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**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
BANGALORE**

REGIONAL BENCH - COURT NO. I

Customs Appeal No. 22153 of 2015

[Arising out of Order-in-Original No. BLR-CUSTOM-CITY-03-15-16
dated 17.07.2015 passed by the Commissioner of Customs, Bangalore
City]

Hikoki Power Tools India Pvt Ltd (Formerly
known as Hitachi Koki India Pvt Ltd) Plot No. 9A,
1st Phase,
Peenya Industrial Area, Bangalore 560 058

.....Appellant

VERSUS

Commissioner of Customs, Bangalore
City Commissionerate, C R Buildings, Queens Road,
Bangalore 560 001

.....Respondent

with

Customs Appeal No. 22154 of 2015

[Arising out of Order-in-Original No. BLR-CUSTOM-CITY-03-15-16
dated 17.07.2015 passed by the Commissioner of Customs, Bangalore
City]

**Shri Dattatreya Joshi Vice President & Company
Secretary**
HiKoki Power Tools India Pvt Ltd Plot No. 9A, 1st
Phase,
Peenya Industrial Area, Bangalore 560 058

.....Appellant

VERSUS

Commissioner of Customs, Bangalore
City Commissionerate, C R Buildings, Queens Road,
Bangalore 560 001

.....Respondent

APPEARANCE:

Present for the Appellants: Ms. Neethu James & Mr. Rohan, Advocates
Present for the Respondent: Mrs. D. S. Sangeetha, Addl. Com. (A.R.)

CORAM:

HON'BLE Dr. D. M. MISRA, MEMBER (JUDICIAL)

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

FINAL ORDER NO. 20945-20946/2023

DATE OF HEARING: 19.05.2023 DATE OF DECISION: 18.09.2023

PER: D. M. MISRA

These two appeals are filed against the Order-in-Original No. BLR-CUSTOM-CITY-03-15-16 dated 17.07.2015 passed by the Commissioner of Customs, Bangalore City.

2. Briefly stated the facts of the case are that the appellant M/s Hikoki Power Tools India Pvt Ltd (formerly known as Hitachi Koki India Pvt Ltd) are the importer of brush cutters, grass cutters, grass trimmers etc. They have filed Bill of Entry No. 4388114 dated 18.01.2014 for clearance of 120 nos. of 'Brush Cutters' classifying the same under CTH 8432 2990 claiming 'nil' rate of CVD. The goods were later examined by the officers of SIIB in the presence of the Customs Broker and found that motors were packed in one box and the shafts were packed in another box separately. The 'user manual' retrieved from the box described the goods as 'grass trimmer/brush cutter'. Investigation was initiated on the classification of said products. After recording the statements, analyzing the catalogues etc., and on completion of said investigation, a show cause notice was issued to the appellants on 14.11.2014 alleging that the products imported namely 'brush cutters' are classifiable under CTH 8467 8990 and not under CTH 8432 2990 as claimed in the respective Bill of Entry. The appellants accepted the said classification and discharged duty with interest amounting to Rs.49,72,134/- for the period from 18.01.2014 to 30.09.2014 under protest classifying the products under CTH 8467 8990. Further investigation revealed that similar goods were imported in the past by the appellants and consequently, demand notice was issued for the period from 18.11.2009 to 28.11.2013 demanding differential duty of Rs.93,37,120/- with interest and penalty with proposal for confiscation. Hence the present appeals.

3.1 The Ld. Advocate for the Appellant submits that the goods imported were classifiable under CTH 8432 2990. She has submitted that CTH 8432 covers the products meant for the agricultural purposes. It is her contention that the imported goods are solely used for agricultural purposes and the same is evidenced by the approval/ test certificate issued by the Department of Agricultural Engineering, GKVK. She has submitted that essential character and functionality of the products are essential in order to determine the classification of the products. Further, she has submitted that the goods were sold to the dealers on the product catalogue clearly state that the same are agricultural machinery. Hence, correct classification for the said products is under 8432 2990. At advanced alternative argument, the Ld. Advocate submitted that the imported goods also be considered classifiable under CTH 8433 of the Customs Tariff Act, 1975 particularly, under CTH 8433 1190 of the CTA. She has submitted that CTH 8433 covers grass mowers, hay mowers and other machinery for cleaning and sorting. The entry for 8433 1190 specifically covers 'mowers powered with the cutting device rotating in a horizontal plane'. The imported goods being grass cutters/brush cutters have a rotating device at the end of the apparatus which is used for cutting the grass. She also submitted that the imported goods cannot be classified under CTH 8467 of CTA. It is her contention that the same tariff heading 8467 covers tools for working in hand which have self-contained electric or non-electric motor. Some of the goods covered under CTH 8467 are drills, hammers, saws etc. These products are tools used for general purposes and not specifically for agricultural purposes. She also submitted that the relevant HSN Explanatory Note to CTH 8467 refers to goods or machinery in general used for trimming lawns and are not meant for agricultural purposes. Further, with regard to the manner of usage

(worn on shoulder) and weight of the impugned goods, the same are not portable hand tools classifiable under CTH 8467, she has contended that CTH 8432 is more specific than CTH 8467 as the said entry refers to the machinery meant for agricultural purposes and thus the imported goods are not classifiable under CTH 8467. She further submitted that the appellants have paid the total amount of Rs.49,72,134/- prior to issuance of show cause notice and the same is not disputed by the Department and in cases where the duty is paid with interest, then show cause notice should have not issued; also, in such cases, penalty is not imposable on the assessee.

3.2 She has further submitted that the show cause notice invoking extended period of limitation and confirmed by the Commissioner is not sustainable in-as-much-as the appellants have neither indulged in any suppression nor mis-declared the description of the imported goods with an intent to evade payment of duty. She has submitted that the appellants are importing the goods from November 2009 onwards classifying the same under CTH 84322990 of CTA, 1975. The appellants have been filing all the required documents such as bills of entry, supplier invoices, packing lists etc. and they have not mis-declared the description of the imported goods in all the documents including bills of entry, which are correctly described as 'brush cutters' and the same have not been disputed by the Department. The imported goods have been duly examined and assessed by the Customs Officers and assessment orders have been passed accordingly. She has further submitted that extended period of limitation cannot be invoked in cases wherein the goods have been assessed and the assessee has provided all the relevant documents and materials during such assessment proceedings. In support, she referred the decisions in the cases of *M/s Signet Chemical Pvt Ltd vs. CC, Mumbai – 2020 (10) TMI 289 – CESTAT MUMBAI* and *CCE & ST, Hyderabad vs. Sandor Medicaids Pvt Ltd – 2019 (367) ELT 486 (Tri. Hyd.)*. Further she has submitted that for claiming a wrong classification, extended period of limitation cannot be invoked. In this regard, she placed the reliance on the decision of Hon'ble Apex Court in the case of *Densons Pultretaknik vs. CCE – 2003 (155) ELT 211 (S.C.)*.

3.3 It is her contention that since the demand itself is not sustainable, imposition of penalty and interest also not sustainable. Further, she has submitted that personal penalty imposed on the co-Appellant is also not sustainable.

4. Per contra, the Learned A.R. for the Revenue reiterated the findings of the learned Commissioner. She submitted that as per the Explanatory Notes in CTH 8432 and 8433, one thing is clear that these two sub-headings cover 'machines' used in place of 'hand tools' for the mechanical purposes for the operations mentioned under the said Note. She also submitted that in the present case, the imported goods are not used as machinery but used as a hand tool, correctly classified under CTH 8467. Further, she submitted that on many occasions, the appellants have classified these grass cutters/ brush cutters under CTH 8467 and invoice of the overseas supplier also mentions the item 'brush cutters' under CTH 8467 8990. She has further submitted that the appellants without any valid reason changed the classification of brush cutters from CTH 8467 to CTH 8432 knowing fully well that the overseas supplier classified the same under CTH 8467. It is her contention that the change of classification was an act of mis-declaration with the intention to evade applicable CVD payable on such imports; therefore, the Id. Commissioner has rightly confirmed the demand for extended period of limitation. She has further submitted that the appellants on one hand, admit re-classification of the goods from January, 2014 to September, 2014 under CTH 8467 and claim that since they have discharged the differential duty, applicable duty under CTH 8467, they are now disputing the correct classification of the goods under CTH 8467.

5. Heard both sides and perused records.

6. The issues involved in the present appeals for determination are, whether: (i) the

imported goods namely ‘brush cutters’ classifiable under CTH 8432 2990 or under CTH 8467 8990 of the Customs Tarriff Act, 1975; (ii) demand could be confirmed invoking extended period of limitation for the past period 18.11.2009 to 28.11.2013 and (iii) penalty imposable on the appellants.

7. The appellant in their reply dated 14/5/2015 before the Commissioner submitted that they are not contesting the classification of the product, brush cutter, on merit, but contested the invoking of extended period of limitation. In the finding, the Commissioner recorded that the appellant has accepted the re- classification of the goods under CTH 8467 and the dispute is only for the demand invoking extended period. However, the Commissioner proceeded to discuss the classification on merit and also the demand for extended period. In the grounds of appeal, the appellant agitated the classification and during the course of argument the Advocate for the appellant also raised the issue on merit as well as on limitation.

8. Before analyzing the relevant entries in ascertaining the correct classification of the imported goods viz. brush cutters, it is necessary to reproduce the competing entries of the Customs Tariff Act, 1975 which is as under:

8432	AGRICULTURAL, HORTICULTURAL OR FORESTRY MACHINERY FOR SOIL PREPARATION OR CULTIVATION; LAWN OR SPORTS-GROUND ROLLERS			
8432 10	- Ploughs:	U U	7.5%	-
8432 10 10	--- Disc ploughs	U	7.5%	-
8432 10 20	--- Other tractor ploughs		7.5%	-
8432 10 90	--- Other	U		
	-Harrows, scarifiers, cultivators, weeders and		7.5%	-
8432 21 00	hoes	U U		
8432 29	-- Disc harrows	U U	7.5%	-
8432 29 10	-- Other		7.5%	-
8432 29 90	--- Rotary hoes	kg	7.5%	-
8432 30 00	--- Other	kg	7.5%	-
8432 40 00	- seeders, planters and transplanters	kg		
8432 80	- Manure spreaders and fertiliser distributors		7.5%	-
8432 80 10	- Other machinery	kg	7.5%	-
8432 80 20	--- Lawn or sports ground rollers		7.5%	-
8432 80 90	--- Rotary tiller	kg		
8432 90	---- Others		7.5%	-
8432 90 10	- Parts			
	--- Parts of agricultural machinery falling		7.5%	-
8432 90 90	within headings 843210, 843221, 843229, 843230 and 843240			
	---Others			

8433	HARVESTING OR THRESHING MACHINERY, INCLUDING STRAW OR FODDER BALERS; GRASS OR HAY MOWERS; MACHINES FOR CLEANING, SORTING OR GRADING EGGS, FRUIT OR OTHER AGRICULTURAL PRODUCE, OTHER THAN MACHINERY OF HEADING 8437			
8433 11	- Mowers for lawns, parks or sports-grounds:	U U	7.5%	-
8433 11 10	-- Powered with the cutting device		10%	-
8433 11 90	rotating in a horizontal plane			
	--- Powered with 3 HP or more			

8433 19	---Other			
8433 19 10	--Other	UU	7.5%	-
8433 19 90	---Non-powered mowers, having width of 75	UU	10%	-
8433 20 00	cm or more	U	7.5%	-
8433 30 00	---Other		7.5%	-
8433 40 00	- Other mowers, including cutter bars for tractor mounting	UU UU	7.5%	-
8433 51 00	- Other haymaking machinery		7.5%	-
8433 52 00	- Straw or fodder balers, including pick-up		7.5%	-
8433 53 00	balers	UU	7.5%	-
8433 59 00	- Other harvesting machinery; threshing	Kg	7.5%	-
8433 60	machinery			
	-- Combine harvester-threshers			
8433 60 10	-- Other threshing machinery		7.5%	-
8433 60 20	-- Root or tuber harvesting machines		7.5%	-
8433 90 00	-- Other		7.5%	-
	- Machines for cleaning, sorting or grading eggs, fruit or other agricultural produce :			
	--- Machines for cleaning			
	--- Machines for sorting or grading			
	- Parts			

8467	TOOLS FOR WORKING IN THE HAND, PNEUMATIC, HYDRAULIC OR WITH SELF- CONTAINED ELECTRIC OR NON-ELECTRIC MOTOR			
8467 11	- Pneumatic :			
8467 11 10	-- Rotary type (including combined rotary	UU	7.5%	-
8467 11 20	percussion)	UU	7.5%	-
8467 11 90	--- Drills		7.5%	-
8467 19 00	--- Hammers	UU	7.5%	-
	--- Other	U		
8467 21 00	-- - - Other		7.5%	-
8467 22 00	-With self-contained electric motor:	U	7.5%	-
8467 29 00	--Drills of all kinds		7.5%	-
	--Saws	UU		
8467 81 00	--Other	U	7.5%	-
8467 89	-Other Tools			
8467 89 10	--Chain saws	Kg	7.5%	-
8467 89 20	--Other	Kg	7.5%	-
8467 89 90	--Compressed air grease guns, lubricators and similar appliances	Kg	7.5%	-
8467 91 00	--Vibrators		7.5%	-
8467 92 00	--Other		7.5%	-
8467 99 00	-Parts:		7.5%	-
	-Of Chain saws			
	-Of pneumatic tools			
	--Other			

9. The claim of the appellants in the respective bills of entry is that the declared product namely ‘brush cutters’ is classifiable under CTH 8432 2990 since this product is meant for agricultural purposes and cleared to the farmers. Its use for agricultural purposes has been supported by certificates issued by the University of Agricultural Sciences, Bangalore.

10. In the alternative, the contention of the appellants is that if the said ‘brush cutters’ is not accepted to be classifiable under CTH 8432, the same could be classifiable under CTH 8433 relating to harvesting or threshing machinery etc.

11. Revenue’s argument, on the other hand, is that CTH 8432 and 8433 cover only ‘machinery’ and not hand tools. The hand tools specifically covered under the scope of

CTH 8467. In support, ld.
A.R. for the Revenue referred to the relevant HSN Explanatory Notes, which is reproduced as under:
“8.1 The Explanatory Notes to Harmonized Commodity Description and Coding System (Fifth Edition, 2013) for CTH 8432 read as follows:

“The heading covers **machines**, whatever their mode of traction, **used in place of hand tools**, for one or more of the following classes of agricultural, horticultural and forestry work, viz.:

The **machines** of the heading may be hauled by an animal or by a vehicle (e.g. a tractor), or may be mounted on a vehicle (e.g. on a tractor or horse-drawn chassis). (In this context “tractor” includes “pedestrian controlled tractor”) (emphasis supplied)

8.2 -----

8.3 As per Explanatory Notes, the goods covered under Chapter 8433 are described as follows:
“The heading covers machines used in place of hand tools, for mechanical performance of the following operations:

The provisions of Explanatory Heading 84.32 apply, *mutatis mutandis*, to this heading, e.g., in respect of tractors fitted with harvesting, threshing, mowing or other interchangeable attachments, and in respect of motor rakes. (emphasis supplied)

The heading includes

- (1) Lawn Mowers, whether worked by hand or motor driven. They may have a cutter bar like agriculture mower, rotary blades which cut the grass against a fixed horizontal blade, or rotating disc with knives on outer edge.
- (2) Mowers (including Motor mowers) for cutting hay etc. They usually consist of a horizontal cutter bar and sections which cut by oscillating action of teeth between the fingers of cutter bar, or they may consist of rotating discs or drums with knives on outer edge.

(21) Machines for removing leaves from maize (corn) cobs; maize (corn) threshers.

However, this heading excludes portable machines for trimming lawns, cutting grass along walls, borders or under bushes, for example. These machines, which are composed of a self-contained internal combustion engine in a light frame or of an electric motor mounted on a metal handle and cutting device usually consisting of one or more thin nylon threads are classified in heading 8467. (emphasis supplied).

8.4.1 The Explanatory Notes to CTH 8467 are follows:

“This heading covers tools which incorporate an electric motor, a compressed Air Motor (or compressed air operated piston), an internal combustion motor or any other motor (e.g. small hydraulic turbine)....

The heading covers such tools only if for working in hand. The expression ‘tools for working in hand’ means tools designed to be held in the hand during use, and also heavier tools (such as earth rammers) which are portable, that is, which can be lifted and moved by hand by the user, in particular while work is in progress, and which are also designed to be controlled and directed by hand during the operation. To obviate the fatigue of taking their full weight during operation they may be used with auxiliary supporting devices (e.g.

Tripods, Jacklegs, Overhead Lifting Tackle). However, certain tools for working in the hand of this heading have fittings permitting them to temporarily fixed to a support. They remained classified here, together with support if it is presented therewith, provided the tools are essentially “for working in hand” as defined above. Some of the tools covered by this heading may be fitted with auxiliary devices (e.g. ; a Fan Wheel and its dust bag to remove and collect dust during working)”

8.4.2 Further, the Explanatory Notes to CTH 8467 also specify the Tools covered under this heading and Sl.No. 18 & 19 of the list are reproduced below:-

“(18) Portable machine for trimming lawns, cutting grass in corners, along walls, borders or under bushes, for example. Such machine have a self-contained motor in light metal frame and a cutting device usually consisting of this nylon thread.

(19) Portable brush-cutters with a self-contained motor, a drive shaft (rigid or flexible) and a tool holder, presented together with various interchangeable cutting tools for mounting in tool holder.”

12. On a plain reading of the relevant Tariff Entry and said explanatory notes under CTH 8432/8433 and 8467, it is clear that the products mentioned under CTH 8432/8433 are referring to ‘machineries’; ‘hand tools’ fall outside the scope of said entries; whereas hand tools explained in the explanatory note under CTH 8467 at sr. no 18 & 19 includes ‘brush cutters’, hence the product in dispute would fall under CTH 8467. The use of the product for Agricultural purpose cannot be the criterion for determination of the appropriate classification. It is held by the Hon’ble Supreme Court in the case of *M/s O.K. Play (India) Ltd vs CCE – 2005 (180) ELT 300 (SC)* that use of an article as ‘Toys’ by children would not place in classification under ‘Toys’. It has been held in a series of cases that the explanations for classification of particular product mentioned in the HSN cannot be brushed aside in determining the correct classification of a product. The Hon’ble Apex Court in *CC, Bombay Vs. Business Forms Ltd. - 2002-TIOL-277-SC-CUS-LB* held as below:

“These civil appeals arise on orders of the Customs, Excise and Gold (Control) Appellate Tribunal and they have to be allowed and the matters remanded for re-consideration by that Tribunal because, principally, the Tribunal has declined to place reliance upon the Explanatory Notes in the H.S.N. stating that, at best, these have only persuasive value.

2. This Court in *Collector of Central Excise, Shillong v. Wood Craft Products Limited [1995 (77) E.L.T. 23]* has said :

“We are of the view that the Tribunal as well as the High Court fell into the error of overlooking the fact that the structure of the Central Excise Tariff is based on the internationally accepted nomenclature found in the HSN and, therefore, be resolved with reference to the nomenclature indicated by the HSN unless there be an express different intention indicated by the Central Excise Tariff Act, 1985 itself. The definition of a term in the ISI Glossary, which has a different purpose, cannot, in case of a conflict, override the clear indication of the meaning of an identical expression in the same context in the HSN. In the HSN, block board is included within the meaning of the expression ‘similar laminated wood’ in the same context of classification of block board. Since the Central Excise Tariff Act, 1985 is enacted on the basis and pattern of the HSN, the same expression used in the Act must, as far as practicable, be construed to have the meaning which is expressly given to it in the HSN when there is no indication in the Indian Tariff of a different intention.” Clearly, therefore, the HSN Explanatory Notes are entitled to far greater consideration than the Tribunal has given there.

3. The Tribunal has also said that the Collector (Appeals) had not relied upon the HSN Explanatory Notes. That was clearly an oversight of the Tribunal because its order says, earlier, thus: *“The Collector (Appeals) held that the photographic apparatus, as has been imported, for making printing blocks were excluded from Chapter Heading 84.38 vide*

Explanatory Notes to CCOM at Page 1288.”

4. *The civil appeals are, therefore, allowed. The orders under appeal are set aside. The appeals before the Tribunal are restored to it for being heard and disposed of afresh. All contentions shall be available to the parties thereto.”*

Thus, the impugned goods in question i.e. ‘brush cutters’ is correctly classifiable under CTH 8467 8990 of CTA, 1975.

13. The next issue for consideration is whether the extended period of limitation can be invoked for demanding duty pertaining to past clearance of the imported ‘brush cutters’ for the period 18.11.2009 to 28.11.2013. Resisting the confirmation of duty invoking extended period of limitation, the appellants have submitted that all the facts have been disclosed to the Department and the goods have been examined and assessed and thereafter, cleared by the Customs Department; they have enclosed examination report by the Customs Department in the appeal paper book (page 121 to 126). Hence, the allegation of suppression cannot be sustained. In their reply to the show cause notice, explaining the facts declaring classification of the similar goods in past under CTH 8467 8990, it has been submitted that since it was imported along with other products, therefore, the mistake could have occurred on their part in declaring the product brush cutter under CTH 8467. Further, they have stated that it is only in the case of imports from Singapore supplier, the classification of ‘brush cutter’ was mentioned in the invoice as CTH 84678900, which is nominal, whereas bulk quantity imported from Japan under CTH 84322990; hence, for uniformity they declared classification under CTH 84322990 and there was no intention to claim any wrong classification.

14. The Ld. Commissioner in the impugned order confirming the demand for extended period has observed that the description of the product in the relevant Bills of entry is declared as ‘Engine Brush Cutter’, or Brush Cutter, or Brush cutter (Engine). Further, he has held that from the explanatory notes, it is clear that these goods are portable tools or for working in hand, but nowhere in any of the documents, the appellant declared this vital information that the imported goods are portable tools for working in hand. Non disclosure of this vital fact during the self-assessment era, post 2011, resulted into suppression of fact. Further, he has observed that non disclosure of these facts do not support the defence of the appellant that the goods were examined and examination reports produced.

15. We find that the differential duty of Rs.93,37,120/- has been demanded, as per annexure-1 to the show cause notice for the period 18.11.2009 to 28.11.2013 for clearance of 6765 numbers of ‘Engine Brush cutters’ cleared against 116 Bills of Entry. The contention of the appellant is that they have placed all the necessary materials, including the catalogue of the said machines at the time of assessment. The goods were physically examined by the assessing officer and thereafter allowed to be cleared on payment of applicable duty. Since the goods were meant to be used for agricultural purposes, they classified it according to their understanding under CTH 84322990. We find that the appellant declared the description of the goods correctly all along during the said period. Also, the goods were examined and assessed by the Department. Once the catalogue has been submitted by the appellant during the course of assessment, therefore, it is the responsibility of the Department to ascertain from the catalogue and description its classification under the appropriate heading. This Tribunal has consistently held that once the description of the goods is correctly disclosed, wrong classification of the said goods on the basis of description cannot be the basis for invoking extended period of limitation. Also, it has been held in a series of cases that merely because the goods are not classified correctly under the appropriate heading by an assessee even though all facts are disclosed to the Department, the allegation of misdeclaration or suppression of fact cannot be invoked for recovery of duty for the past period. In our view, it is not necessary for the appellant to disclose on the relevant bills of entry that the goods are meant to be used

as portable hand tools; the basis of classification as per explanatory notes of HSN. The stray cases of classification of the imported goods in five bills of entry under CTH 84678900 by the appellant, in our view, cannot lead to the conclusion that in other bills of entry, the goods were declared under wrong heading knowingly and to suppress the correct classification. The explanation furnished by the appellant that the mistake occurred when other goods of the same heading were imported along with the Brush cutters seems to be reasonable. Thus, invoking of extended period cannot be sustained and hence the demand is barred by limitation. Consequently, the penalties on the Appellants are not sustainable.

16. In the result, the impugned Order is modified to the extent of confirming classification of the impugned goods under CTH 84678990; confirming the demand and interest for the normal period and setting aside demand and interest for the extended period; also the penalty imposed on the Appellants is set aside.

17. Appeals are disposed off accordingly.

(Pronounced in the court on 18.09.2023)

(D. M. MISRA) MEMBER (JUDICIAL)

(R. BHAGYA DEVI) MEMBER (TECHNICAL)

RA_Saifi