuch as the demand is under proviso to section 28(1).

4. Heard both sides. The only dispute is whether penalty is to be imposed when the appellant has accepted the classification and paid the entire duty along with penalty much before the issuance of the show cause notice. It is an admitted fact that the goods were correctly described in the relevant documents except for the classification being inadvertently mentioned as 9031 instead of 9016. It is also a fact that till 2007, the rate of duty under both the Headings was same. The documents including the invoices

from the foreign supplier which were placed before the Customs Authorities also contained correct description namely precision 'balances of sensitivity of 5 cg declared as parts of weighing equipment'. It is also on record that without contesting the classification, the appellant had immediately paid the entire differential duty along with interest much prior to the issuance of the show cause notice. Therefore, the question of alleging suppression in the present case does not arise. The decision relied upon by the authorities in the case of **Union of India vs. Rajasthan Spinning and Weaving Mills: 2009 (238) ELT 3 (SC)** is not applicable inasmuch as that was the case of clear suppression of facts. In the present case, as already discussed, description of goods was not suppressed and as the Hon'ble Supreme Court in the case of **Continental Foundation Jt. Venture Vs. Commissioner of Central Excise, Chandigarh: 2007-TIOL-152-SC-CX** observed that:

"10. The expression "suppression" has been used in the proviso to Section 11A of the Act accompanied by very strong words as 'fraud' or "collusion" and, therefore, has to be construed strictly. Mere omission to give correct information is not suppression of facts unless it was deliberate to stop the payment of duty. Suppression means failure to disclose full information with the intent to evade payment of duty. When the facts are known to both the parties, omission by one party to do what he might have done would not render it suppression. When the Revenue invokes the extended period of limitation under Section 11A the burden is cast upon it to prove suppression of fact. An incorrect statement cannot be equated with a wilful misstatement. The latter implies making of an incorrect statement with the knowledge that the statement was not correct".

4.1 In the present case, the appellant had paid the differential duty in 2009 and the notice was issued only in 2011 to

appropriate the amounts and impose penalty. The Hon'ble High Court of Karnataka in the case of **Commissioner of Customs, Bangalore vs. Powerica Ltd.: 2012 (276) ELT 302 (Kar.)** decided on 22-9-2011 held that:

“4. In view of the aforesaid provision, when the assessee pays the duty and penalty and inform the proper Officer of such payment in writing, who on receipt of such information shall not serve any notice under sub-section (1) in respect to the duty or the interest so paid. If in law there is a prohibition for initiation of the proceedings to recover the duty and penalty after it is paid before the issue of show cause notice, certainly in such a proceedings which is not maintainable, question of imposing penalty would not arise. In other words, if duty and penalty is paid even before the issue of show cause notice and the said fact is informed to the proper officer, he shall not initiate any proceedings to recover the duty and interest, much less for imposition of penalty. Therefore, the order imposing penalty is illegal. The Tribunal has set aside the same for different reasons. As the ultimate order is proper and we have set aside the same, we do not see any merit in this appeal. Accordingly, it is dismissed. Thus, the substantial question of law is answered in favour of the assessee and against the revenue”.

5. In view of the above, we set aside the penalty and accordingly the appeal is allowed.

(Order pronounced in open court on 10.01.2024.)

(P. A. AUGUSTIAN)
MEMBER (JUDICIAL)

(R. BHAGYA DEVI)
MEMBER (TECHNICAL)