



\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Judgment reserved on :02 August 2023**  
**Judgment pronounced on:16 August 2023**

+ W.P.(C) 3584/2023

M/S UNITED SANITATIONS THROUGH ITS PARTNER SH.  
DEEPAK DHAWAN ..... Petitioner

Through: Mr. Pradeep Jain along with Mr.  
Sambhav Jain, Advs.

versus

ADDL COMMISSIONER OF CUSTOMS, ICD,  
TUGHKAKABAD, NEW DELHI ..... Respondent

Through: Mr. Satish Kumar, SSC along with  
Mr. A. Mandal, Adv.

**CORAM:**

**HON'BLE MR. JUSTICE YASHWANT VARMA**

**HON'BLE MR. JUSTICE DHARMESH SHARMA**

### **J U D G M E N T**

#### **DHARMESH SHARMA, J.**

1. The petitioner has instituted this writ petition under Article 226 of the Constitution of India through its Partner praying for quashing and setting aside of **impugned order dated 08 July 2022** passed by the Addl. Secretary to the Government of India exercising its revisional powers under **Section 129DD of the Customs Act, 1962**, as amended upto date<sup>1</sup> thereby dismissing the revision application preferred by the petitioner upholding the order of the original

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<sup>1</sup>The Act



authority with regard to classification of goods exported and rejecting its claim of duty drawback under a different category.

**FACTUAL BACKGROUND:**

2. Briefly stated, the petitioner is holder of ‘Import Export Code’ and is stated to be a regular exporter of CP Sanitary Bathroom Fitting in brass (Basin Mixer, Bath Mixer, Sink Mixer etc.), commonly known as sanitaryware under All Industry Rates Drawback Scheme<sup>2</sup>. It is stated that the subject goods are made of more than 90% brass and are chrome plated and are exclusively used in bathroom, kitchen etc. Suffice to state that after effecting the export of the consignment, the petitioner had claimed duty drawback @ **11% or Rs. 83 per kg** (whichever was lower) on 07 September 2011, by classifying the goods under **drawback heading No. 741902** Customs Tariff Act, 1975, as amended upto date<sup>3</sup>, while on the other hand, the Department asserted that the goods would be covered under sub heading 848180 of the ‘CTA’ thereby attracting drawback @ **7.3% or Rs. 43.10 per kg**. **It was further** alleged by the Department that the petitioner had deliberately classified the goods in question under Chapter heading No. 7419 with the sole intention of availing extra drawback, and thus, the petitioner had contravened the provisions of Section 75 of the Act read with Customs Central Excise Duties and Service Tax Drawback Rules, 1995<sup>4</sup>.

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<sup>2</sup> AIR DS

<sup>3</sup> CTA

<sup>4</sup> CCED&STDR



3. Although, the consignment was provisionally released, subsequently Show Cause Notice dated 26 September 2012 was issued by the Additional Commissioner of Customs (Export), TKD, New Delhi<sup>5</sup> to the petitioner as to why the goods in question should not be classified under Chapter heading 84818020 of the CTA and under Tariff heading 848101 of the Drawback Schedule to the customs, further proposing to confiscate the goods for misclassification with the intention to avail higher drawback by the petitioner. The petitioner refuted such allegations and submitted a detailed reply dated 17 October 2012 with relevant documents but its objections did not find favour with the ACC(E) vide Order-in-Original No. 101/2013 dated 10 April 2013, thereby confirming recovery of drawback amounting to Rs. 19,36,809/- in respect of the past exports and also holding that the goods exported were liable to confiscation under Section 113(h)(ii) of the Act besides redemption fee of Rs. 20 Lacs and penalty of Rs. 15 Lacs.

4. Aggrieved thereof, the petitioner filed an appeal before the Commissioner (Appeals)<sup>6</sup>, which was rejected vide order dated 31 March 2014. The petitioner then challenged the said order in the appeal by filing a Revision Application under Section 129 DD of the Act before the Revisionary Authority i.e. the Additional Secretary to the Government of India, Ministry of Finance, Department of Revenue, New Delhi. The revision application was dismissed vide

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<sup>5</sup> ACC(E)

<sup>6</sup> COM(A)



impugned order No. 215/22-Cus dated 08 July 2022 *inter alia* holding that the original authority (sic ACC(E)) on examination of the live consignment had found that the goods were essentially mixers of different kinds, and accordingly found that the goods were falling in the heading 8481 of the 'CTA' for the following reasons:

“(i) In terms of Section Note 1(f) of Section XV (Chapter 72-83) of the Customs Tariff, the said Section does not cover articles of Section XVI (machinery, mechanical appliances and electrical goods). Therefore, the classification of brass taps (mixers) under Ch.74 is ruled out as these are the appliances covered under Heading 8481 as "Tap".

(ii) Even otherwise as per Rule 3(a) of the General Rules for Interpretation, the heading which provides more specific description shall be preferred to the heading providing a more general description.”

5. The Revisionary Authority found that the view was supported by the Explanatory Notes for Chapter heading 8481, which provides as follows:

"In general, taps, valves, etc., are of base metal or plastics, but those of other materials (other than unhardened vulcanized rubber, ceramics or glass) are also *covered* by the heading.

(12) Mixing taps and valves with two or more inlets and a mixing chamber. The heading also covers thermostatically controlled mixing valves incorporating an adjustable tension thermostatic element, which actuates the plugs or stoppers regulating the admission of fluids at different temperatures into the mixing chamber.....”

6. The **impugned order dated 08 July 2022** has been assailed by filing the instant Writ Petition *inter alia* on the grounds that even before issuance of the Show Cause Notice, although the Department had found that the consignment contained sanitarywares and articles,



it had adjudicated that the articles were essentially mixers of different kinds classifiable under Chapter heading 8481 of the CTA; and that the Revisionary Authority passed the impugned order in a mechanical manner, failing to conduct any independent analysis or assign reasons for rejection of its revision application; and that the impugned order by the Revisionary Authority is perverse as it failed to take into consideration the exhaustive material related to the items in question reflected in the brochures/catalogues of the goods exported by the petitioner placed on the record which clearly suggested that the goods were bathroom and kitchen fittings having premium aesthetic and sleek design that are clearly classified under the explanation ‘bathroom fittings’ in terms of Tariff items under 7418 and 7419 of the Drawback Schedule and the expression ‘bathroom fittings’ has been specifically incorporated under SH 741802; and lastly that the impugned decision is contrary to the legal parameters that must be considered while classifying a product enunciated under the ‘CTA’ and reliance is placed on decision in the case of **O.K. Play (India) Pvt. Ltd. V. Commissioner of Central Excise**<sup>7</sup>; **Dharampal Satyapal v. CCE**<sup>8</sup>; **KRRDS v. Commissioner of Customs**<sup>9</sup>; and **Jaquar & Co. Ltd. Case**<sup>10</sup>.

7. Hence, following reliefs are claimed:-

“(i) pass writ of mandamus, order quashing and setting aside the impugned Order No. 215/22-Cus dated 08.07.2022 passed by the

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<sup>7</sup> 2005 (180) ELT 300 (SC)

<sup>8</sup> 2005 (183) ELT 241(SC)

<sup>9</sup> 2019 (369) ELT 1488 (T)

<sup>10</sup> 2011 (270) ELT 550 (Trb)



Additional Secretary to the Government of India, Ministry of Finance, Department of Revenue, New Delhi [i.e., Revisionary Authority];

(ii) consequently, uphold the classification of the subject goods as adopted by the petitioner, i.e., under Drawback Heading No. 741902A at 11% or Rs. 83/per kg (whichever is lower), and hold the entitlement of the petitioner to such drawback at such rate as availed by the petitioner for its present and past exports having been rightly availed by the petitioner by correctly classifying the subject goods so exported; and

(iii) pass such other order or orders as may be deemed fit and proper in the interest of justice.”

### **RESPONSE OF THE RESPONDENT/CUSTOMS**

8. The respondent has filed a short affidavit of Mr. Rajesh Kumar Meena, Deputy Commissioner, Office of Commissioner of Customs (Export), Inland Container Depot, Tughlakabad, New Delhi and while refuting the submissions of the petitioner, it is contended that the Adjudicating Authority i.e. ACC(E) rightly observed based on the material available, that the goods in questions are classifiable under Chapter 84 of the CTA and the brochures/catalogues submitted were not decisive to permit a divergent classification; and the petitioner did not render correct classification of the goods in the shipping bills and hence drawback applicable to the product exported came under item No. 848101 of the Drawback Schedule. It was further stated that General Interpretative Rules (GIR) are to be applied for interpretation of Tariff and as per Rule 1, the titles of Sections and Chapters are provided for ease of reference only; and for legal purposes, classification shall be determined according to the terms of the heading and any relative Section or Chapter Notes. It was further



submitted that Section XV covers Chapters 72 to 83 and Section XVI covers Chapter 84 and 85. Section note 1(f) of Section XV of the Customs Tariff reads as follows:

"this Section does not cover articles of Section XVI (machinery, mechanical appliances and electrical goods)"

Further Chapter heading of Chapter 84 read as follows:

"Nuclear Reactors, Boilers, Machinery and Mechanical Appliances; Part thereof "

And description of goods under Chapter heading 8481 of the Customs tariff reads as "Taps, cocks, valves and similar appliances for pipes, boiler, shells, tanks, vats or the like, including pressure reducing valves and thermostatically controlled valves". Further, the Chapter sub-heading 84818020 of the Customs Tariff Act, 1975 reads as follows:

"Taps, Cocks and similar appliances of non-ferrous metal"

9. Hence, it is contended that for classification of brass taps (Basin mixer, bath mixer, sink mixer etc., as mentioned in the Shipping Bill No. 5312257 dated 07 September 2011 by the Petitioner under Chapter 74 is ruled out in view of the exclusion of note 1(f) under section XV; and further that they are more appropriately classifiable under Chapter 84, specifically under heading 8481, and thus correct classification is 8481 and not 7418 as claimed by the Petitioner.

#### **ANALYSIS AND DECISION:**

10. We have given out thoughtful consideration to the submissions made by the learned counsels for the parties. We have perused the relevant documents placed on the record.

11. At the outset, the impugned order dated 08 July 2022 passed by the Revisionary Authority cannot be sustained in law. The reasons for our decision are not far to be spelled out. Chapter 74 of the CTA is titled as "Copper and Articles thereof " and it specifically deals with



the articles in the nature of bathroom sanitarywares, which are extracted in the Tabular form and reproduced as under:-

Chapter	Description of goods	Unit	Drawback when cenvat facilities has not been availed		Drawback when cenvat facilities has been availed	
			Drawback Rate	Drawback cap per unit in Rs.	Drawback rate	Drawback cap per unit in Rs.
1	2	3	4	5	6	7
7418	Table, kitchen or other household articles and parts thereof, of copper; pot scourers and scouring or polishing pads, gloves and the like, of copper; sanitary ware and parts thereof.					
741801	Sanitary and bathroom fitting (of gun metal)	Kg	0.11%	120%	0.03%	32.4%
7418102	Sanitary and Bathroom Fittings including parts components thereof made of Brass (Nickel/Chrome Plated)	Kg	0.11%	120%	0.03%	32.4%
741803	Electro plated nickel silver ware (EPNS)	Kg	0.11%	120%	0.02%	21.6%
741898	Others of copper	Kg	0.11%	145%	0.01%	13.2%
741899	Others of brass and other copper alloys	Kg	0.11%	120%	0.01%	10.8%
7419	Other articles of copper	-	-	-	-	-
741901	Artware/Handicraft of Brass	Kg	0.11%	120%	0.02%	21.8%
741902	Artware/Handicraft of copper	Kg	0.11%	145%	0.02%	26.4%

12. Further, the item 'sanitaryware' is specifically described in Section XIII of Chapter 28 vide item No. 68159920. Section XVI in Chapter 84 of the CTA is titled as "Nuclear Reactor, boilers, machines and mechanical appliances; and parts thereof" and the relevant sub-heading 8481 is tabulated as under:

Tariff Item	Description of goods	Unit	Drawback when Cenvat facilities has not been availed	Drawback when Cenvat facilities has been availed
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			Drawback Rate	Drawback cap per unit in Rs.	Drawback rate	Drawback cap per unit in Rs.
1	2	3	4	5	6	7
848102	Valve for LPG Cylinder, Hand Wheel type, made of Brass	Kg	0.066%	60%	0.02%	18.2%
848103	Industrial valves (cast or forged body)		0.02%		0.02%	
848104	Valves of Brass/Gun metal	Kg	0.066%	60%	0.03%	27.3%

13. A careful perusal of the clause in Rule 1(d) of Chapter 84 manifests that there is specific exclusion of the category of goods dealt with under original heading of 7321 or 7321 or similar articles of other base material in chapter 74 to 76 or 78 to 81.

14. Reverting back to the instant matter, the consignment was duly inspected vide *panchanama* dated 12 September 2011, and the same was verified to be 'sanitarywares'. The stand of the respondent that the details of the item brochures/catalogues, which were submitted by the petitioner at the earliest point of time, belies common sense and logic. There is no gainsaying that 'sanitarywares' or 'fixtures' are those equipments, which in isolation or combined with other objects or appliances may be used to achieve a high standard of cleanliness from germs and bacteria. The use of brass in sanitarywares for taps or knobs is by all means a well known phenomena in context of the business of kitchen and bathroom wares since such wares invariably come in contact with moisture or water, which has a high erosive value and brass is thus used in order to prevent rusting of the wares or fixtures for longer lasting durability and use. Per the 'Online Merriam Webster' Dictionary, the words 'sanitarywares' are defined as 'ceramic plumbing fixtures, such as sinks, lavatories, or toilet bowls'



and as per ‘Online Dictionary.com’ it includes “plumbing fixtures for use in as sinks or toilet bowls, made of ceramic material or enamelled material”. As per The Cambridge Guide to English Usage, Pam Peters at page 486 the term sanitary or sanatory is defined as under:

‘The first spelling sanitary is standard everywhere for this adjectives meaning “hygienic” or “concerned with the maintenance of health”, as in *sanitary napkin/towel* and *sanitary regulations*”

15. As per the ‘Shorter Oxford English Dictionary’ Volume 2 at page 2666 the word ‘sanitary’ is stated to be derived from the French word ‘*sanitaire*’, from Latin *sanitas* health, from *sanus* – meaning **1(a)** ‘of or pertaining to the conditions affecting health, esp. with reference to cleanliness and protection against infection; concerning sanitation’ – **(b)** Designating an appliance, soap, etc., made especially with a view to health and hygiene; free from or designed to kill germs, infection, etc.’ **2.** Intended or tending to promote health.’ The term ‘ware’ is defined as ‘articles of merchandise or manufacture; goods, commodities’.

16. At the cost of repetition, there is no denial of the fact that the consignment of goods that was exported was containing sanitarywares *albeit few parts made of* brass elements but nonetheless not in any manner pertaining to use or application in “nuclear reactors, boilers, machineries and appliances”. The respondent has clearly overlooked even the brochures pertaining to the items that amply demonstrates the essential features of the sanitarywares and use of brass so as to make the articles more elegant and durable for the use of end consumers.



17. It is apparent that the respondent in a mindless manner has failed to even consider the common parlance and manner in which the articles are known, bought and sold in the marketing world. In the cited case of *O.K. Play (India) Pvt. Ltd. (supra)*, the assessee was engaged in the manufacture of toys and he cleared certain items viz., Activity Desks and Chairs, Fun Fliers, Play Table, Play Pool, Rockers, Slides and Swings without payment of duty claiming exemption from payment of excise duty under chapter Heading 95.03. The Department sought to penalise the assessee for importing rather furniture items suffixing the items with the word ‘baby’ so as to claim that the items were ‘toys’. The Supreme Court agreed with the plea of the Department that the mere fact that an article was meant for exclusive use of children would not place it in the category of toys. Relying on decision in **A. Nagaraju Brothers v. State of Andhra Pradesh**<sup>11</sup>, it was reiterated that no one single universal test can be applied for correct classification. There cannot be a static parameter for correct classification. It was held firstly that the (i) Harmonized System of Nomenclature (for short "HSN") along with the explanatory notes in the Excise Tariff provides a safe guide for interpretation of an Entry; secondly, the heading which provides a specific description shall be preferred to a heading having a more general description; and thirdly, due importance be given to the functional utility, design, shape and predominant usage while determining the classification of an item.

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<sup>11</sup> 1994 (72) ELT 801



18. All said and done, the claim of the petitioner that the duty drawback should be classified vide heading No. 741903A ('A' signifies a matter where CENVAT has not been claimed), as claimed in the prayer clause, is also misconceived since a bare perusal of the aforesaid tabulated tariff details would show that item No. 741902 in Chapter 74 pertains to "artware/handicraft". By no stretch of imagination it can be said that merely because 'sanitarywares' were having *premium aesthetic and sleek design* that such items would fall in the category of "artwork/handicraft". We do not wish to tax ourselves delving into the meaning of artware/handicraft since *a fortiori* the symbol 'slash' between the two words conveys or denotes items or wares of artistic expression as commonly understood in the society as also in the commercial environment. "Artwork" is ordinarily associated with the idea or feeling of painting, sculpture, photography etc., while "handicraft" implies an activity that needs skills with hands as well as artistic abilities. Ultimately, it is the end use of the product that is decisive and in the instant case, the items are meant for use in the kitchen, toilets or bathroom and although it may portray some art work in its designs, it is not 'artwork' or 'handicraft' item. Therefore, duty drawback could only be claimed in category of goods falling Chapter 74 vide item No. 741802.

19. In view of the foregoing discussions, we have no hesitation in holding that the impugned order dated 08 July 2022 passed by the Revisionary Authority thereby approving the order-in-original No. 101/2013 dated 10 April 2013 by the by the ACC(E) cannot be



sustained in law. Accordingly, the instant Writ Petition is allowed and the impugned order dated 08 July 2022 is hereby quashed, and thereby providing that the respondent shall consider the claim for duty drawback of the 'subject goods' in terms of classification vide item No. 741802 as per tariff applicable for the year 2011-212. The petition is disposed of accordingly.

**YASHWANT VARMA, J.**

**DHARMESH SHARMA, J.**

**AUGUST 16, 2023**

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