

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI**

PRINCIPAL BENCH – COURT NO. IV

CUSTOMS APPEAL No. 50542 OF 2021 [DB]

(Arising out of Order in Appeal No. CC(A) CUS/D-II/Import/ICD/TKD/ 1237/2020-21 dated 28.12.2020 passed by Commissioner of Customs (Appeals), New Delhi)

M/s. Welkin Foods,

Khasra No.504 & 506,
Village Sadhauili,
P.O. Jhabera, Roorkee,
Uttarakhand - 247665

...Appellant

Versus

Commissioner of Customs (Import)

ICD, Tughlakabad,
New Delhi- 110020

....Respondent

APPEARANCE:

Mr. Salil Arora & Mr. Divya Ratna Singh, Advocate for the appellant
Mr. Mukesh Kumar Shukla, Authorized Representative for the Respondent

**Coram: HON'BLE DR.RACHNA GUPTA, MEMBER (JUDICIAL)
HON'BLE MRS. HEMAMBIKA R. PRIYA, MEMBER (TECHNICAL)**

**DATE OF HEARING : 19/12/2023
DATE OF DECISION : 19/04/2024**

FINAL ORDER NO.55604/2024

DR. RACHNA GUPTA

The appellant M/s. Welkin Foods imported aluminium shelving for Mushroom growing alongwith the floor drain and automatic watering system for Mushroom growing itself (agricultural use). The Bill of Entry No.7399702 dated 09.11.2016 was filed by the appellant classifying the said goods under CTH 84369900 at 'nil rate of duty'. The Department was of the opinion that the goods imported are the kind of Aluminium structure instead of parts of any agricultural machine. Hence, proposed the goods to be classified under CTH

76109010 which attracts VCD at the rate of 10%, CVD at the rate of 12.5 %, Cess at the rate of 3% and ADC at the rate of 4%. Thus, alleging misclassification of the imported goods resulting in short levy /payment of duty amounting to Rs.21,01,983/-, is proposed to be recovered from the appellant alongwith the interest at the rate fixed by Notification issued under section 28 AA of Customs Act, 1962. The Show Cause Notice No.20190 dated 08.08.2018 was served upon the appellant proposing the same importation of penalty. The proposal has been confirmed vide Order in Original No.25/2019 dated 28.02.2019 holding that the impugned goods are classifiable under CTH 76109010 and thus are chargeable to duty at the applicable rates. Appeal against the said order has been rejected vide Order-in-Appeal No.1237/2020-21 dated 28.12.2020. Being aggrieved, the appellant is before this Tribunal.

2. We have heard Mr. Salil Arora & Ms. Divya Ratna Singh, Advocate for the appellant and Mr. Mukesh Kumar Shukla, Authorized Representative for the Respondent.

3. Ld. Counsel for the appellant has mentioned that appellant is engaged in the agricultural activity of growing mushrooms and has been importing the goods as are in question under the same CTH 84369900 from different ports. It is mentioned that the aluminium shelving including the other goods imported are the part of whole mushroom production cycles. The other machines cannot work

without using these shelving drain and watering system. Hence the goods are the part of mushroom cultivation mechanization process. It is mentioned that ICAR (**Indian Council of Agricultural Research**) directorate certificate dated 29.08.2018 also treat these goods as the mechanical devises for agriculture industry. It is further mentioned that the supplier of the goods also deals with only mushroom growing equipments. The equipments are very much necessary for climate control required for mushroom and mushroom farming mechanization is not possible without the imported shelving, drainage and watering system.

4. The compact disc provided to the Bench is mentioned to have the video representation of the process of mushroom growing involving the impugned imported goods which is sufficient to show that shelves have been so designed to allow for feeding, drainage, spraying insecticides and compost layering by other machineries as part of mushroom growing Plant, hence, by no sense can be covered under generic aluminium structures of tariff heading 7610 which otherwise is specific to such aluminium structures which are used in civil structures and which are capable of moving by dismounting screws and applicable of shipment. It is further impressed upon that explanatory notes to HSN Volume 3, 1996 exclusion clause (a) to Chapter Heading 76.10 specifically excludes assemblies identifiable as parts of articles of Chapter 84 to 88. The impugned goods are the assembly of racks with railings is therefore excluded from chapter 76. The findings in the order under challenge are not therefore,

sustainable. Order is accordingly prayed to be set aside and appeal is prayed to be allowed. Appellant has relied upon the following decisions:-

1. C.C. (Import), Mumbai Zone-II vs. Maschio Gaspardo India Pvt. Ltd. reported in 2016 (332) ELT 153 (Tri. Mum.)
2. Jai Kunkan Foods v. Commissioner of Customs, New Delhi (2023) 7 CENTAX 199 (Tri. Del.)

5. While rebutting these submissions, Id. Departmental Representative has mentioned that classification of goods under the customs tariff has to be determined strictly in terms of general rules of interpretation. The impugned imported goods admittedly are aluminium shelving. These are nothing but the aluminium structure hence, are rightly been classified under tariff item 76109010. It is further mentioned that the goods herein do not qualify to be called as machine, as defined in Note 5 to section XVI of the Customs Tariff. The goods in question have no such characteristics of a machine. These are aluminium structures only to be integrated with other machines/equipments meant for growing mushrooms but post importation. CTH 7610 cover all kinds of aluminium structure without distinguishing aluminium structures on the basis of their end use. Therefore the goods in question have rightly been classified under CTH 7610 and the duty demand has rightly been confirmed alongwith the interest. Impressing upon no infirmity in the order under challenge, appeal is prayed to be dismissed.

6. Ld. Departmental Representative has relied upon the case law in the case of **M/s. Saraswati Sugar Mills vs. Commissioner of C. Ex., Delhi-III reported in 2011 (270) E.L.T. 465 (S.C.)**

7. Having heard the rival contentions and perusing the entire record, we observe and hold as follows:-

The impugned appeal is about the controversy arising out of the applicability of Custom Tariff Entry to the imported goods i.e. mushroom growing shelving. The floor drain for mushroom growing and automatic watering system for mushroom growing both are accepted to fall under CTH 84369900 accepting that these are meant for agriculture use. To adjudicate the same we observe that Section 3 of the Central Excise Tariff Act provides the duties of excise shall be levied under the said Act on all excisable goods produced and manufactured in India at such rate as mentioned in First Schedule and the Second Schedule therein, we also observe that the Fourth Schedule of the Act contains a set of rules known as general rules for interpretation to govern the classification of goods.

Rule 1 of these Rules makes it clear that the titles of Section, Chapter and Sub-Chapters are provided for ease of reference only and that for legal purposes, classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes and provided such heading or Notes do not otherwise require, according to the provisions of the rules that follow. Rule 2 deals with incomplete or unfinished articles and mixture or combinations of material or substance. Rule 3 deals with cases when

goods are classified under two or more sub headings rule 3 reads as under:

"(a) the heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives the more complete or precise description of the goods.

(b) mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to (a) shall be classified as if they consisted of the material or component which gives them their essential character, in so far as this criteria is applicable.

(c) when goods cannot be classified by reference to (a) or (b), they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration."

8. Thus, it is clear that as per rule 3, the heading which provides most specific description shall be preferred to the heading providing a more general description.

9. To understand the description under two heading in question, we need to see the headings of CTH 84369900 which has been declared by the appellant while importing the impugned goods and the headings of CTH 76109010 as has been held by the Department

to be the correct classification for the said goods. Chapter 84 broadly is related to machinery and mechanical appliances. The heading of 8436 reads as follows:-

8436	Other agricultural, horticultural forestry, poultry-keeping or bee-keeping machinery, including germination plant fitted with mechanical or thermal equipment; poultry incubators and brooders
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Chapter 84369900 covers other such kind of apparatus. We further observe that Chapter 76 broadly covers aluminium and articles thereof. Headings 7610 is as follows:-

7610	Aluminium structures (excluding prefabricated buildings of heading 9406) and parts of structures (for example, bridges and bridge-sections, towers, lattice masts, roofs, roofing frameworks, doors and windows and their frames and thresholds for doors, balustrades, pillars and columns); aluminium plates, rods, profiles, tubes and the like, prepared for use in structures.
76109010	Includes the respective structure

10. In the light of above, we need to adjudicate as to whether the goods imported can be called as machine or mechanical appliances covered under chapter 84 or are more precisely & specifically classifiable as the aluminum structures of chapter 76. The goods imported by the appellant apparently are the aluminium shelves/racks which are imported by the appellant for using the same after integrating with the other two imported goods (drains and automatic

watering system) for in mushroom growing. it is also nowhere been denied that the other activities essential for mushroom growing that is the climate control equipments, the compost spreading equipments, the insecticide spraying equipments etc. are also to be fastened on the imported aluminium shelves. No doubt, all these machines are to be integrated subsequent to the import but we observe that the goods are imported from the person, who exclusively deals in the structures specific to mushroom growing industry. The importer-appellant is also in the business of growing mushrooms. There is also no denial to the fact that the aluminium shelves imported cannot be used as any other aluminium structures for any other purpose.

11. From the general rule of interpretation, as discussed above, it is clear that the goods have to be classified to the more appropriate category instead of being covered under the generic category. Chapter 76 is generic to all aluminium structures but chapter 84 is specific for any machine/ device of any metal which is used for agriculture purpose. There can be no denial that growing mushroom is an agricultural or horticultural activity and the product imported is crucial and specific for the said activity that the product is specifically designed part of mushroom growing apparatus.

12. No doubt, the goods under Chapter 84 have first to be a machine or mechanical appliance. For the purpose, we foremost look into the dictionary meaning of these words.

13. As per Oxford dictionary machine is a piece of equipment with moving parts that is designed to do a particular job by the use of power (any kind). Similar is the definition in the Cambridge dictionary. The dictionary meaning of mechanical device is that it is an instrument /apparatus or devise for a particular purpose or use. As already observed above, the aluminium shelves/ the impugned goods have no purpose other than a specific one of being used in the mushroom growing industry. Admittedly, the two other imported goods i.e. drain and automatic watering system have to be integrated on these aluminium shelves. Department has admitted these two to be covered under CTH 84369900. Though these two apparatuses alongwith two others are to be integrated on the mushroom shelving, post import but we observe that the aluminium shelve itself is so designed with such specifications, as may permit these specific integrations. The brochure of product Info also mentions the model of the goods as mechanization/ planting machine. Thus, we hold that the goods in question is not aluminium shelve in generic but is a mushroom growing rack specifically; though is made of aluminium but it is a mechanical appliance used for agriculture purpose.

14. Chapter 76 is all about anything made of aluminium. On the contrary chapter 84 is about mechanical appliances of whatsoever metal but specific for agricultural use. There is no denial to the fact that the aluminium shelving in question is not known to the common trade parlance as a mere aluminium structure but is specifically known as Mushroom growing rack.

15 Hence, we hold that the goods under question as imported by appellant (mushroom shelving) are classifiable under CTH 84369977. Appellant is held to have rightly classified the same under CTH 84369900. The decisions relied upon by the Department in the case of **Saraswati Sugar Mills (supra)** is about captive use of iron and steel structures in the sugar mill and the question adjudicated therein is whether or not these structures could be called as capital goods to entitle the assessee credit of duty paid on those goods. Similarly the extract that China Customs is classifying this product under CTH 7610 is also not that relevant, as the said observations are not binding on the Indian Customs or on the Indian importers. The agricultural equipments are otherwise eligible for duty benefits in Indian scenario. Hence we hold that the appellant has rightly claimed the duty exemption while importing a product which is exclusively for the purpose of agriculture and which otherwise is a mechanical device. With these findings the order under challenge is hereby set aside and the appeal is hereby allowed.

[Pronounced in the open Court on 19/04/2024]

(DR. RACHNA GUPTA)
MEMBER (JUDICIAL)

(HEMAMBIKA R. PRIYA)
MEMBER (TECHNICAL)