IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, KOLKATA
EASTERN ZONAL BENCH : KOLKATA

REGIONAL BENCH - COURT NO.2

Customs Appeal No.75252 of 2024

(Arising out of Order-in-Appeal No.KOL/CUS/AIRPORT/KS/895/2023 dated 22.11.2023 passed by Commissioner of Customs (Appeals), Kolkata.)

Sumitra Devi Kejriwal, Proprietor
M/s. Tea Spares (India),
(13, Brabourne Road,Kolkata-700001.)

...Appellant

VERSUS

Commissioner of Customs (Airport & Administration), Kolkata

.....Respondent

(15/1, Strand Road, Custom House, Kolkata-700001.)

APPEARANCE

Shri Arijit Chakraborty, Advocate for the Appellant (s)

Shri S.Debnath, Autorized Representative for the Revenue

CORAM: HON'BLE SHRI R. MURALIDHAR, MEMBER(JUDICIAL)
HON'BLE SHRI RAJEEV TANDON, MEMBER(TECHNICAL)

FINAL ORDER NO. 75522/2026

DATE OF HEARING : 25.03.2026
DATE OF DECISION : 17.04.2026

Per : RAJEEV TANDON :

Aggrieved with the Order-in-Appeal No.KOL /CUS /AIRPORT /KS /895 /2023 dated 22.11.2023 passed by Commissioner of Customs (Appeals), Kolkata, the appellant has filed the impugned appeal.

2. The appellant Sumitra Devi Kejriwal, Proprietor of M/s. Tea Spares (India) having IEC No.0288046021, imported various items under description of Tea Plucking/Pruning Machine/Spare Parts of Tea Pruning Machine and filed two Bills of Entry No.3909784 dated 17.08.2017 and 4175701 dated 27.11.2017 for clearance of the said goods. The importer had self-assesed the two Bills of Entry and post assessment out of charge was granted by the authorities. Subsequently, during the course of post clearance audit it was noticed by the authorities that there was a short levy of IGST, which according to the authorities was leviable at 18% (Sl.No.453 of Schedule-III of Notification No.01/2017 – Integrated Tax (Rate) dated 28.06.2017) as against the 12% (Sl.No.196 of Schedule-II of IGST Notification No.1/2017-Integrated Tax (Rate) dated 28.06.2017) as paid by the appellant at the time of import. A Demand cum Show Cause Notice dated 26.08.2021 was therefore issued to the importer in terms of Section 124 of the Customs Act, 1962 seeking recovery of IGST @ 18% along with interest. The show cause notice also made out a proposal for invocation of penalties on the appellant under section 114A and 114AA of the Customs Act.

3. The Ld.Counsel for the appellant has pointed out that the impugned show cause notice was issued to the appellant nearly four years after import invoking the suppression clause. He claims that no facts were concealed and there was no suppression in the matter. The

goods were classified as declared, to which the corresponding IGST Schedule Entry indicated duty @ 12% and which accordingly was paid by the appellant at the time of clearance of the said goods. He further submits that the Revenue was barred from contesting the matter in the appellate proceedings without in effect challenging the legality of the assessment as undertaken at the time of import. He further points out that the show cause notice issued did not even propose any challenge on the aspect of classification of the said machines or parts thereof (ref. - CTH 8432/8433). He therefore assails the show cause notice for the aforesaid reasons. Another plea raised in the matter by the appellant before the lower authorities pertained to lack of jurisdiction, for the contention raised that Notice under Section 28(4) of the Customs Act cannot propose recovery of IGST which is not 'duty' specified under the Customs Act and hence any such demand would be beyond jurisdiction.

4. The adjudicating authority, however, agreeing with the contentions of the Noticee dismissed the show cause notice and dropped the proposed demand of Rs.2,68,581/-. In appellate proceedings however, the Commissioner(Appeals) did not agree with the contentions of the lower authority stating therein that the adjudicating authority had not drawn any conclusion raised by the department on the disputes raised and should have concluded as to which of the two entries - whether Entry No.Sl.No. 196 of Schedule-II of IGST Notification No.1/2017 – Integrated Tax (Rate) dated 30.06.2017 or Entry Sl.No.453 of Schedule-III of IGST Notification

No.1/2017 – Integrated Tax (Rate) dated 30.06.2017 was applicable. Accordingly, he remanded the matter back to the lower authority for a fresh decision in the matter having accepted the Revenue's appeal.

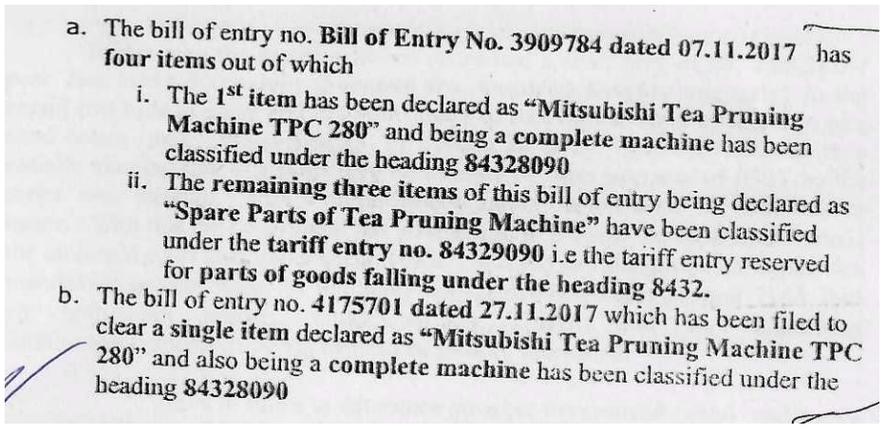
5. The appellant is in appeal against the aforesaid order of remand.

6. The learned AR for the Revenue has reiterated the department's contention. However, he has fairly conceded that in case there is no suppression the impugned show cause notice would be clearly barred by limitation.

7. We have heard the two sides and perused the case records. We note that the adjudicating authority had after elaborate consideration of the matter arrived at a specific finding dropping the demand both on limitation and merits. We find no disagreement with the said findings of the adjudicating authority. As aforestated, the appellant had imported the Tea Plucking/Pruning Machine/Spare Parts of Tea Pruning Machine against the aforesaid two Bills of Entry and classified the product in CTH 8432 (84329090 and 84328090). The heading 8432 reads as under :

> *"Agricultural, horticultural, or forestry machinery for soil preparation or cultivation: Lawn or sports-ground rollers."*

8. The description of the goods as imported has been recorded in Para 4.3 of the adjudication order which reads as under :



a. The bill of entry no. **Bill of Entry No. 3909784 dated 07.11.2017** has **four items** out of which
   i. The 1st **item** has been declared as **"Mitsubishi Tea Pruning Machine TPC 280"** and being a **complete machine** has been classified under the heading **84328090**
   ii. The **remaining three items** of this bill of entry being declared as **"Spare Parts of Tea Pruning Machine"** have been classified under the **tariff entry no. 84329090** i.e the tariff entry reserved for **parts of goods falling under the heading 8432.**
b. The bill of entry no. **4175701 dated 27.11.2017** which has been filed to clear a **single item** declared as **"Mitsubishi Tea Pruning Machine TPC 280"** and also being a **complete machine** has been classified under the heading **84328090**

9. We find that the adjudicating authority has appropriately questioned the department's stance of not having questioned the description of the impugned goods their classification during the course of the post-clearance scrutiny and have merely issued the show cause notice stating therein that the subject imports did not attract IGST under Entry Sl.No.196 of Schedule-II of IGST Notification No.1/2017-Integrated Tax (Rate) dated 30.06.2017. The department stating that the said goods find no specific mention in any of the entries of the Six Schedules (I, II, III, IV, V and VI) appended to the IGST Notification dated 28.06.2017, are to be classified under Sl.No.453 of Schedule-III of Notification ibid with the then prevailing rate of IGST @ 18%. For sake of ready reference the two competing entries with their description and rate are as per table below :

IGST Schedule	Serial no.	Chapter or Heading or sub-heading or tariff heading	Description of goods	Integrated Goods and Service tax rate
II	196	8432	Agricultural, horticultural, or forestry machinery for soil preparation or cultivation: Lawn or sports-ground rollers *(N.B Parts classifiable under heading 843290 were introduced through an amendment vide Notification No. 43/2017 dated 14.11.2017- discussed subsequently)*	12%
III	453	Any chapter	Goods that are not specified in Schedule I,II,III,IV, V & VI	18 %

10. In view of the aforesaid facto legal position, the department sought to recover the alleged short levy by invoking the extended period of limitation with other attendant consequences of interest and penalty. Thus, in order to determine the appropriateness and legality of the demand for correct application of IGST, it is imperative to ascertain as to whether the appellant's contention or the department's plea in the matter is legally sustainable. For sake of ready reference CTH 8432 is reproduced below :

Tariff Item		Description of goods
(1)		(2)
8432		AGRICULTURAL, HORTICULTURAL OR FORESTRY MACHINERY FOR SOIL PREPARATION OR CULTIVATION; LAWN OR SPORTS- GROUND ROLLERS
8432 10	-	Ploughs:
8432 10 10	---	Disc ploughs
8432 10 20	---	Other tractor ploughs
8432 10 90	---	Other
	-	Harrows, scarifiers, cultivators, weeders and hoes :
8432 21 00	--	Disc harrows
8432 29	--	Other
8432 29 10	---	Rotary hoes
8432 29 90	---	Other
	-	Seeders, planters and transplanters:
8432 31 00	--	No-till direct seeders, planters and transplanters
	--	Other
	-	Manure spreaders and fertiliser distributors:
8432 41 00	--	Manure spreaders
8432 42 00	--	Fertiliser distributors
8432 80	-	Other machinery :
8432 80 10	---	Lawn or sports ground rollers
8432 80 20	---	Rotary tiller
8432 80 90	---	Other
8432 90	-	Parts
8432 90 10	---	Parts of agricultural machinery falling within headings 8432 10, 8432 21, 8432 29, 8432 30 and 8432 40
8432 90 90	---	Other

11. A reading of the aforesaid description would show that heading 8432 is applicable in respect of agricultural, horticultural or forestry

machinery for soil preparation or cultivation; lawn or sports-ground rollers and their parts. We are in agreement with the adjudicating authority that unlike machines like Rotary tiller (8432 80 20), Fertiliser distributors (8432 42 00), there is no specific entry in the aforesaid CTH for classification of the imported goods. Nonetheless, Tariff Entry 8432 8090 'Other' provided room for classifying such other machines as are not specifically indicated in the CTH, but are partly classifiable under heading 8432 – being agricultural, horticultural or forestry machineries used for cultivation. We note that the Revenue have however not raised this question of classification for "Tea Pruning Machines" under CTH 8432 and have merely contested that the goods not being specifically mentioned under entry no.196 of Schedule II of the IGST Notification No.01/2017 Integrated Tax (Rate) dated 28.06.2017 are correctly classifiable for IGST levy under residual serial no.453 of Schedule III of ibid notification dated 28.06.2017.

12. It is a fact that for IGST purposes, the Tariff Entry/Sub-heading/Heading/Chapter mentioned against a particular entry in any of the six schedule of the IGST is inextricably linked with the corresponding description of the goods in that same entry. Thus, in order to disprove that the goods imported do not qualify for IGST levy under serial no.196, the department was required to first establish that the imported goods had not been classified under the HSN heading 8432. However, this very fact of classification, is missing completely in the subject demand notice. From the discussions on the relevant

portions of the IGST Act 2017 vis-à-vis the Customs Act, 1962 read with the Customs Tariff Act, 1975, made above, there cannot be one heading/tariff entry for the same goods for the purpose of levying Basic Customs Duty or BCD and another heading/tariff entry for the purpose of levying IGST.

13. Thus, having not contested the classification as undertaken by the appellant on self-assessment basis, it would be deemed acceptance by the authorities. It was pointed out by the Ld.AR for the department that a more specific tariff entry under CTH 8438 would indeed be applicable for tea pruning machines and their parts (8438 80 40) which reads as under :

Tariff Item		Description of goods
(1)		(2)
8438		MACHI NERY, NOT SPECIFIED OR INCLUDED ELSEWHERE IN THIS CHAPTER, FOR THE INDUSTRIAL PREPARATION OR MANUFACTURE OF FOOD OR DRINK, OTHER THAN MACHINERY FOR THE EXTRACTION OR PREPARATION OF ANIMAL OR FIXED VEGETABLE FATS OR OILS
8438 10	-	Bakery machinery and machinery for the manufacture of macaroni, spaghetti or similar products :
8438 10 10	---	Bakery machinery
8438 30	-	Machinery for sugar manufacture:
8438 30 10	---	Sugar cane crushers
8438 30 90	---	Other
8438 40 00	-	Brewery machinery
8438 50 00	-	Machinery for the preparation of meat or poultry
8438 60 00	-	Machinery for the preparation of fruits, nuts or vegetables
8438 80	-	Other machinery:
8438 80 10	---	Auxiliary equipment for extrusion cooking plant
8438 80 40	**---**	**Tea leaf rolling or cutting machine**
8438 80 90	---	Other
8438 90	-	Parts :
8438 90 10	---	Of sugar manufacturing machinery
8438 90 90	---	Of other machinery

14. It is therefore clear that a more appropriate entry of the CTH was indeed applicable to which however there is no contest and the Revenue have not made it as a part of the show cause notice.

Accordingly, under the circumstances, the department's contention cannot be sustained simply for the reason that the impugned goods did not find any place in any of the entries across the six schedules of IGST Notification 1/2017-Integrated Tax (Rate) Dated 28.06.2017. The Ld.AR further pointed out that at the material time under this appropriate heading the leviable IGST rate was paid by the importer.

15. On the aspect of limitation, we note that the show cause notice has been under Section 28(4) of the Customs Act invoking the extended period on account of willful misstatement and suppression of facts. However, there is no averment under the said demand notice to indicate any *malafide* on the part of the importer. We are of the view that the Revenue chose to invoke the extended limitation just to bring about a semblance of timeline for issuance of the Show Cause Notice. In the absence of anything to establish mis-declaration, collusion or suppression, the said extended period of limitation is not available to the Revenue. Under the circumstances, the case of the Revenue for invoking extended period of limitation fails miserably.

16. In view of the classification under Sub-heading 8438 80 90 as discussed, not having been challenged by way of the show cause notice, we find no infirmity in the order of the adjudicating authority.

17. In view of the foregoing, both on merits and limitation, the appeal is bound to succeed. We therefore set aside the order of the

Ld.Commissioner remanding the matter for fresh adjudication and uphold the order passed by the adjudicating authority in the matter.

The Appeal succeeds and the order of Commissioner(Appeals) is set aside.

(Order pronounced in the open court on 17.04.2026.)

Sd/
(R. MURALIDHAR)
MEMBER (JUDICIAL)

Sd/

(RAJEEV TANDON)
MEMBER (TECHNICAL)

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