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CESTAT Chennai Upholds Classification of Aluminium Composite Circles Under CTH 7606

The Customs, Excise & Service Tax Appellate Tribunal (CESTAT), Chennai Bench, in Final Order No. 40976/2024 dated 26 July 2024, upheld the classification of aluminium composite circles under CTH 7606, dismissing the appeal filed by the Commissioner of Customs, Chennai against M/s Butterfly Gandhimathi Appliances Ltd.

Case Background:

- Butterfly Gandhimathi Appliances imported goods declared as "Aluminium Circles and Induction Base".
- The revenue reclassified the items as "Other articles of aluminium" under CTH 7616, demanding differential duty of ₹16.13 lakhs.
- The department argued that the goods were not simple aluminium circles but were embossed with stainless steel, making them composite items with a specific use.

Importer's Argument:

- The goods are raw materials used in pressure cooker manufacturing, not finished products or parts.
- They are predominantly aluminium circles with minor stainless steel affixation to enable compatibility with induction cooktops.

- Cited a Chartered Engineer's report affirming that the imported items are only raw materials, not components.

Key Tribunal Findings:

- CTH 7606 covers aluminium plates, sheets, strips, and circles over 0.2 mm thickness, whereas CTH 7616 is a residuary heading.
- The goods clearly fall within CTH 7606 due to:
 - Predominant aluminium composition by weight.
 - Their status as raw materials, not parts or finished products.
 - Note 7 of Section XV and Interpretative Rule 2(b) support classification by predominant material.
- The Tribunal rejected the department's invocation of Rule 3(c), as Rule 2(b) already applies when composite materials are involved.

Procedural Lapse by Revenue:

- CESTAT noted that essential documents like Show Cause Notice and Bills of Entry were not filed with the appeal.
- This failure was criticised as a recurring issue, and the Tribunal urged the Chief Commissioner to issue guidelines to ensure proper documentation in future appeals.

Dismissal of Precedent Reliance:

- The revenue's reliance on the Colts Engineering case was rejected as factually distinguishable.
- In Butterfly's case, the goods were intended for further processing, unlike the Colt case where components were individually manufactured.

Final Order:

- CTH 7606 affirmed as the correct classification for aluminium composite circles.
- The Tribunal upheld the First Appellate Authority's order.
- Revenue's appeal was dismissed in full.

Significance:

- Clarifies that composite raw materials with predominant aluminium content should be classified under CTH 7606, not under residuary headings.
- Reinforces application of Interpretative Rules and Section Notes in composite material classification.
- Reiterates that intended use and physical characteristics take precedence over assumptions about end-use functionality.

This Article has been written by Shri Ravi Shekhar Jha, Advocate Delhi High Court based on his interpretation of the law. He can be reached at his email id intelconsul@gmail.com or on his Mobile +91-9999005379.

Source: CESTAT Chennai

Write to us at office@aadrikaalaw.com

Tel: +91-11-4999 2707 | +91-9999005379

www.aadrikaalaw.com

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

REGIONAL BENCH - COURT No. I

Customs Appeal No.42738 of 2014

(Arising out of Order-in-Appeal No.C.Cus No.1669/2014, dated 10.09.2014 passed by the Commissioner of Customs, 60, Rajaji Salai, Custom House, Chennai 600 001).

Commissioner of Customs

Import Commissionerate
60, Rajaji Salai
Custom House
Chennai 600 001

...Appellant

VERSUS

M/s. Butterfly Gandhimathi Appliances Ltd.

143, Pudupakkam Village
Vandalur – Kelambakkam Road
Kancheepuram 603 103

...Respondent

APPEARANCE:

Shri P. Narasimha Rao, Authorised Representative for the Appellant
Shri S. Murugappan, Advocate for the Respondent

CORAM :

**HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)
HON'BLE MR. M. AJIT KUMAR, MEMBER (TECHNICAL)**

FINAL ORDER NO.40976/2024

DATE OF HEARING : 10.07.2024

DATE OF DECISION : 26.07.2024

ORDER : [PER HON'BLE MR. P. DINESHA]

It is the case of the revenue, as could be seen from the grounds of appeal, that the Respondent-

assessee filed a Bill of Entry No. 4458261 dated 25.08.2011 for the clearance of goods declared as "66215 Kgs of Aluminium Circles and 38000 pieces of Induction Base" and the invoice showed separate values for aluminium circles USD 3160 per MT and induction base USD 0.50 per piece. However, the goods were found to be aluminium circles embossed/affixed with stainless steel circles. The appellants have clarified that the stainless steel circles is attached on one side of the aluminium circle to make it magnetic and that these circles are only basic raw materials which are to be processed further like pressing in mechanical press to make it deeper and deeper to give the shape of utensils and hence are classifiable under CTH 7606.

2.1. The entire manufacturing process of pressure cooker and other utensils were inspected at the appellant's factory along with the representatives of Chartered Engineer M/s Inspectorate Griffith India Ltd., Chennai. The Chartered Engineer's report dated 08.02.2012 concluded that the goods are only raw materials used for production of pressure cookers in ready to cut sizes which facilitates for direct usages in the mechanical presses by the importer, without wastage of time by cutting the required sizes on the imported raw material supplied in sheet/coil for and the inspected consignment is not parts of pressure cooker. The Lower Adjudicating Authority based on this ruled out the classification of the goods under CTH 7615. The Lower Adjudicating Authority has held that CTH 7615 is not appropriate on the observation that the goods are not simple aluminium

circle, that has assumed the character of goods with a specific end use including but extending beyond that of a more aluminium circle and that the essential character of the goods cannot be conclusively claimed or attributed to either constituent of the composite. Adopting Rule 3(c) of the General Rule of Interpretation the Lower Adjudicating Authority has classified the goods under CTH 76169990. The Lower Adjudicating Authority has confirmed the differential duty amounting to Rs. 16,13,906/- in respect of the above mentioned Bill of Entry.

2.2 Aggrieved by the above demand, it appears that the importer filed an appeal before the First Appellant Authority by contending *inter alia* that the Party has filed an appeal before Commr(A) on the said ground and stated that the goods are admittedly raw material and not finished products or even parts of products to be manufactured. The Chartered Engineer's report dated 08.02.2012 concluded that the goods are only raw material used for production of pressure cookers in ready to cut sizes which facilitates for direct usage in the mechanical presses by the importer. The appellants want the classification under CTH 76069110 whereas the department has classified the goods under CTH 76169990. The rival parties agree that the goods are to go under CTH 76 only. CTH 7606 covers 'Aluminium plates, sheet and strips, of a thickness exceeding 0.2mm, whereas CTH 7616 covers 'other articles of aluminium'. It was stated that aluminium

predominates and stainless steel is attached to the base. Referred to Note 7 to Section XV. The appellants stated that the assessment is provisional in all the Bills of Entry.

3. The Ld. First Appellant Authority after hearing and after going through the materials available on record has held that the goods imported by the appellants are aluminium circles attached at the bottom with stainless steel circles; the aluminium content in the goods is very high compared to the content of stainless steel; that the Lower Adjudicating Authority has not disputed this; aluminium has predominating presence; that therefore, when CTH 7606 mentions plates, sheets, strips, circles of aluminium or alloys of aluminium, it has to be taken to include combinations of aluminium circles with Stainless Steel circles; that in this regard reference to Note 7 of Section XV, the appellant in his reply to the Show Cause Notice has stated that the aluminium composite circles predominantly contain aluminium by weight on which small Stainless Steel circles of negligible weight is pressed; that the Lower Adjudicating Authority has not disputed this; that therefore, it is clear that the presence of aluminium is predominant in the goods; therefore, in view of the above stated Rule 2(b)/ Rule 3 of the General Rules for the Interpretation of Import Tariff read with Notes 7 to Section XV, the appropriate classification for the goods will be under the CTH 7606; that CTH 7616 is not a competing heading for the Impugned goods; that therefore,

there is no situation for invoking Rule 3(c); that the classification of the goods by the Lower Adjudicating Authority under CTH 7616 is not correct.

4. Revenue being aggrieved by the above classification as ordered by the First Appellant Authority, has preferred this appeal before this forum. In a nutshell, the assessee-Respondent has opted to classify the Article in question under 76069110 since according to the assessee they are only raw materials, the department proposed the classification under 7616 in the show-cause Notice, while the DRI which undertook investigation, had initially suggested the same to be classified under 7615.

5.1. Before we get into the merits of the case, we have to observe here, that the present appeal was filed by the Department in the year 2014, we do not find the basic and essential documents like the Show cause notice issued to the Respondent and the relevant Bills of Entry on the file. Though Show Cause Notice is essentially to be filed along with the Appeal, but the same is not found to be part of the Appeal. When an appeal is filed, the appellant is expected to file those documents which are prescribed under CESTAT Regulations and those documents that helps lay the foundation of the *lis*. No exemption is given in this regard. Lack of filing of such documents at the appeal stage can prove fatal to the interest of revenue. We are pained to

make this observation as we have been finding such incomplete appeals being filed quite frequently. The Ld. Supervisory Chief Commissioner may like to sensitise their officers and remedy the situation in future, by issuing necessary guidelines.

5.2 Revenue has harped much on the Bills of Entry filed at the time of import, but not even a single Bill of Entry is filed for the benefit of the Bench and hence, we are left with no option but to go with the observations of the First Appellant Authority in this regard.

6. Shri. P. Narasimha Rao, Ld. Commissioner argued for the Appellant-department and Shri S. Murugappan, Ld. Advocate argued for the Respondent-assessee.

6.2. We have anxiously considered the rival contentions and we have also gone through both the Order in Original as well as the Order in Appeal. After hearing both sides, the only issue that survives for our consideration is, "whether in the facts of the case, the Article in question namely Aluminum Circles deserves to be classifiable under CTH 7606?"

7.1. From the perusal of the Grounds of Appeal, Department appears to be attacking the process that had resulted in the 'Aluminum Circles' which are under dispute. It is not disputed, however, the end-use of the same. It was explained that the items in question are the result of joining the stainless-steel plate to the Aluminum base so that the same could

be used both on an 'induction cook top' as well as 'LPG Stove', while utensils with just Aluminum base could not be used on an induction cook top.

7.2 It thus remains an undisputed fact that the article in question is not 'simple Aluminum Circle'.

8. The other facts that remain undisturbed are that (i) the Article in question are only 'raw materials' and (ii) about the contents of the same. The explanation of the assessee in this regard has been reproduced in the Order in Original [page 10, para 18(iii)] to be '..... predominantly Aluminum Circle containing a small ss circle of very negligible weight.' There is also a recording of the submissions of the assessee in the Order in Original, at para 20 that the Article in question '..... Aluminum Composite Circles predominantly contain aluminum by weight on which small SS circle of negligible weight is pressed remain the same raw material'. It is also a matter of record that the chartered Engineer who appears to have accompanied the inspecting team of the department to ascertain the manufacturing process, have also reported that '*the goods are only raw material used for production of pressure cookers in ready to cut sizes which facilitates for direct usage in the mechanical presses by the importer, without wastage of time by cutting the required sizes on the imported raw material supplied in sheet/coil for and the inspected consignment is not parts of pressure cooker*'. [para 8 of the Order in Original].

9.1 CTH 7616 which is pressed into service by the department refers 'Other articles of aluminium' under which articles like Nails, tacks, staples, screws, Cloth, grill and the like of aluminium wire, are mentioned. HSN Explanatory Notes under Heading 7616 which is relevant, reads thus:

'This heading covers all articles of aluminium other than those covered by the preceding headings of this Chapter, or by Note 1 to Section XV, or articles specified or included in Chapter 82 or 83, or more specifically covered elsewhere in the Nomenclature'.

9.2 It is thus necessary for the revenue to first clear the first test of eliminating the article in question from being covered by '*the preceding headings of this chapter*'. The above explanatory notes makes it clear that 7616 is in the nature of residuary heading that will not cover articles of aluminium which are covered by the preceding heading of that Chapter. When the revenue disputes the classification, it is the settled position of law that the burden is heavily on the revenue to justify not only how the declared classification was wrong, but also as to why its proposed classification is to be accepted.

9.3 Primarily, we find that other than denying the contentions of the assessee, that too without any evidence, no material whatsoever is placed on record by the revenue. When their own chartered engineer reports that the articles were raw materials which undergo further process, that aspect has also

not been disputed other than the Adjudicating Authority holding that the same was not acceptable. Thus, the allegations are not taken to their logical conclusion.

10. The other argument of the Id. Commissioner is that by referring to Section Note 7 of Section XV, the importer/Respondent had conceded to the classification proposed to be adopted by the revenue. For convenience Note 7 is reproduced below:

'Except where the headings otherwise require, articles of base metal (including articles of mixed materials treated as articles of base metal under the Interpretative Rules) containing two or

more base metals are to be treated as articles of the base metal predominating by weight over each of the other metals'.

At this juncture, it is useful to refer to the explanatory notes in HSN with regard to Interpretative Rule 2(b), which refers to classification of mixtures and combination of materials or substances. The same reads thus:

(X) Rule 2(b) concerns mixtures and combinations of materials or substances, and goods consisting of two or more materials or substances. The headings to which it refers or headings in which there is a reference to a material or substance (e.g. heading 05.07 –

ivory), and headings in which there is a reference to goods of a given material or substance (e.g., heading 45.03 – articles of natural cork). It will be noted that the Rule applies only if the headings or the Section or Chapter Notes do not otherwise require (e.g., heading 15.03 – Lard stearin, lard oil, oleostearin, oleo-oil and tallow oil, not emulsified or mixed or otherwise prepared).

Mixtures being preparations described as such in a Section or Chapter Note or in a heading text are to be classified under the provisions of Rule 1.

(XI) The effect of the Rule is to extend any heading referring to a material or substance to include mixtures or combinations of that material or substance with other materials or substances. The effect of the Rule is also to extend any heading referring to goods of a given material or substance to include goods consisting partly of that material or substance.

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(XII) As a consequence of this Rule, mixtures and combinations of materials or substances and goods consisting of more than one material or substance, if prima facie classifiable under two or more headings, must therefore be classified according to the principles of Rule 3.

11. *Prima facie* we are of the view that the above Rule is required to be applied in the case on hand, also for the reason that heading 7616 does not require '*otherwise*' with regard to classification of material containing a combination of metals. The takeaway from the above is that the heading specifically requires that the product should not be mixed or otherwise prepared and therefore, for classifying any product under that heading, Rule 2(b) could never be applied. But there is no such provision similar to that under 7616 and therefore, any reference to the clause '*otherwise requires*' does not have any implications for the reason that the same is not in accordance with the scheme of the heading under chapter 76.

12. Moreover, we find after going through the grounds of appeal urged before us in the appeal memo as well as upon considering the arguments, that apparently the purpose for which they article in question was imported by the respondent is last sight off. Primarily, they are not loose parts but a combination customised for specific purpose. The imported article under dispute is a raw material which is subjected to further processes, which ultimately takes the shape of a vessel as a part of the pressure cooker; and after the process is completed, the same would become the bottom of such utensil/Aluminium cooker. In the normal course, when the steel is not embossed or combined with the Aluminium in the form of circle, the same could be used on any ordinary/Gas stove. The only purpose for assimilating/embossing steel with the aluminium

is to enable the same to be used on an induction stove also. In any case, the aluminium circle would remain predominant, the resultant product would be the bottom vessel of an aluminium cooker and nothing else.

13. From a perusal of CTH 7606, we find that the aluminium circles are specifically mentioned under heading 7606 9110 and since the same is a composite product made up of aluminium as well as stainless steel, with the predominant material being aluminium, by implication of Rule 2(b), the same has essentially to be classified as aluminium circle only.

14. Ld. Commissioner has during the arguments, relied on an order of Delhi Tribunal in the case of ***Colts Engineering industries Vs. Commissioner of Central Excise, New Delhi, 2000 (119) E.L.T. 181***. We have carefully considered the above order, we find in the said case that the parts are individually obtained and as observed by the Learned Bench, at the time of clearances, the items therein were not fit for use as handles and channels with cookers as such. Whereas, in the case on hand, the aluminium circle as such is a raw material which is subjected to further processes to same take the shape of vessel to form base/bottom of aluminium cooker and hence, the facts are clearly distinguishable.

15. In view of the above discussion, the department has not made out any case for our interference with the findings of the First Appellant

Authority and hence, the classification of articles in question as confirmed in the impugned order is held to be in order.

In the result, we dismiss the Appeal.

(Pronounced in Open Court on 26.07.2024)

(M. AJIT KUMAR)
MEMBER (TECHNICAL)

(P. DINESHA)
MEMBER (JUDICIAL)

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