

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE
TRIBUNAL, KOLKATA
EASTERN ZONAL BENCH : KOLKATA
REGIONAL BENCH - COURT NO.2**

Customs Appeal No.75152 of 2015

(Arising out of Order-in-Appeal No.416-422/CUS(Apprg.)/KOL(P)/2014 dated 11.09.2014 passed by Commissioner of Customs (Appeals), Kolkata.)

M/s. BTL EPC Limited

(2, Jessore Road, Kolkata-700028.)

...Appellant

VERSUS

Commissioner of Customs (Port), Kolkata

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

.....Respondent

WITH

Customs Appeal No.76038 of 2015

(Arising out of Order-in-Appeal No.Kol/Cus(Port)/AM/054/2015 dated 18.08.2015 passed by Commissioner of Customs (Appeals), Kolkata.)

Commissioner of Customs (Port), Kolkata

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

...Appellant

VERSUS

M/s. Chirag Corporation

(320, Marshall House, 33/1, N.S. Road, Kolkata-700001.)

.....Respondent

APPEARANCE

Dr. Samir Chakraborty, Senior Advocate & Shri Ajay Sanwaria, Chartered Accountant for the Appellant (s)/Party

Shri Manish Mohan & Shri M.P.Toppo, both Authorized Representative for the Respondent/Revenue

CORAM: HON'BLE SHRI P. K.CHOUDHARY, MEMBER(JUDICIAL)

HON'BLE SHRI P.ANJANI KUMAR, MEMBER(TECHNICAL)

FINAL ORDER NO. 75478-75479/2022

DATE OF HEARING : 17 June 2022
DATE OF DECISION : 17 August 2022

P.K.CHOUDHARY :

Appeal No. C/76152/2015 has been filed by the Appellant company (hereinafter referred to as "BTL") against the Order-in-Appeal No. 416-422/CUS(Apprg)/KOL(P)2014 dated 11.09.2014,

passed by the Commissioner of Customs (Appeals), Kolkata, upholding assessment orders passed by the Assistant Commissioner of Customs, Appraising Group-5, Kolkata (in short, "the Assistant Commissioner") denying the benefit of customs duty at the concessional rate of 2.5% in terms of Notification No. 12/2012-Customs dated March 17, 2012 [Sl. No. 399(X)] (in short, "the said notification") [hereinafter referred to as "*first impugned order*"] in respect of consignments of power tillers imported under 31 (thirty one) Bills of Entry, detailed in paragraph 1 of the said order dated 11.09.2014.

2. Appeal No. C/76038/2015 has been filed by the Revenue, being aggrieved by the Order-in-Appeal No. Kol/Cus/Port/AM/054/2015 dated 18.08.2015 passed by the Commissioner of Customs (Appeals), Kolkata, allowing the appeals filed by Chirag Corporation against assessments on two Bills of Entry filed for import of power tillers denying the benefit of the said notification. The Commissioner (Appeals), however, while allowing the appeal, extended the benefit under the said notification (hereinafter referred to as "*second impugned order*").

3. The facts in brief in the two appeals before us are as under:

3.1 Appeal No. C/76152/2015

BTL, during the period from July 10, 2012 to August 29, 2013, imported 31 consignments of Power Tillers. Separate Bills of Entry were filed in respect of each consignment, in all of which BTL claimed benefit of concessional rate of basic customs duty under the said notification, under Sl. No. 399(x) of the "Table" to the said notification. However, the Assistant Commissioner of Customs, the assessing authority, denied the benefit and the said goods were assessed at the basic customs duty rate of 7.5%.

3.1.1 Being aggrieved with the said assessment orders of the Assistant Commissioner, BTL preferred appeals against the same

before the Commissioner of Customs (Appeals), Kolkata [hereinafter referred to as "the Commissioner (Appeals)"]. However, by the common first impugned order the Commissioner (Appeals) rejected all the 31 appeals.

3.2 Appeal No. C/76038/2015

Chirag Corporation (in short, "Chirag") imported two consignments of power tillers and filed two Bills of Entry both dated 03.06.2014, claiming benefit under the said notification in respect of the consignments of power tillers imported.

3.2.1 The two Bills of Entry were self assessed and cleared by the Customs Risk Management System. However, when the goods were examined it was found that what was imported, according to the Customs authorities were, not rotary tillers which were eligible to benefit under the said notification and therefore the benefit thereunder could not be made available to the goods imported by Chirag. Consequently, both the said Bills of Entry were reassessed denying the benefit under the said notification. In addition, the goods were held to be liable for confiscation under Section 111(m) of the Customs Act, 1962 (hereinafter referred to as "the Act") and that Chirag was liable to penalties under Sections 112(a) and 114A of the Act. The goods were however allowed to be redeemed upon payment of a redemption fine of Rs. 5,00,000/-. Penalty of Rs. 8,56,380/- was also imposed upon the importer under Section 114A of the Act.

3.2.2 Being aggrieved by the said order Chirag preferred appeals before the Commissioner (Appeals) who, vide a common Order-in-Appeal dated 18.08.2015, allowed the appeals and set aside the impugned order and extended the benefit passed by the said notification in respect of the imported goods.

3.2.3 Being aggrieved by the order dated 18.08.2015 passed by the Commissioner (Appeals), the Revenue filed this appeal before the Tribunal.

3.2.4 By a Final Order No. 75299/KOL/2020 dated 25.02.2020 this Bench of the Tribunal allowed the appeal of the Revenue in part. On the issue as to whether the benefit of the said notification was available to the goods imported, placing reliance upon the Circular issued by CBEC bearing No. 45/2001-Customs dated 07.08.2001 it was held that the goods imported were classifiable under CTH 8701 of the Customs Tariff and not under CTH 8432. It was further held that the exemption under the said notification was limited to rotary tillers and not power tillers and hence not available to the imported goods. However the Tribunal maintained the order of the Commissioner (Appeals) setting aside confiscation of the goods under Section 111(m) of the Act and imposition of fine and penalty imposed.

3.2.5 Being aggrieved by the order dated 25.02.2020 of this Tribunal, Chirag preferred a writ petition before the Calcutta High Court, being WPA/943/2021 (Rajesh Mehta Vs. Union of India & Ors.). By a judgment dated 23.11.2021 the Hon'ble High Court, while not interfering with the Tribunal's order whereby the confiscation, redemption fine and penalty imposed by the Commissioner (Appeals) were set aside, quashed the order dated 25.02.2020 of the Tribunal on the issue of availability of the benefit under the said notification and remanded the matter for fresh consideration in light of the observations made in the judgment. Accordingly this appeal has come up for de novo consideration.

4. We have heard Dr. Samir Chakraborty, Ld.Senior Advocate along with Shri Ajay Sanwaria, Ld.Chartered Accountant for both BTL and M/s. Chirag Corporation and Shri Manish Mohan & Shri M.P.Topo, both Ld.Authorized Representative for the Revenue and have perused the

appeal records, including the judgment and order dated 23.11.2021 passed by the Hon'ble Calcutta High Court.

5. It has been contended by Dr. Samir Chakraborty, Ld.Senior Advocate on behalf of the importers that:

(i) Power tiller, also called as a rotary tiller, is an agricultural machine used for soil preparation having a single axle, in which the direction of travel and its control during field operation is performed by the operator. It is self-powered, self-propelled. The equipment may be walk behind or riding attachment type. The minimum rated horse power output of the power tiller engine shall not be less than 8 BHP (Break Horse Power). It is also known as hand or walking type tractor or rotary tiller.

(ii) Construction-wise a power tiller or rotary tiller comprises of 4 sub-assemblies, namely prime mover (generally it's a single cylinder, diesel engine), chassis frame, transmission unit and functional part, i.e., the rotary unit. The other parts of the same are wheels, axle and seating arrangements.

(iii) Both the products are agricultural products. As such clarification was sought for from the Ministry of Agriculture, Government of India, as to whether or not Power Tiller was also entitled to the exemption under Sl. No. 399(x) of the said notification. The Government of India, Ministry of Agriculture, Department of Agriculture & Cooperation, by a letter dated October 27, 2014 to the Ministry of Finance, Government of India clarified, upon due examination, that "Power Tillers are also called self propelled Rotary Tillers as it has rotary tilling unit as a standard attachment and therefore the principal purpose of the power tiller being rotary tilling, it can be appropriately classified under Customs Tariff Head 84328020 as Rotary Tillers

and the benefit of concessional customs duty @2.5% should be continued for Power Tillers". The Finance Ministry (Customs Department) was requested to look into the matter and "allow continuing benefit of concessional customs duty @2.5% to Power Tillers".

(iv) By Notification No. 19/2015-2020 dated July 15, 2020 issued by the DGFT authorities it has been made clear, under Clause 3(a) thereof, that under HS Code 8432 8020 import is 'Free' for all items except "Power Tillers" as defined under IS 13539-2018, thus equating Power Tillers with Rotary Tillers, referred to in paragraph 1 of the notification, under Exim Code 8432 8020. Thus Power Tillers even as per the Foreign Trade Policy is classified, in consonance with the Customs Tariff, under Tariff classification under TSH 84328020. Hence, the requirement of the said notification for availing concessional rate of customs duty stands satisfied in respect of Power Tillers also.

(v) The Explanatory Note on Budget Changes 2002-2003 issued by CBEC after the introduction of the Finance Bill 2002 has made it clear that Power Tillers are to be classified under Heading 84.32 and the Circular No. 45/2001 dated August 7, 2001 of CBEC to the contrary issued earlier has been withdrawn. Thus whatever doubt or dispute remained relating to the tariff classification of Power Tillers came to an end with effect from the coming into effect of the Finance Act, 2002.

(vi) The Learned Counsel also relied upon the product literature of various manufacturers of Power Tillers/Rotary Tillers sold internationally under various brands and upon the decision of the South Zonal Bench, Bangalore, of the Tribunal in the case of *VST Tillers & Tractors Ltd. Vs. Commissioner of Central Excise, 2006 (196) ELT 419 (T)*.

5.1 The Ld.Authorized Representative for the Department, while reiterating the findings of the order of this Bench in the case of

Commissioner of Customs (Port), Kolkata Vs. Chirag Corporation, 2020
(2) TMI 1432 – CESTAT KOLKATA and the findings of the Ld.Commissioner (Appeals) dated 11.09.2014 passed in Appeal No.C/76152/2015, relies also upon the CBEC Circular No. 45/2001 dated 07.08.2001 and contends that the matters should be remanded for deciding the correct classification of the imported goods in both cases.

6. We find that the issue involved in both the appeals is whether or not power tiller is covered under the said Notification No. 12/2012 and, consequently, whether the benefit thereunder is available to the respective importers in respect of the power tillers imported by them under the above referred Bills of Entry.

7. CTH 8432 classifies agricultural, horticultural or forestry machinery for soil preparation or cultivation, lawn or sports ground rollers. CTH 8432 8020 refers to 'rotary tiller' under the sub-heading "other machinery" (8432 80). There is no separate tariff sub-heading for 'power tiller' in the Customs Tariff. It is the contention of the importers that power tiller is nothing but a rotary tiller classifiable under CTH 8432 80. Further, explaining the changes made by the Finance Bill 2002 the clarification provided by the Central Government, under the head '*Machinery Falling Under Chapters 84 and 85 of the Customs Tariff (Other Than Electronics/IT)*' clarified the changes effected by the Finance Bill, inter alia, in respect of agricultural machinery, as under:

"(ii) Agricultural machinery falling under headings 84.32, 84.33, 84.36 and 84.37 (other than lawn and sports ground roller, goods falling under sub-headings 8433.11, 8433.19, 8437.80 and their parts) which hitherto attracted 25% basic duty, would now attract duty at 15% [S. No. 267 in Notification No. 21/2002-Cus. refers]. In this regard it is hereby clarified that 'power tillers' are to be classified

under heading 84.32. Circular No. 45/2001, dated 7th August, 2001 is accordingly withdrawn."

(emphasis added)

It has thus been made clear that power tillers are also to be classified under CTH 84.32. It has also been made clear that Circular No. 45/2001 dated August 7, 2001 had been withdrawn.

7.1 Circular No. 45/2001-Customs dated August 7, 2001, which has been relied upon on behalf of the Revenue, had clarified that "pedestrian tractors"/ "power tillers" were classifiable under CTH 87.01, whereas "rotary tillers" were classifiable under CTH 84.32. In view of the above clarification this circular no longer survives.

7.2 We find that even the DGFT authorities have recognised that power tillers come under HS Code 8432 8020 (CTH 8432 8020). This appears from Notification No. 19/2015-2020 dated July 15, 2020 issued by the Directorate General of Foreign Trade, Ministry of Commerce & Industry, Government of India, which is as follows:

"S.O. 2352 (E): *In exercise of powers conferred by Section 3 of FT (D&R) Act, 1992, read with paragraph 1.02 and 2.01 of the Foreign Trade Policy 2015-2020, as amended from time to time, the Central Government hereby amends the import policy and import policy conditions of items under Chapter 84 of ITC (HS), 2017, Schedule-I (Import Policy).*

Exim Code	Item Description	Present Policy	Revised Policy	Present Policy Condition	Revised Policy Condition
8432 8020	Rotary tiller	Free	Restricted	-	Subject to Policy Condition 3 of this Chapter
8432	Other	Free	Restricted	-	Subject to Policy

9090					Condition 3 of this Chapter
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2. A new Policy Condition No. 3 is being added in Chapter 84 of ITC (HS), 2017, Schedule-I (Import Policy) as follows:
3. Import Policy for Power Tillers and its components:
- a. Under HS code 8432 8020, Import is 'Free' for all items except Power Tillers as defined in IS:13539-2018.

b. Under HS code 8432 9090, Import is 'Free' for all items except for Engine, Transmission, Chassis and Rotavator forming parts of Power Tillers as defined in IS:13539-2018.

c. Definition of Power Tillers as per IS:13539-2018:
Power Tiller is an agricultural machinery used for soil preparation having a single axle, in which the direction of travel and its control during field operation is performed by the operator. It is self powered, self propelled and can pull cultivator, harrow, plough, various seeder, harvester and such other suitable attachments. The equipment may be walk behind or riding attachment type and should be capable of being coupled to a trailer that can be used for transportation of goods of not less than 1 ton capacity. The maximum speed of the power tiller when coupled to a trailer shall not exceed 22 kmph. The minimum rated horse power output of the power tiller engine shall not be less than 8 bhp (Brake Horse Power).

Effect of the Notification: Import Policy of Power Tillers and its components is amended from 'Free' to 'Restricted'. This issues with the approval of Minister of Commerce & Industry."

7.3 Further, the coordinate Bench of the Tribunal (South Zonal Bench of the Tribunal, Bangalore), in the case of *VST Tillers & Tractors Ltd. Vs. Commissioner of Central Excise (supra)* has also held that Power Tillers are classifiable under CTH 84.32 of the Central Excise Tariff (which is pari materia to CTH 84.32 of the Customs Tariff). Dealing with the similar issue of classification of power tillers under the Central Excise Tariff, the Bench embarked on a comparison between tractors and power tillers as also rotary tiller and power tiller and thereafter, relying upon the decision of the Hon'ble Supreme Court in *O.K. Play (India) Ltd. Vs. CCE, 2005 (180) ELT 300 (SC)* observed and held as follows (para 14):

"14. From the above it is very clear that the Government of India has always been classifying Power Tiller under CH 84.32 and not under CH 87.01. Even the Delhi High Court distinguished between Tractors and Power Tillers and held that Power Tiller is not a Tractor. In all the exemption Notifications given to Power Tiller, the classification is mentioned as 84.32. Moreover in 2002-2003 Budget the Government of India has clarified that Power Tiller are to be classified under 84.32. In our view, the legal maxim 'contemporanea expositio et optima et fortissima in lege' (Contemporaneous exposition is the best and strongest in the law. A state is best explained by following the construction put upon it by judges who lived at the time it was made, or soon after) [Black's Law Dictionary] is very relevant for this case. All along the judiciary and the CBEC have been holding that Power Tiller is classifiable under 84.32 inspite of the HSN. The DGFT also decided that Power Tillers or walking tractor will fall under 84.32. They have observed that 'the guiding principle in all such

classification will be that any machinery, including Tractors used for agricultural activity should be classified under agricultural implements under 84.32 and those used for transport should be under 84.34'. The essential function of Power Tiller is not transport as seen from the literature available. Another point to be noted is Power Tiller Manufacturers Association's representations to the Government of India with regard to the import policy of Pedestrian Controlled Tractor cannot be held against them, as they have not been relied on in the Show Cause Notice. The adjudicating authority has gone strictly by the HSN and classified the item under 87.01. In our view, in a situation like this the totality of facts and circumstances has to be applied. There is also no merit in invoking the longer period, as there is absolutely no suppression of facts. The appellants have been filing the classification list and declaration and the department was very well aware of the activities of the appellants. We hold that the impugned goods, namely, Power Tillers manufactured by the appellants are classifiable under 84.32 during the relevant period. The OIOs has no merit and hence we allow the appeals with consequential relief."

We are in agreement with the reasonings and findings of the said decision of the coordinate Bench of this Tribunal in *VST Tillers & Tractors Ltd. Vs. Commissioner of Central Excise (supra)* on the clarification in respect of power tillers and rotary tillers.

7.4 From the product literature of various manufacturers of power tillers/rotary tillers sold internationally under various brands, submitted by BTL, it is also evident that rotary tillers and power tillers are self same goods. To similar effect is the declaration dated December 16, 2019 of the Chinese manufacturer of the power tillers imported by BTL. The said declaration clarifies that the primary function of a power tiller is nothing but a modified rotary tiller, inbuilt with an engine as source of power.

7.5 From the import documents, along with declaration given by the manufacturer, it is evident that the consignments of power tillers imported by the two importers are self propelled rotary tillers where the tractive unit and the tiller make up one integral part. Thus the contention that power tillers are different from rotary tillers are based on erroneous premises and thus unsustainable. Power Tillers imported by the importers herein are therefore entitled to the benefit of concessional rate of basic customs duty of 2.5% in terms of the said notification, as per Sl. No. 399(x) of the 'Table' thereof.

8. In view of the above:

- (i) Appeal No. C/76152/2015 of BTL is allowed and the impugned order of the Commissioner (Appeals) dated 11.09.2014 is set aside, with consequential relief to BTL;
- (ii) Appeal No. C/76038/2015 of the Revenue is rejected and the impugned order dated 18.08.2015 passed by the Commissioner (Appeals), Kolkata is affirmed, with consequential relief to Chirag Corporation.

(Order pronounced in the open court on 17 August 2022.)

Sd/

(P.K.CHOUDHARY)
MEMBER (JUDICIAL)

Sd/

(P.ANJANI KUMAR)
MEMBER (TECHNICAL)