(2024) 10 CESTAT CK 1190

In the Customs, Excise And Service Tax Appellate, New Delhi

Case No : Customs Appeal No. 51881, 51046 of 2021

M/s Showa India Pvt. Ltd. @APPELLANT @Hash Principal Commissioner of Customs @RESPONDENT

Date of Decision : 10-10-2024

Acts Referred:

Customs Act, 1962 — Section 17(4), 17(5), 28(1), 28AA, 28(8), 54(1), 77, 110, 110A, 111(m), 112, 114A, 114AA

Citation : (2024) 10 CESTAT CK 1190

Hon'ble Judges : Dr. Rachna Gupta, Member (J);P. V. Subba Rao, Member (T)

Bench : Division Bench

Advocate : N.K. Sharma, S.K. Rahman

Final Decision : Allowed

Judgement

P.V. Subba Rao, J

1. The order-in-original dated 04.03.2020 passed by the Principal Commissioner of Customs (Preventive), New Delhi is assailed by M/s Showa India Pvt. Ltd., Showa in its appeal No. C/51881 of 2021. It is also assailed that Shri Manoj Negi, Manager (Commercial) of Showa in his appeal No. C/51046 of 2021. Showa is aggrieved by the rejection of its classification of the imported goods under Customs Tariff Item, CTI 8714 91 00 and their re-classification under 8714 10 90 by the impugned order. It is also aggrieved by the consequential demand of duty under section 17(4) in respect of the Bill of Entry dated 27.08.2018 and demand in respect of the previous Bills of Entry filed within one year under section 28(1). It is also aggrieved by the order of confiscation of the goods under section 111(m) and imposition of redemption fine and penalty on it. Shri Negi is aggrieved by the imposition of personal penalty of Rs. 50,000/- on him.

2. The facts of the case are that Showa India manufactures shock absorbers for motorcycles and it imported parts of such shock absorbers and classified them under CTI 8714 91 00 as Frames and Forks and parts thereof. It filed Bill of Entry dated 29.08.2018 to clear the goods through Inland Container Depot, ICD, Ballabhgarh.

3. Receiving intelligence about this consignment, the officers of the Commissionerate of Customs (Preventive), Delhi put the consignment on hold, examined the goods under a panchnama, recorded statements of Shri Manoj Negi and seized the goods under section 110 of the Customs Act, 1962, Act but released them provisionally under section 110A. After completing the investigation, a show cause notice, SCN dated 19.09.2019 was issued by the Principal Commissioner of Customs (Preventive) covering the Bill of Entry dated 27.07.2018 and 407 other Bills of Entry filed by Showa. It was proposed to classify the imported goods under CTI 8714 10 90 instead of 8714 91 00, finalize the assessment in respect of this consignment accordingly and also to recover differential duty in respect of the past consignments under section 28(1) along with applicable interest under section 28AA. It was also proposed to confiscate the goods, which were seized under section 111(m) for mis-classifying them and impose penalty under section 112 on Showa and penalty under section 114AA on Shri Negi.

4. Adjudicating on this SCN, the impugned order was passed.

5. It needs to be pointed out that in respect of three Bills of Entry No. 7334677 dated 23.07.2018, 7348707 dated 24.07.2018 and 7372494 dated 26.07.2018 filed by Showa in ICD, Tughlakabad, the Assistant Commissioner had already reclassified the goods under CTI 8714 10 90 and passed speaking orders under section 17(5) of the Act. Learned counsel for the appellant submits that Showa filed an appeal against this speaking order before the Commissioner (Appeals), which is pending. Meanwhile, another consignment was imported and the Principal Commissioner of Customs (Preventive) started investigation and issued the SCN and the impugned order.

6. We have heard the submissions advanced by learned counsel for the appellant and learned authorized representative for the revenue and perused the records.

7. The questions which we need to decide in this case are :-

(a) Are the parts of the shock absorbers imported by the appellant classifiable under CTI 8714 10 90 or under CTI 8714 91 00;

(b) Will the appellant be entitled to the benefit of Notification No. 50/2017-CUS (Sl. No. 532) even if the parts are classified under CTI 8714 10 90;

(c) Can the goods be confiscated under section 111(m) for claiming a wrong classification ;

(d) Is the penalty imposed under section 112 on Showa sustainable ; and

(e) Is the penalty imposed on Shri Negi under section 114AA sustainable.

8. Classification of the goods :- The relevant entries of the Customs Tariff are as follows :-

8714

PARTS AND ACCESSORIES OF VEHICLES

OF HEADINGS 8711 TO 8713

8714 10

-

Of motorcycles (including mopeds) :

8714 10 10

Saddles

8714 10 90

Other

8714 20

-

Of carriages for disabled persons:

8714 20 10

Mechanically propelled

8714 20 20

Non-mechanically propelled

8714 20 90

Other

-

Other:

8714 91 00

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Frames and forks, and parts thereof

8714 92

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Wheel rims and spokes:

8714 92 10

Bicycle rims

8714 92 20

Bicycle spokes

8714 92 90

Other

8714 93

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Hubs, other than coaster braking hubs and hub brakes, and free-wheel sprocket-wheels:

8714 93 10

Bicycle hubs

8714 93 20

Bicycle free-wheels

8714 93 90

Other

8714 94 00

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Brakes, including coaster braking hubs and hub brakes, and parts thereof

8714 95

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Saddles:

8714 95 10

Bicycle saddles

8714 95 90

Other

8714 96 00

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Pedals and crank-gear, and parts thereof

8714 99

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Other:

8714 99 10

Bicycle chains

8714 99 20

Bicycle wheels

8714 99 90

Other

9. A plain reading of the above shows that 4 digit Customs Heading 8714 is categorized under "8714 10 parts of motorcycle (including mopeds)", 8714 20 – carriages for disabled persons" and "others". Each of these six digit headings with a single dash are further sub-classified. According to the appellant, the parts imported by it fall under CTI 8714 91 00 as Frame and Folks and parts thereof because it is a more specific heading and prevails over the general heading as parts of motorcycles. Learned counsel for the appellant asserts in terms of Rule 3 of the General Rules for Interpretation, GIR the heading which provides the most specific heading should be preferred or one which provides a more generic heading. Since frames and folks and parts thereof is a more specific heading it should prevail over the general heading of parts of motorcycles. However, he fairly concedes that the frames and forks which they imported were parts of the motorcycles and were not goods of general use.

10. He also asserts that the appellant had been classifying the goods under CTI 8714 91 00 in the past and since it was not objected to, the department cannot now change the classification. According to him, the burden of proof of classification rests on the department which it had not discharged.

11. Learned counsel for the appellant relied on the order of Commissioner (Appeals) dated 21.10.2021 for a different period in which he held that the parts and components imported by the appellant deserve to be classified under 8714 91 00 as frames and forks and parts thereof. The relevant portion of this order is as follows :-

"5.4 The appellant has submitted that they are manufacturer of different types of shock absorbers. There are total 80 parts or components that go into the manufacturer of shock absorber, the appellant imports 52 parts or components. Out of these 52 imported parts, 28 parts are classified under specific tariff headings and the remaining 24 parts used for the manufacture of shock absorbers such as seat pipe, valve, case cover, case body, guise bush, piston ring rebound etc. are classified under CTH 8714 91 00 as 'Frames and forks, and parts thereof'. I find force in the submission that these parts have not even assumed the essential character of a shock absorber, much less of a motorcycle or moped. These are not complete parts which can be directly integrated into motorcycles, scooters etc., rather these parts are used for the manufacture of shock absorbers.

5.5 I refer to case of Jtekt Sona Automotive India Ltd., 2020 (371) E.L.T. 293 (Tri. – Del.) wherein issue of classification of 'Gear reduction blank" imported as part of Column Type Electric Powers Steering Systems (CEPS) for use in motor vehicles was decided and it was held that goods were not parts of motor vehicles under CTH 8708 but were gears etc. under CTH 848300. Similar was case of Varroc Engineering P. Ltd., 2019 (366) E.L.T. 170 (Tri. – Mumbai) wherein LCD imported for dash boards of motorcycles were not considered as parts of motor vehicles but as LCDs.

5.6 Accordingly, impugned goods have been correctly classified under 87149100 as parts of frames and forks (which covers shock absorbers) and they cannot be classified as parts of motor cycles. The impugned orders changing the classification are set aside".

12. Learned authorized representative for the Revenue supports the classification in the impugned order. He asserts that there is no estoppel in law and if the classification was done incorrectly in the past it does not mean that such incorrect classification should continue for the future also.

13. He asserts that there are three six digit sub-headings and there is further sub-classification. Of the three six digit sub-headings, the first is parts of motorcycles (including mopeds). The second is parts of carriages for disabled persons and third is the residual category of others. Since the goods imported by the appellant are undisputedly parts of motorcycles they cannot fall under

others. They squarely fall under the six digit heading 8714 10 as parts and accessories of motorcycles. Within this six digit heading are two digit CTI 8714 10 10 – Saddles and 8714 10 90 other. Since the imported goods were not saddles, but other parts of motorcycles they fall under CTI 8714 10 90.

14. We have considered the submissions by both sides on this question of classification. General Rules of Interpretation help in classifying the goods under the Customs Tariff. GIR 1 states that the goods should be classified as per the Customs Headings and sub-headings and the related chapter notes and section notes. There are no chapter notes or section notes, relevant to this case. The undisputed position is that the imported goods were parts of frames of motorcycles. Therefore, they fall under the 4 digit heading of 8714. Under this heading there are three six digit sub-headings 8714 10 (of motorcycles including mopeds) 8714 20 (of carriages for disabled persons) and other. Needless to say that something which falls under the first two six digit headings cannot also fall under the residuary category of other. Goods will fall under the residual category, if they do not fall under the previous categories. 8714 10 deals with parts of motorcycles and the imported goods are parts of motorcycles and there is no dispute about this fact. Therefore, the correct classification on six digit level of the imported goods is 8714 10. Within that six digit heading are two 8 digit CTI – saddles and others. Since the imported goods are not saddles they fall under others. We have no manner of doubt that appropriate classification for the imported goods is 8714 10 90. Therefore, we hold in favour of the Revenue on the question of classification and uphold the classification of the imported goods in the impugned order.

15. In view of our findings we do not agree with the view taken by the Commissioner (Appeals) for the earlier period in his order dated 21.10.2021. In our view, the Commissioner (Appeals) erred in holding that the parts of motorcycle or moped need to have the characteristics of the shock absorber for them to be classified under 8714 10 90. It goes without saying that no part in itself will have the essential character of the article until it becomes the part of the article. However, for that reason it does not cease to be a part of the article. A shock absorber, for instance, will be a shock absorber even if it is not fitted in the motorcycle. Similarly parts of shock absorber will be such parts even before they are assembled together as a shock absorber. The Commissioner (Appeals) clearly erred in holding that the parts have to assume the essential character of the article. His reliance in the case laws of Jtekt Sona Automotive India Ltd. and Varroc Engineering P. Ltd. is completely misplaced. These decisions were with respect to forgings which had yet to be completed into articles. In this case what were imported are parts of shock absorber and there will be such parts whether before or after fitting them into the shock absorber. The classification of the goods in the order impugned in this appeal under 8714 10 90 needs to be sustained.

16. It needs to be noted that while the classification in respect of the current Bill

of Entry was under section 17(4), the demand in respect of the past Bills of entry is under section 28(1) within the normal period of limitation. No extended period of limitation is involved.

17. Benefit of exemption Notification No. 50/2017-CUS (Sl. No. 532). Learned counsel for the appellant submitted that even if the goods are classified under 8714 10 90, the appellant would still be entitled to the benefit of this exemption notification, because they were parts and components other than the parts of bicycles. The relevant entry of the notification reads as follows :-

532

8714 9100, 8714 92, 8714 93, 87149400, 871495, 87149600, 8714 99.

All goods other than bicycle parts and components

10%

18. A plain reading of the above shows that all goods falling under the CTI indicated in Column '2' of the notification other than bicycle parts and components are eligible for exemption Notification No. 50/2017-CUS. The notification does not say that all goods in the entire tariff will get exempted other than bicycle parts and components. They must fall under one of the CTI indicated in Column '2' of the above table. CTI 8714 10 90 does not fall in Column '2'. Therefore, this assertion of the appellant has no force and deserves to be rejected.

19. Confiscation of the goods under section 111(m) and imposition of redemption fine :- Section 111(m) reads as follows :-

The following goods imported into India shall be liable for confiscation :

"(m) any goods which do not correspond in respect of value or in any other particular with the entry made under this Act or in the case of baggage with the declaration made under section 77 in respect thereof, or in the case of goods under transhipment, with the declaration for transhipment referred to in the proviso to sub-section (1) of section 54"

20. Evidently, goods which do not respond in respect of value or any other particular with the entry made under the Act are liable for confiscation. This would imply that the goods should be as per the declarations. It does not mean that the classification of the goods which is a matter of opinion of the importer self-assessing goods should match with the opinion of the officer who may re-assess the goods. Nothing in this section provides for confiscation of the goods if the classification of the goods by the importer during self-assessment does not confirm to the views of the proper officer or any adjudicating authority. Clearly goods cannot be confiscated under section 111(m), if the classification claimed by the appellant for the Bill of Entry does not confirm to the views which the officers may hold. Therefore, the order of confiscation needs to be set aside and consequently the redemption fine also needs to be set aside.

21. Penalty under section 112 upon the appellant:-Section 112 reads as follows :-

SECTION 112. Penalty for improper importation of goods, etc. — Any person, -

(a) who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under section 111, or abets the doing or omission of such an act, or

(b) who acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing, or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under section 111,

shall be liable, -

(i) in the case of goods in respect of which any prohibition is in force under this Act or any other law for the time being in force, to a penalty [not exceeding the value of the goods or five thousand rupees], whichever is the greater;

(ii) in the case of dutiable goods, other than prohibited goods, subject to the provisions of section 114A, to a penalty not exceeding ten per cent. of the duty sought to be evaded or five thousand rupees, whichever is higher :

Provided that where such duty as determined under sub-section (8) of section 28 and the interest payable thereon under section 28AA is paid within thirty days from the date of communication of the order of the proper officer determining such duty, the amount of penalty liable to be paid by such person under this section shall be twenty-five per cent. of the penalty so determined;

(iii) in the case of goods in respect of which the value stated in the entry made under this Act or in the case of baggage, in the declaration made under section 77 (in either case hereafter in this section referred to as the declared value) is higher than the value thereof, to a penalty not exceeding the difference between the declared value and the value thereof or five thousand rupees, whichever is the greater;

(iv) in the case of goods falling both under clauses (i) and (iii), to a penalty not exceeding the value of the goods or the difference between the declared value and the value thereof or five thousand rupees, whichever is the highest;

(v) in the case of goods falling both under clauses (ii) and (iii), to a penalty not exceeding the duty sought to be evaded on such goods or the difference between the declared value and the value thereof or five thousand rupees], whichever is the highest."

22. Evidently the penalty under section 112 is imposable if the goods are rendered liable for confiscation under section 111. Since, we have held against the confiscation of the goods, under Section 111 the penalty under section 112 also needs to be set aside.

23. Penalty on Shri Negi under section 114AA :- Section 114AA reads as

follows :-

“SECTION 114AA. Penalty for use of false and incorrect material. - If a person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular, in the transaction of any business for the purposes of this Act, shall be liable to a penalty not exceeding five times the value of goods.”

Nothing in the records shows that Shri Negi made any declaration or statement which is false or incorrect in the Bill of Entry. All that was done that was during self-assessment, they classified the goods under a particular CTI which is different from the CTI held in the impugned order. Therefore, the penalty imposed on Shri Negi also needs to be set aside.

24. In view of the above, we dispose of the appeals as follows :-

(a) Appeal No. C/51881 of 2021 filed by M/s Showa India is partly allowed upholding the classification of the goods and confirmation of demand of duty along with interest, but setting aside the confiscation of the goods, imposition of redemption fine and penalty on M/s Showa India.

(b) Appeal No. C/51046 of 2021 is allowed and the penalty imposed on Shri Negi is set aside.

25. Both appellants will be entitled to consequential relief, if any.

(Order pronounced in open court on 10/10/2024.)