# CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL BANGALORE

REGIONAL BENCH - COURT NO. 2

## Customs Appeal No. 21104 of 2017

[Arising out of Orders-in-Appeal No. 706 & 707/2016 dated 21.12.2016 passed by the Commissioner of Customs (Appeals) Bengaluru]

**M/s. Kodibail Agro Mac**
Door No. 1-1230/3, 4
Lakshmi Arcade, Bypass Junction
Darbe, Putthur
Dakshin Kannada – 574 202 ............ **Appellant(s)**

**VERSUS**

**Commissioner of Customs Mangalore**
New Custom House
Panambur
Mangalore – 575 010 .......... **Respondent(s)**

**WITH**

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**APPEARANCE:**

Mrs. Gomathi Srinivas, Advocate for the Appellant
Mr. Sreekanth M., Assistant Commissioner (AR) for the Respondent

**CORAM:**
**HON'BLE MR. P.A. AUGUSTIAN, MEMBER (JUDICIAL)**
**HON'BLE MR. PULLELA NAGESWARA RAO, MEMBER (TECHNICAL)**

**FINAL ORDER NOS. 20778 - 20779 / 2026**

Date of Hearing:26.02.2026
Date of Decision: 24.06.2026

**PER: P.A. AUGUSTIAN**

The issue in the present Appeal is regarding classification of goods.

2. The brief facts are that alleging misdeclaration of classification of imported goods, show cause notice C. No. S-48/09/2013 PCA/1372 was issued on 18.03.2014 for the period from September 2009 to November 2012 and show cause notice C. No. S-48/09/2013 PCA/1371 dated 18.03.2014 was issued for November 2012 to March 2013. Thereafter, Adjudication Authority as per the order dated 28.11.2014 confirmed the demand against both the show cause notices and aggrieved by said orders, appeals were filed before the Commissioner (Appeals). Commissioner (Appeals) as per the impugned orders dated 21.12.2016 upheld the order issued by the Adjudication Authority. Aggrieved by said order, present appeals are filed.

3. When the appeals came up for hearing, Learned Counsel for the Appellant submits that impugned order reopening the assessment is *prima facie* unsustainable. In this regard, Learned Counsel further submits that the issue was considered by this Tribunal in the matter of **M/s. Wipro Ltd. Vs. CCE, Chennai reported in 2005 (189) E.L.T. 289 (Tri.-Bang.)** wherein it is held as under:

> "6..........The appellant's contention that the assessment done on the Bill of Entry [...] is final and no demand can survive until and unless the assessment order is reviewed by the department is correct. The Honourable Apex Court in the case of Priya Blue Industries Ltd. v. CC, (Preventive) reported in 2004 (172) E.L.T. 145 (S.C.) have held that "Refund claim contrary to assessment order not maintainable without order of assessment having been modified in Appeal or reviewed under Section 28 of Customs Act, 1962." On the same lines, Revenue also cannot demand duty without order of

> assessment having been modified in Appeal or reviewed under Section 28 of the Customs Act, 1962........"

4. On identical grounds, in **Madhus Garage Equipments Vs. Commissioner of Customs (Appeals) [2006 (198) E.L.T 388 (Tri.-Bang.)]** it was held by the Hon'ble Tribunal as under:

> "6........ The Hon'ble Supreme Court in the case of Priya Blue Industries Ltd. v. CC (Preventive) reported in 2004 (172) E.L.T. 145 (S.C.) have held that refund claim contrary to assessment order is not maintainable without order of assessment having been modified in appeal or reviewed under Section 28 of the Customs Act, 1962. Similarly, Revenue cannot demand duty unless the order of assessment has been reviewed. In the present case, it is seen that ........ no action was taken to modify these assessment orders by filing review application. Therefore, following the ratio of Priya Blue (supra) case we hold that the demand is not sustainable....."

5. It is well settled that in matters of classification, the burden is upon the Department when the Appellant provided all the relevant information and documents to the satisfaction of the Department at the time of import, the Department cannot reclassify the imported goods and demand additional duty subsequently that too without challenging the assessment order by invoking extended period of limitation. The Learned Counsel further submits that the demand made against the Bills of entry dated 08.09.2009 and 15.07.2011 against show cause notice (SCN) dated 18.03.2014 is also barred by limitation as there is no substance in the allegation of willful suppression of facts on the part of Appellant. Further it is settled that classification burden is upon the Department.

6. As regards the issue on merit, Learned Counsel submits that from September 2000 onwards, Appellant had imported various types of high-pressure cleaners which are used by dairy farmers for cleaning cows and for other agricultural use. Since it is used for agriculture use, Appellant classified the goods under Customs Tariff heading (CTH) 8424 or 8433 and their spare parts were also cleared under the said category

availing exemption from Countervailing Duty (CVD) for the purpose of assessment of customs duty. Thereafter, alleging that as per the information available on internet, the supplier of the company is showing the goods are used for car washing, during the course of Post Clearance Audit (PCA) of Bill of Entries, allegations were made regarding misdeclaration of the goods against the Bills of Entry as per the following chart.

| Sl. No. | BoE details | | Description of goods | Tariff item | CVD paid or not |
|---|---|---|---|---|---|
| | No. | Date | | | |
| 1 | 231706 | 08.09.2009 | Dairy farming & agricultural equipment: Cleaning machinery | 8424 89 90 | Not paid |
| | | | Spare parts of the above | 8424 90 00 | Not paid |
| 2 | 4084635 | 15.07.2011 | High Pressure Washer/Cleaner | 8424 89 90 | Not paid |
| | | | Spare parts of the above | 8424 90 00 | Paid |
| 3 | 8565098 | 22.11.2012 | High Pressure Washer/Cleaner | 8424 89 90 | Paid |
| | | | Spare parts of the above | 8424 90 00 | Paid |
| 4 | 9653112 | 22.03.2013 | Machines for cleaning | 8433 60 10 | Not paid |
| | | | Spare parts of the above | 8433 90 00 | Not paid |

7. Learned Counsel further submits that the Appellant has classified the goods under bona fide belief regarding its classification. With the Department having ignored its responsibility of proper classification at an earlier stage, it cannot be alleged subsequently that the Appellant knowingly misclassified the imported goods. In other words, the Appellant's classification of goods cannot be deemed to be willful mis-declaration or suppression of fact for invoking extended period of limitation. The Learned Counsel for the Appellant relies on the decision of this Tribunal in the matter of **M/s. Sutures India Pvt. Ltd. Vs.**

**Commissioner of Customs [2009 (245) E.L.T. 596 (Tri. - Bang.),** wherein it is held as under:

> "10.5 ....... It can be seen from the above reproduced ratio, that the law is clearly settled as to the claiming of classification of the goods ..........is a matter of belief and would not amount to mis-declaration. We find that the ratio of the law as laid down by the Hon'ble Supreme Court [Northern Plastic Ltd. v. Commissioner - 1998 (101) E.L.T. 549 (S.C.)] squarely covers the issue in favour of the appellant, as they cannot be alleged to have mis-declared the item .........."

8. The Learned Counsel further submits that the Adjudication authority failed to appreciate that the classification of the imported goods viz. High-pressure cleaner and spare parts thereof under Chapter subheading 8479 89 50 and 8479 90 90, respectively is not correct as the said Chapter heading pertains to Car washing machines and related appliances, whereas the goods imported by the Appellant are for the purpose of use in Agriculture, Horticulture and Dairy Farming. Learned Counsel also submits that the Ld. Commissioner failed to appreciate that imported goods are used for cleaning animals like cows, washing and cleaning cowshed etc., besides these machines are used by farmers for cleaning Areca nut plant leaves, fruits and vegetables. However, Adjudication Authority failed to appreciate that for claiming classification or exemption under a particular heading or notification is matter of belief and would not amount to mis-declaration as held by the Hon'ble Tribunal in large number of cases.

9. Learned Authorized Representative (AR) reiterated the findings in the impugned order and submits that the appellant has deliberately mis-classified the high pressure cleaners /washers, i.e., 'car washing machine and related appliances' under Customs Tariff entries 84248990, 84249000 (parts) and 8433 6010, 8433 9000 (parts) instead of the specific Customs Tariff Item 8479 8950 as car washing machinery and related appliances, to evade payment of Countervailing Duty (CVD). Hence, the Adjudication Authority rightly held that the 'high pressure

cleaners /washers' imported by the appellant are in fact 'car washing machines and related appliances' rightly classifiable under customs Tariff item entry 8479 89 50 and the parts and spares classifiable under 8479 90 90. Therefore, the CVD at 12% as applicable to 'car washing machines and related appliances' classifiable under Customs Tariff Item entry 8479 89 50 and spares and parts classifiable under Customs Tariff item entry 8479 90 90(spare parts) is liable to be paid by the appellant.

10. Heard both sides and perused the records.

11. We find that the importer was made declaration as per the details furnished by the manufacturer and it was cleared subject to assessment by proper officer of Customs. Further there is no admissible evidence to substantiate the allegation regarding mis-declaration. Even if it is assumed that the goods can be put to dual use, there is no evidence that the goods are used for the purpose other than it is claimed by the Appellant. Further as regarding limitation, we find that in the matter of classification, burden is on the Revenue to establish the suppression of fact and considering facts and circumstances of the case, there is no reason to confirm the demand by invoking extended period of limitation. Hence, impugned orders confirming demand by invoking the extended period of limitation and imposition of penalty are unsustainable and the impugned orders are liable to be set aside.

12. In the facts and circumstances of the case and considering the issue on limitation, impugned orders are set aside, and appeals are allowed with consequential relief, if any, in accordance with law.

*(Order pronounced in open court on 24.06.2026)*

**(P.A. AUGUSTIAN)**
**MEMBER (JUDICIAL)**

**(PULLELA NAGESWARA RAO)**
**MEMBER (TECHNICAL)**

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