

**CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI
PRINCIPAL BENCH, COURT NO. 3**

CUSTOMS APPEAL NO. 51191 OF 2020

[Arising out of Order-in-Original No. 31/2020/UG/Pr. Commr. Dated 18.08.2020 passed by the Pr. Commissioner of Customs, New Delhi]

AUREOLE INSPECS INDIA PVT LTD

Appellant

B-38, Sector-5, Noida-201301 (UP)

Vs.

**PRINCIPAL COMMISSIONER, CUSTOMS -
NEW DELHI**

Respondent

Air Cargo Complex, (Import), New Customs House
Near IGI Airport, New Delhi-110037

APPEARANCE:

Shri P. Chakrapani, Consultant and Shri Anil Kumar, Advocate for the appellant

Shri S.K. Rahman, Principal Commissioner (AR) and Shri Rakesh Kumar, Authorised Representatives for the respondent

CORAM:

HON'BLE MS. BINU TAMTA, MEMBER (JUDICIAL)

HON'BLE MR. P. V. SUBBA RAO, MEMBER (TECHNICAL)

FINAL ORDER NO. 51024 /2023

Date of Hearing : 21/07/2023

Date of Decision: 09/08/2023

P V SUBBA RAO:

M/s. Aureole Inspects India Pvt. Ltd.¹ filed this appeal to assail the Order-in- Original² dated 18 August 2020 passed by the Principal Commissioner of Customs Air cargo complex (Import), New Delhi. The appellant imported snow goggles which it supplied to the Indian Army as per its contract dated 31 August 2018 to supply 79,245 Snow Goggles. The appellant filed Bill of Entry dated 21.9.2019 to clear the snow goggles

1 Appellant
2 Impugned order

classifying them under Customs Tariff Heading³ 90049090 which attracts basic customs duty⁴ at the rate of 10%. Revenue felt that they were classifiable under CTH 90041000 attracting BCD of 20%. The Principal Commissioner of Customs issued a Show Cause Notice⁵ dated 28.2.2020 which culminated in the impugned order the operative part of which is as follows:

ORDER

- (i) I reject the claim seeking classification of the imported goods namely 'Snow Goggles' under CTH 90049090 and order that the goods be reclassified under CTH 90041000 for which Bills of Entry were filed / presented by M/s Aureole Inspects (India) Pvt. Ltd.
- (ii) I hereby confirm the demand of Customs duty and IGST to the tune of Rs. 51,58,683/- (Rupees Fifty One Lakh Fifty Eight Thousand Six Hundred and Eighty Three only) on the import and clearance of 'Snow Goggles' made by M/s Aureole Inspects (India) Pvt. Ltd. against the three Bills of Entry as listed in tabular form under para 2 of the SCN under Section 28(1) of the Customs Act, 1962.
- (iii) I hold that interest under Section 28AA of the Customs Act, 1962 is payable in this case by M/s Aureole Inspects (India) Pvt. Ltd. from the due date till the duty is paid in accordance with law.
- (iv) I hold that the goods imported and already cleared M/s Aureole Inspects (India) Pvt. Ltd. against the three Bills of Entry as listed in tabular form under para 2 of the show cause notice totally valued at Rs. 3,97,43,313/- (Rupees Three Crore Ninety Seven Lakh Forty Three Thousand Three Hundred and Thirteen only) liable for confiscation

under Section 111 (m) of the Customs Act, 1962. Since, the goods have already been cleared and are not seized, therefore, I refrain from imposing any Redemption Fine upon M/s Aureole Inspects (India) Pvt. Ltd. under Section 125(1) of the Customs Act, 1962.

- (v) I also impose penalty of Rs. 5.15,850/- (Rupees Five Lakh Fifteen Thousand Eight Hundred and Fifty only) upon M/s Aureole Inspects (India) Pvt. Ltd. under Section 112(a) of the Customs Act, 1962.

2. Aggrieved, the appellant filed this appeal.

Submissions on behalf of the appellant

3. The adjudicating authority erred in holding that snow goggles were classifiable under 90041000 because the heading pertains to 'sun glasses' which are different from the 'snow goggles' imported by it which are classifiable under 90049090.

4. Snow Goggles is a more specific description of the goods and should prevail over the more general description of 'sun glasses' as per Rule 3(a) of the General Rules for Interpretation of Tariff ⁶.

5. The adjudicating authority erred in holding that Sun glasses and Snow Goggles are one and the same for the reason that both are meant for protecting the eyes.

6. The goods should be classified as they are known to the end-users/customers. The contract which the appellant received was for 'Snow Goggles' and all the specifications in the contract are for 'Snow Goggles' and nothing in the entire

contract shows that they are sun glasses. The relevant portion of the contract are as follows:

1. Clause No. 1.0 of specification for Snow Goggles:-

Scope- "This specification covers Qualitative and other requirement for supply of snow goggles, Cat. Pt. No.- NIV, which are used for protection of eye in snowy region".

2. Clause No. 16.2.1 of specification for Snow Goggles:-

Recommendations for use:- "These high altitude snow goggles are designed to provide protection against snow, sun, wind and cold conditions. Not recommended for use when driving. Ensure that air can freely circulate around the ventilation holes, which are specially developed to allow water droplets to evaporate. This will prevent any condensation from impairing your vision. To ensure a perfect individual fit use the head strap slide adjustor.

3. Clause No. 5.2.2 of specification for snow Goggles:-

Lens: The lens shall also be suitably coated to offer protection against effects of fog/frost.

7. Sun glasses protect the eyes from bright sunlight while Snow Goggles are meant for use in high altitudes where the risk of exposure to Ultra-violet rays is very high. The specific differences between the two are as below:

GOGGLES	SUNGLASSES
Goggles give complete protection to eyes from the dust, water, snow, debris, etc which are present in the atmosphere	Sunglass are mainly designed to protect the eyes from sunlight and UV rays present in the sunlight

NATURE	
Goggles are close fitting glasses which cover the entire eye area along with the sides of the head also.	Sunglasses are typically a pair of lenses which rests on the nose and ears of the person who is wearing them.
WEIGHT	
Goggles are very bulky in nature and usually weight, more than sunglasses	Sunglasses are very light weight and easy to wear.
FOG UP	
Goggles usually fog up in cold weather, however anti-fogging goggles are also available.	Sunglasses usually don't fog up much when compared to goggles
COST	
Goggles are very costly in price and durable in nature	Sunglasses are cheaper in price and there are some premium brands also.
EXAMPLES	
Ski-Goggles, Swimming Goggles, Safety Goggles, Winter-Spot Goggles, Blow Torch Goggles	Sunglasses, Shades, Aviator Sunglasses, Corrective Sunglasses, Yellow Tinted Sunglasses, etc.

8. Even if the classification is decided against them, classification of goods is only a matter of interpretation and no mis-declaration can be alleged. Consequently, there is no basis to hold that the goods were liable for confiscation under section 111(m). Consequently, no penalty can be imposed under section 112.

9. As far as the old Bills of Entry are concerned, the goods have already been cleared for home consumption and the assessment is final. Hence no duty can be charged under section 28 without appealing against the assessment order. Reliance is placed on **Priya Blue Industries Ltd. vs Commissioner of Customs (Prev)**⁷ .

7 2004(172) ELT 145(SC)

10. Therefore, the entire demand of duty in the case along with interest and the imposition of penalty cannot be sustained. The appeal may please be allowed and the impugned order may be set aside.

Submissions on behalf of the Revenue

11. Sun glasses and Snow Goggles are essentially the same as both are meant to protect the eyes from bright sunlight. The term sun glasses has a wide meaning which encompasses snow goggles in it. A perusal of the explanatory notes to the HSN 9004 shows that it covers all the articles meant for protecting the eyes or correcting their defects related to vision.

12. Wikipedia shows that Snow Goggles are those goggles which fit tightly against the face so that the only light entering is through the slits. Similarly, sun glasses are also a form of protective eyewear for protection from sun.

13. The adjudicating authority examined the submissions of the appellant and found that the differences in build, cost, weight, etc. do not change the inherent purpose of which is the same for snow goggles and sun glasses.

14. Rule 3(a) of GIR applies when the goods are prima facie classifiable under two or more headings and the importer has not been able to establish that its snow goggles can be classified under more than one heading. Therefore, Rule 3(a) of GIR does not apply and the classification of the goods under Sun glasses is correct.

15. As the appellant has mis-declared the CTH for the imported goods, they are liable to confiscation under section 111(m).

16. The appeal may, therefore, be dismissed.

Findings

17. We have considered the submissions on both sides. The facts of the case are not in dispute. The appellant imported 'Snow Goggles' to supply to Indian Army as per its contractual obligation. The contract does not place any order for sun glasses nor does it use the terms 'sun glasses' and 'snow goggles' synonymously. Thus, as far as the trade parlance, i.e., knowledge of those who deal with the imported goods is concerned, the imported goods are 'Snow Goggles' and not sun glasses. The SCOPE of supply under the contract in paragraph 1.1 of the contract reads as follows:

1.1 This specification covers Qualitative and other requirements for supply of SNOW GOGGLES, Cat, Pt. No.-NIV, which are used for protection of eyes in snowy region.

Thus, the goods are meant for protection of eyes in snowy region and not protection of eyes from sunlight which is the purpose of sun glasses as is common knowledge. Thus, the finding in the impugned order that the Snow Goggles are also sun glasses is not correct. The contract also lays down detailed specifications of the materials, processing, quality control, dimensions, tolerances, workmanship and finish, pre-inspection, sampling procedure, conformity, test methods, packaging and user instructions. We do not find anything in

these to suggest that these are the same as sun glasses. The contract also requires that in each individual case of goggles, the User Instructions must be provided as follows:

16.0 PACKAGING

16.1 Each goggle shall be packed in individual case or box, wrapped in flannel of size 20 Cm x 20 Cm of good trade quality, then put it into Polythene bag of suitable size with press zip lock. 30 or 60 such boxes or cases shall be packed in a 7 ply corrugated boxes of size as agreed between user and manufacturer shall be finally tied with polypropylene strapping.

16.2 USER INSTRUCTIONS- Along with Goggles, all individual case or box shall contain a Guarantee Certificate for protection against UV/Visible rays in addition to following user instructions.

16.2.1 RECOMMENDATIONS FOR USE- These high altitude snow goggles are designed to provide protection against snow, sun, wind and cold conditions. Not recommended for use when driving. Ensure that air can freely circulate around the ventilation holes, which are specially developed to allow water droplets to evaporate. This will prevent any condensation from impairing your vision. To ensure a perfect individual fit use the head strap slide adjustor.

16.2.2 MAINTENANCE AND CLEANING-The best way to clean your goggles is to hold the lens under a stream of lukewarm water, then rinse and leave to dry. Do not rub or wipe the inner surface of the lens as the stop-fog coating may lose its effectiveness. Do not use aggressive products such as solvents or detergents which could alter the goggles mechanical properties. Take special care to protect the lens when storing to avoid damage of the lens surface.

18. The user instructions are the instructions which go to the soldiers to whom the Snow Goggles will be issued. These

clearly show they are designed to provide protection against snow, sun, wind and cold conditions. The sun glasses which are available in the market and which most of us use are, as the name suggests, meant to protect our eyes from sun. These are often used while driving in daylight also. Snowy conditions in high altitudes require a different kind of protection. Not only the sun from above but also the glare of the snow reflecting the light hurts the eyes. High altitudes also expose one to more UV rays. The wind and the cold conditions also hurt the eyes. The goods in question, Snow Goggles are specifically required to protect the eyes from all these. Specifically, they are not recommended for use while driving which also distinguishes them from the sun glasses. Perhaps, the only commonality between the sun glasses and the Snow Goggles is that both provide protection from sunlight and the commonality ends there.

19. In the impugned order, the Principal Commissioner stated " *I am of the opinion that the Snow Goggles will become sunglass if fitted with two arms for the purpose of being mounted over the nose of a person. Therefore, I am of the opinion the Snow Goggles are nothing but Sun Glasses and merit classification under CTH 90041000.*" Goods should be classified and assessed to duty as they are imported and not based on what they will become if some changes are made. Therefore, the Principal Commissioner has clearly erred in classifying the imported goods on the basis of what they can become if some changes are made.

20. The relevant CTH are as follows:

9004 Spectacles, goggles and the like, corrective or other

9004 10 00 Sunglasses

9004 90-Other;

9004 90 10—Passive night vision goggles

9004 90 20—Prismatic eye glasses for reading

9004 90 90—Other

It is undisputed that the goods fall under the broad heading of 9004. The dispute is if they are sunglasses and, therefore, fall under 90041000. We found, after examining the contract of the appellant with the Army (to meet which these were imported), that they are not sunglasses but are Snow Goggles. Therefore, the disputed goods cannot fall under 90041000 (sun glasses) and must fall under 900490 'Other'. This heading covers three types of goods viz., passive night vision goggles, prismatic eye glasses for reading and others. Night vision goggles enable the viewer to see in the dark by converting the infra red rays which are emitted by all objects even in the dark, into visible light. Prismatic eye glasses are meant for reading correcting the vision. The imported goods do not fall under either of these categories. Hence, they were correctly classified by the importer under the residual CTH 90049090 as others.

21. Since we have decided the classification in favour of the appellant, the demand needs to be set aside. Consequently, the demand of interest also needs to be set aside.

22. As the demand itself is set aside, the fine imposed on the appellant also needs to be set aside on this ground alone. Further, penalty under section 112(a) can be imposed if the goods are liable to confiscation under any clause of section 111. In this case, the impugned order held that the goods imported by the appellant which had already been cleared for home consumption were liable for confiscation under section 111(m) for the reason that the imported goods did not match the classification of the goods (as decided in the impugned order). The relevant Sections read as follows:

Section 111. Confiscation of improperly imported goods, etc. -

The following goods brought from a place outside India shall be liable to 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 trans-shipment, with the declaration for trans-shipment referred to in the proviso to sub-section (1) of section 54;

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

.....
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.

23. The reasoning in the impugned order is that since the appellant indicated a classification in the Bill of Entry and the imported goods do not match that classification, they are liable to confiscation under Section 111(m). We do not agree with this reasoning. Classification of goods is a part of the assessment. Section 2(2) of the Customs Act defines assessment as follows:

(2) "assessment" means determination of the dutiability of any goods and the amount of duty, tax, cess or any other sum so payable, if any, under this Act or under the Customs Tariff Act, 1975 (51 of 1975) (hereinafter referred to as the Customs Tariff Act) or under any other law for the time being in force, with reference to-

(a) the tariff classification of such goods as determined in accordance with the provisions of the Customs Tariff Act;

(b) the value of such goods as determined in accordance with the provisions of this Act and the Customs Tariff Act;

(c) exemption or concession of duty, tax, cess or any other sum, consequent upon any notification issued therefor under this Act or under the Customs Tariff Act or under any other law for the time being in force;

(d) the quantity, weight, volume, measurement or other specifics where such duty, tax, cess or any other sum is leviable on the basis of the quantity, weight, volume, measurement or other specifics of such goods;

(e) the origin of such goods determined in accordance with the provisions of the Customs Tariff Act or the rules made thereunder, if the amount of duty, tax, cess or any other sum is affected by the origin of such goods;

(f) any other specific factor which affects the duty, tax, cess or any other sum payable on such goods, **and includes provisional assessment, self-assessment, re-assessment** and any assessment in which the duty assessed is nil ;

24. Thus, the classification of the goods under the Customs Tariff is a part of assessment. The next question is who can do this assessment. Section 17, reads as follows:

Section 17. Assessment of duty. -

(1) An importer entering any imported goods under section 46, or an exporter entering any export goods under section 50, shall, save as otherwise provided in section 85, self-assess the duty, if any, leviable on such goods.

(2) The proper officer may verify the entries made under section 46 or section 50 and the self-assessment of goods referred to in sub-section (1) and for this purpose, examine or test any imported goods or export goods or such part thereof as may be necessary.

25. Thus, as per Section 17 the importer or exporter has to self-assess duty and the proper officer can re-assess the duty. Both the self-assessment by the importer (or, as the case may be, the exporter) and the re-assessment by the proper officer fall under the definition of assessment as per section 2(2).

Thus, the importer (or exporter) and the proper officer are competent to classify the goods and assess the duty payable on them. The remedy against self-assessment is re-assessment by the officer [or an appeal to Commissioner (Appeals)] and the remedy against the re-assessment is an appeal to the Commissioner (Appeals) which option is available to both sides or a notice under section 28 (which is available only to the Revenue and only to recover duties not levied, not paid, short levied, short paid or erroneously refunded).

26. However, there is no separate document or procedure through which the importer can self-assess the duty on the imported goods under Section 17. All the elements necessary

for assessing the duty are filled online in the Bill of Entry itself which is the entry of the goods made under section 46. Thus, the Bill of Entry has factual elements such as the nature of the goods, quality, quantity, weight, transaction value, country of origin, etc. which all need to be correctly declared and elements which are in the nature of the opinion of the importer such as classification of the goods, exemption notifications which apply to the import, etc. While the facts are verifiable as correct or incorrect, opinions can differ. The importer may find that the goods are classifiable under one CTH while the officer re-assessing the goods may classify them under a different CTH. If appealed against, different views can be taken at different levels of judicial hierarchy from Commissioner (Appeals) all the way up to the Supreme Court. Similar will be the case with exemption notifications.

27. The imported goods do not become liable to confiscation under section 111(m) on the ground that the importer classified the goods under a CTH different from the opinion of the officer. Firstly, the importer is not an expert in taxation and can make mistakes and he cannot be penalized for making mistakes. Secondly, classification is a matter of opinion and the importer's goods cannot be confiscated nor can he be penalized for his opinion. Thirdly, the filing of the Bill of Entry and the self-assessment precede re-assessment by the proper officer and it is impossible for the importer to anticipate under which heading the officer is likely to classify

the goods and file the Bill of Entry accordingly. Fourthly, there is no legal obligation on the importer to conform to the possible subsequent view of the officer. The law cannot be read to obligate the importer to do the impossible task of predicting the views of the officer and following them. For all these reasons, wrong classification or wrong claim of an exemption notification, in the Bill of Entry even if they are found to be completely incorrect, do not attract section 111(m) or the consequential penalty under section 112.

28. In view of the above, the impugned order is set aside and the appeal is allowed with consequential relief to the appellant.

[Order pronounced on **09/08/2023**]

(BINU TAMTA)
MEMBER (JUDICIAL)

(P V SUBBA RAO)
MEMBER (TECHNICAL)