

2020-TIOL-391-CESTAT-MUM

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH, MUMBAI
REGIONAL BENCH
COURT NO. II**

Customs Appeal No. 682 of 2011

Arising out of Order-in-Appeal No. 332 (Gr.III)2011 JNCH/IMP/-273, Dated: 24.06.2011
Passed by Commissioner of Customs (Appeals) Mumbai-II

**Date of Hearing: 04.01.2019
Date of Decision: 04.01.2019**

**M/s WESTERN REFRIGERATION PVT LTD
7B, PANNALAL SILK MILL COMPOUND, 78
LBS MARG, BHANDUP (W), MUMBAI-400078**

Vs

**COMMISSIONER OF CUSTOMS (IMPORT)
NHAVA SHEVA, JAWAHARLAL NEHRU CUSTOM HOUSE, POST URAN
DISTRICT RAIGAD, SHEVA PIN CODE - 400707**

Appellant Rep by: Ms Lakshmi Menon, Adv.

Respondent Rep by: Shri Manoj Kumar, AR

CORAM: S K Mohanty, Member (J)

Sanjiv Srivastava, Member (T)

Cus -

Appellant is engaged in the manufacture of Visi-coolers (Refrigerators) [CSH 84.18 of CETA, 1985] and had imported "Door Glass of size 1109 x 5603 x 19mm PVC 300TCR" and "371.5 x 443 x 19mm SRC-400" from China - Appellant had claimed classification under heading 7008 of CTA - however, Customs authorities were of the view that the impugned goods are classifiable under heading 7005 and are liable for payment of Anti-dumping duty in terms of notification 4/2009-Cus (ADD) dated 06.01.2009 - duty demand was confirmed and the goods were confiscated with an option to redeem the same on payment of redemption fine and penalty imposed u/s 112(a) of the Customs Act, 1962 - as the said order was upheld by the Commissioner(A), appellant is before the CESTAT.

Held: Supplier M/s. Jinan Wenshing Glass Co. Ltd. had furnished a detail technical write-up on the characteristics of insulated glass and also confirmed that the door glass supplied by them to the appellant herein falls under the category of insulated glass panels, which were manufactured as per the size and specification furnished by the appellant - It has further been confirmed that the said insulated glass panels are used in Commercial Refrigerators, with a transparent viewing door called as Refrigerated Display Cabinets - Further, the technical specification furnished by the overseas supplier is also confirming to the HSN notes to justify classification of the imported goods under CTH 7008 - Since goods of Chapter 7008 do not find place in the notification 4/2009-Cus (ADD) dated 06.01.2009 for the purpose of levy of anti-dumping duty, such duty levied through adjudication process on the appellant cannot be sustained - Consequently, goods cannot be held liable for confiscation and no penalty can be imposed on the appellant, since there is no mis-declaration of goods - appeal allowed: CESTAT [para 6, 7]

FINAL ORDER NO. A/87135/2019

Per: S K Mohanty:

This appeal is directed against the impugned order dated 24.06.2011 passed by the Commissioner of Customs (Appeals), Mumbai-II.

2. Briefly stated, the facts of the case are that the appellant is engaged in the manufacture of Visi-coolers (Refrigerators), falling under Chapter Heading 84.18 of the Central Excise Tariff Act, 1985. During the disputed period, the appellant had imported "Door Glass of size 1109x5603x19mm PVC 300TCR" and "371.5x443x19mm SRC-400" from China. The appellant had claimed classification under 7008 of the Customs Tariff Act, 1975. During the course of verification of the imported goods, the department observed that the goods are appropriately be classifiable under CTH No. 7005 and as such, it was held that the appellant should be liable for payment of anti-dumping duty in terms of Notification No.04/2009 dated 06.01.2009. Accordingly, the matter was adjusted against the appellant, in confirming the anti-dumping duty. Besides, the imported goods were also confiscated, with option to redeem the same on payment of redemption fine. The impugned order has imposed penalty on the appellant under Section 112(a) of the Customs Act, 1962. On appeal, the Ld. Commissioner (Appeals) vide the impugned order dt. 24.06.2011 has upheld the classification of goods as well as the adjudged demands confirmed in the original order dated 17.08.2010.

3. Learned Advocate appearing for the appellant submitted that the description of goods mentioned in the Bill of Entry denotes that there are two clear float glass panels separated by 12mm dry air, and four set glasses are sealed around the edges to contain the air and make one insulated glass. Thus, she submitted that the goods in question are complying to the requirements of description of goods provided under CTH 7008. In this context, she has referred to the technical literature obtained from the overseas supplier M/s. Jinan Wenshing Glass Co. Ltd. She further relied upon the HSN to show that the goods in question are appropriately classifiable under CTH.7008.

4. On the other hand, the Ld. AR appearing for the Revenue submitted that since the appellant had imported float glass, the same should be classifiable under CTH No. 7005 and as such, liable for payment of anti-dumping duty in terms of Notification dated 06.01.2009 (supra).

5. Heard both sides and perused the records.

6. We find that the supplier M/s. Jinan Wenshing Glass Co. Ltd. had furnished a detail technical right-up on the characteristics of insulated glass and also confirmed that the door glass supplied by them to the appellant herein falls under the category of insulated glass panels, which were manufactured as per the size and specification furnished by the appellant. It has further been confirmed that the said insulated glass panels are used in Commercial Refrigerators, with a transparent viewing door called as Refrigerated Display Cabinets. Further, the technical specification furnished by the overseas supplier is also confirming to the HSN notes, to justify classification of the imported goods under CTH 7008. Since, goods of Chapter 7008 is not finding place in the notification dated 06.01.2009 (supra) for the purpose of levy of anti-dumping duty, in our considered opinion, such duty levied through adjudication process on the appellant cannot be sustained. The goods cannot be liable for confiscation and no penalty can be imposed on the appellant, since there is no mis-declaration of goods.

7. In view of above, we do not find any merits in the impugned order. Accordingly, after setting aside the same, the appeal is allowed in favour of the appellant.

(Operative part of the order pronounced in the open court)

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