

Excise Misc. Appln (CT) No.40064 of 2023 &
Excise Appeal No.40389 of 2018,
Excise Appeal No.40495 of 2020

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE
TRIBUNAL,
SOUTH ZONAL BENCH, CHENNAI
COURT HALL No. III**

EXCISE MISCELLANEOUS APPLICATION (CT) No. 40064 of 2023
(on behalf of Appellant) &

EXCISE APPEAL No.40389 OF 2018

(Arising out of Order-in-Original No.04/2017-Commr. dated 31.10.2017
passed by Commissioner of GST & Central Excise, No.6/7, ATD Street, Race
Course Road, Coimbatore – 641 018)

M/s. Autotex Private Limited **...Appellant**
[earlier named as Associated Autotex Ancillaries Pvt. Ltd.]
Unit-II, SF No.119/4,
A9, Mylampatti Road,/
Coimbatore 641 062.

Versus

The Commissioner of GST & Central Excise, ...Respondent
Coimbatore Commissionerate
6/7, A.T.D. Street, Race Course,
Coimbatore 641 018.

AND

EXCISE APPEAL No.40495 OF 2020

(Arising out of Order-in-Appeal No.CMB-CEX-000-APP-012-20 dated
23.03.2020 passed by Commissioner of GST & Central Excise (Appeals),
Coimbatore, No.6/7, ATD Street, Race Course Road, Coimbatore – 641 018)

M/s. Autotex Private Limited **...Appellant**
[earlier named as Associated Autotex Ancillaries Pvt. Ltd.]
Unit-II, SF No.119/4,
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Coimbatore Commissionerate
6/7, A.T.D. Street, Race Course,
Coimbatore 641 018.

APPEARANCE :

Mr. Vishal Agarwal, Advocate
For the Appellant

Mr. Sridevi Taritla, Additional Commissioner (A.R)
For the Respondent

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CORAM :

Hon'ble Ms. SULEKHA BEEVI, Member (Judicial)
Hon'ble Mr. M. AJIT KUMAR, Member (Technical)

Date of Hearing : 08.06.2023

Date of Decision :21.06.2023

FINAL ORDER No.40457-40458/2023

ORDER : Per Ms. Sulekha Beevi, C.S.

The issue involved in these appeals being the same they were heard together and are disposed of by this common order.

2. Brief facts are that the appellant is engaged *inter alia* in the manufacture of excisable goods namely, Auto feeder, Chick Drinker and Poultry made of plastics. On the basis of intelligence gathered that appellant is manufacturing and clearing the goods, Auto feeder, Chick Drinker and Poultry cage without paying duty by adopting incorrect classification, investigation was initiated. The officers of the Preventive Unit visited the premises, verified the accounts and recorded statements. It was seen that appellants were clearing the good , namely, (1) Auto feeder (2) Chick Drinker and 3) Poultry cage under CTH 84361000 as poultry keeping machinery and had not charged any excise duty in the invoices, mentioning that the goods are 'exempted vide notification No.111/88 dt. 01.09.1988 as amended and CSN No.8436 Nil by Tariff". Along with such goods they also cleared various products like 'Hose PVC, 'Flexible Blue', Tee Joint Nipple' etc. without payment of duty classifying them also under CTH

84361000. The said chapter heading 8436 of Central Excise Tariff Act, 1985 is for "*Other agricultural, horticultural, forestry, poultry keeping or bee keeping machinery including germination plant fitted with mechanical or thermal equipments; poultry incubators and brooders.*" It appeared to the department that the products namely Chick drinker, Auto feeder and Poultry cage have no mechanical function and being made out of plastic is not classifiable under 8436 and but merits classification under 3926 (Auto feeder, Chick drinker) and 3923 (Poultry cage) of CETA 1985. The miscellaneous parts to be classified along with. Show cause notice was issued for different periods proposing to redetermine the classification of the goods and also to demand duty along with interest and to impose penalties. After due process of law, the original authority vide impugned Order-in-Original dated 31.10.2017 redetermined the classification of the goods under 3926 and confirmed the duty along with interest and imposed penalties. Aggrieved by such order of the original authority, the appellant is in Appeal E/40389/2018. On similar set of facts, proceedings were initiated against the appellant which culminated in Order-in-Original dated 30.08.2018. On appeal, Commissioner (Appeals) vide OIA dt. 23.03.2020 upheld the order of original authority. Aggrieved by the order of appellate authority, the Appellant is in Appeal E/40495/2020.

3. The Ld. Counsel Shri Vishal Agarwal appeared and argued for the appellant. The facts and provisions of law were explained as under :

3.1 The chick drinker consists of top cone, plastic stand, bottom plate and handle. It also contains of a stand to maintain the height. The system works by using gravity (air lock mechanism) to push water into the tray. When the hens drink water from the tray, it results in the reduction of the water level, this causes the air to escape into reservoir above the drinking tray. Once the air goes into the water reservoir, water is released into the tray filling it back to set level. Once equilibrium between the water and vacuum pressure in the reservoir is achieved, no more water will leak into the tray until the water level falls again. The chick drinker comes in a variety of sizes from 0.5 litres to 50 litres.

3.2 Likewise, auto feeder consists of a feeder cone, cone extension and feeder bottom plate, feeder grill, feeder centre stack, height adjuster and feeder base nut. It is designed in such a way that the feed is filled manually from the top into the feeder cone extension. The size of the cavity is designed in such a way that the feed does not overflow from the bottom plate. As and when the bottom plate attains the feed level to the height, the feed flow will stop automatically by virtue of the air locking mechanism; as and when the feed is consumed by the poultry, the bottom plate gets refilled by gravitational force which results in the downward movement of the feed from the feeder cone to the plate.

3.3 In so far as the poultry cage is concerned, the same consists of cage top, cage bottom, cage side cover big, cage side cover small and cover-sliding cage. It is designed keeping in mind the space area required by each chick / bird, proper ventilation to avoid suffocation, prevention of injury to the birds and easy handling. The cage is specifically manufactured solely for use in the poultry industry. It is special box with doors and is used for shifting the baby chicks / poultry from the hatchery to the poultry farm, inside poultry farm during vaccination and from farm to dressing / processing unit.

3.4 The only reason assigned by the department in the adjudication order for classifying the chick drinker and auto feeder under 39269099 is that the same works merely on air locking mechanism and does not have any in built mechanism so as to classify as 'machines' under 84361000. According to the department, for an item to be classified under Chapter Heading (CETH) 8436, it has to be a machine which fits into the dictionary meaning and in the nature of '*some mechanical contrivances which by themselves or in combination with one or more mechanical contrivances by the combined movement and independent operation of their respective parts generate power or evoke, modify, apply or direct natural forces with the object in each case of effecting so definite and specific a result*'. Relying on the dictionary meaning the adjudicating authority has taken the view that the impugned goods do not fit into the meaning of 'machines'. According to the department when water or feed is

manually filled in the cone, all that happens is it trickles down due to gravitational force and is too simple to be called a machine that there is no systematic arrangement of several parts which move and function in the designed manner to perform any work on the supply of force to it. It does not multiply or convert the force supplied to it for any such purpose. Hence, they cannot be considered as machinery. According to the department, the Poultry Cage is a box with doors and is used for shifting or transport of the baby chicks / poultry from one place to another i.e. transportation of poultry. This does not have any mechanical function and it is a mere crate for storage and shifting of poultry, which is secondary function to the main function of poultry farming and consequently cannot be classified under CETH 8436.

4. The relevant tariff headings and HSN explanatory notes were adverted by the Ld. Counsel to argue that the impugned goods would fall under CETH 8436.

4.1 The Chapter Heading 8436 is as under :

8436		OTHER AGRICULTURAL HORTICULTURAL, FORESTRY, POULTRY-KEEPING OR BEE-KEEPING MACHINERY, INCLUDING GERMINATION PLANT FITTED WITH MECHANICAL OR THERMAL EQUIPMENT; POULTRY INCUBATORS AND BROODERS	
8436100	-	Machinery for preparing animal feeding stuffs	Nil
	-	Poultry-keeping machinery; poultry incubators and brooders:	
84362100	--	Poultry incubators and brooders	Nil
84362900	--	Other	Nil
843680	-	Other machinery:	
84368010	---	Germination Plant fitted with mechanical and thermal equipment	Nil
84368090	---	Other	Nil

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	-	Parts:	
84369100	--	Of poultry-keeping machinery or poultry incubators and brooders	Nil
84369900	--	Other	Nil

4.2 The Chapter Heading 3923 / 3926 is as under :

3923		ARTICLES FOR THE CONVEYANC OR PACKING OF GOODS, OF PLASTICS; STOPPERS, LIDS, CAPS AND OTHER CLOSURES, OF PLASTICS	
392310	-	Boxes, cases, crates and similar articles:	
39231010	---	Plastic containers for audio or video cassettes, cassette tapes, floppy disk and similar articles	12.5%
39231020	---	Watch-box, jewellery box and similar containers of plastics	12.5%
39231030	---	Insulated ware	12.5%
39231040	---	Packing for accommodating connectors	12.5%
39231090	---	Other	12.5%
	-	Sacks and bag (including cones)	
39232100	--	Of polymers of ethylene	18%
392329	--	Of other plastics:	
39232910	---	Of poly (vinyl chloride)	18%
39232990	---	Other	18%
392330	-	Carboys, bottles, flasks and similar articles:	
39233010	---	Insulated ware	12.5%
39233090	---	Other	12.5%
39234000	-	Spools, cops, bobbins and similar supports	12.5%
392350	-	Stoppers, lids, caps and other closures :	
39235010	---	Caps and closures for bottles	12.5%
39235090	---	Other	12.5%
392390	-	Other:	
39239010	---	Insulated ware	12.5%
39239020	---	Aseptic bags	12.5%
39239090	---	Other	12.5%

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3926		OTHER ARTICLES OF PLASTICS AND ARTICLES OF OTHER MATERIALS OF HEADINGS 3901 To 3914	
39269099	---	Other	12.5%

4.3 The Notes to Chapter 39 [Note 2 (s)] is as under :

CHAPTER 39

Plastics and articles thereof

“Notes :

1. Throughout this Schedule, the expression “plastics” means those materials of headings 3901 to 3914 which are or have been capable, either at the moment of polymerization or at some subsequent stage, of being formed under external influence (usually heat and pressure, if necessary with a solvent or plasticizer) by moulding, casting, extruding, rolling or other process into shapes which are retained on the removal of the external influence.

Throughout this Schedule any reference to “plastics” also includes vulcanized fibre. The expression, however, does not apply to materials regarded as textile materials of Section XI.

(2) This Chapter does not cover:

.. ..

(s) articles of Section XVI (machines and mechanical or electrical appliances);”

4.4 The HSN Notes with regard to CETH 8436 is as under :

“II POULTRY – KEEPING MACHINES, INCUBATORS AND BROODERS

(A) **Incubators.** These machines fitted with devices permitting eggs, placed in trays, to be automatically turned in an atmosphere where temperature, air flow and air humidity conditions can be exactly controlled. They may work in conjunction with a control system which may be linked to a personal ADP machine in order to optimize the incubation result. Some incubators, known as combi-incubators, incorporate hatcher functions.

(B) **Hatchers.** In these machines, which incorporate devices for controlled heating and air circulation, the eggs are placed in baskets or special trays for hatching.

(C) **Brooders,** large appliances with heating and cooling devices used for rearing young chicks.

(D) **Rearing and laying units or “batteries”**, large installations equipped with automatic devices for filling the feeding troughs, cleaning the floors and collecting the eggs.

(E) **Egg candlers (or testers)** with mechanical features (including photo-electric testers) **other than** staling testing lamps.

(F) **Sexing and vaccination equipment**, enabling hatcheries to separate chicks of different sex and to vaccinate them. These machines are not designed to be used by veterinary surgeons.

The heading does not include machines, known a chick counting and boxing systems for automatically counting and placing chicks in boxes (heading 84.22); the handling of the chicks is the primary function, the counting being merely a secondary function permitting to place in a box a fixed number of chicks predetermined in accordance with the size of the box. “

5. The Ld. Counsel submitted that all the impugned goods are meant for poultry farming and is not in the nature of general goods which can be used by others. The Chapter Heading 8436 covers Agricultural, Horticultural, Forestry, Poultry, Bee-keeping machineries. The tariff prescribes ‘Nil’ rate of duty for goods falling under Chapter Heading 8436. The HSN Explanatory Notes to Chapter Heading 8436 states that poultry keeping machines include, items such as Incubators, Hatchers, Brooders, Rearing and Laying units, Egg Candles and Sexing & Vaccination equipments. Chapter 39 provides the classification for plastic articles. Note 2 (s) to Chapter 39 specifically provides that the said chapter excludes articles falling under Section XVI (machines and mechanical or electrical appliances). Chapter 3923 specifically

deals with classification of plastic articles for conveyance or packing of goods such as caps and other closures etc. Chapter 3976 is the residuary entry for other articles of plastics which have not been covered under previous entries.

6. The Ld. Counsel submitted that the general arrangement of goods covered under Chapter 84 has been explained in the HSN Explanatory Notes, as per which Heading 8425 to 8478 covers machines and apparatus which, with certain exception, are classified with reference to the field of the industry in which they are used, regardless of their particular function in that field. The Heading 8436 covers '*Other agricultural, horticultural, forestry, poultry keeping or bee keeping machinery, including germination plant fitted with mechanical or thermal equipments; poultry incubators and brooders*'. By virtue of the scheme of the arrangement of Chapter 84, all machines and apparatus with reference to these industries would be covered under CETH 84, regardless of the use to which the machine or the apparatus has been put to in the industry.

7. The Ld. Counsel emphasized that the expression "machine" has been defined in Note 5 to Chapter XVI of CETA 1985 to mean, "any machine, machinery, plant, equipment, apparatus or appliances cited in the heads of Chapter 84 to 85.

8. Further, as per HSN Explanatory Notes to Chapter XVI of CETA 1985, the said section covers '*all mechanical or electrical machinery, plant, equipment, apparatus and appliances and parts*

thereof, together with certain apparatus and plant which is neither mechanical nor electrical (such as boiler, boiler house plant, filtering apparatus) and parts of such apparatus and plants’. This position is also clear from the HSN Explanatory Notes to Chapter 84, whereunder the explanation General Content of the Chapter it has been clarified that Chapter 84 covers machinery, mechanical apparatus as also non-mechanical apparatus (e.g. filtering apparatus).

9. It is thus submitted that Chapter 84 covers machine, machinery, plant, equipment, apparatus or appliances and such machines covered under Section XVI (i.e. Chapter 84 and 85) need not only be mechanical or electrical machinery but can also be apparatus and plant, which is neither mechanical nor electrical.

10. It is submitted that the Explanatory Notes to CETH 8436 covers machinery, equipment, apparatus used on farm, in forestry, market gardens, or poultry-keeping or bee-keeping farms or the like amongst the various equipments covered therein, automatic watering-troughs for cattle, horse, pigs etc. is one of the other agriculture, horticulture or forestry machinery which is covered under CETH 8436. The chick drinker and the auto feeder for poultry are clearly akin to the automatic watering-troughs which is specifically covered under CETH 8436. Both these equipments or apparatus work on the principal of air locking mechanism and automatically release the water or the feed, on depletion of the same below the prescribed level.

11. It is submitted that the contention of the department that there is no inbuilt mechanism either in the chick drinker or auto feeder, besides the same being an irrelevant criteria, is factually incorrect as it works on the principal of air lock mechanism where due to the principal of the gravitational force, the feed or water is released on the basis of the consumption by the poultry.

12. The Ld. Counsel referred to para 41 of the order in original and argued that the adjudicating authority has relied on the dictionary meaning of 'machine/machinery' and the decisions in the case of *Corporation of Calcutta Vs Chairman of Cossipore and Chitpore Municipality* - AIR 1922 PC 27, *K.B. Dani Vs State of Karnataka* - 1979 44 STC 276 (Kar) and the case of *Commissioner, Commercial tax Vs Anand Tyres* decided on 05.02.2015 by the Hon'ble High Court of Allahabad to derive the meaning of "machine".

13. The Notes to Section XVI to Chapter 84 gives the meaning of the word 'machine'. When the Tariff provides for the meaning the adjudicating authority ought not to have relied on dictionary meaning and case laws. The said case laws are not all with regard to classification of impugned items.

14. The Ld. Counsel argued that a lay man understanding would be that a machine always has to be made of metal and should be having some sort of complicated mechanical functions. It is always not so. The Notes to Section XVI was referred which is as under :

GENERAL

(I) GENERAL CONTENT OF THE SECTION

- (A) Subject to certain **exclusions** provided for in the Notes to this Section and to Chapters 84 and 85 and apart from goods covered more specifically in other Sections, this Section covers all mechanical or electrical machinery, plant, equipment, apparatus and appliances and parts thereof, together with certain apparatus and plant which is neither mechanical nor electrical (such as boilers and boiler house plant, filtering apparatus, etc.) and parts of such apparatus and plant.

The main **exclusions** from the Section are:

(a)

- (b) Parts of general use as defined in Note 2 of Section XV, such as wire, chains, bolts, screws and springs, or iron or steel heading 73.12, 73.15, 73.18 or 73.20) and similar articles of other base metals (Chapters 74 to 76 and 78 to 81), locks of heading 83.01, fittings and mountings for doors, windows, etc., of heading 83.02. Similar goods for plastics are also excluded from this Section and fall in Chapter 39.

....

- (B) In general, the goods of this Section may be of any material. In the great majority of cases they are of base metal, but the Section also covers certain machinery of other materials (e.g., pumps wholly of plastics) and parts of plastics, of wood, precious metals, etc.)

15. The Ld. Counsel pointed out that as per General Content per (A) above, the chapter 84 covers apparatus and appliances and parts thereof, together with certain apparatus and plant which is neither mechanical or electrical (such as boilers and boiler house plant, filtering apparatus etc.) and parts of such apparatus and plant.

16. Further, as per General Content (B) above, the Chapter 84 covers machinery other materials (eg. Pumps wholly of plastics)

and parts of plastics, of wood, precious metal etc. Thus machines need not be always of metal it can be made of plastic, wood too. The adjudicating authority has classified the goods under Chapter 39 for the reason that the impugned goods are made of plastic which is erroneous.

17. It is urged that as per Note to Section XVI, Chapter Notes & HSN Explanatory Notes the appellant has correctly classified the goods under 8436.

18. The Ld. Counsel submitted that the adjudicating authority has placed reliance on the Board Circular and the decision in the case of *Azra Poultry Equipments Vs UOI* - 2015 (323) ELT A21 (SC). The Board circular does not put forward the correct classification. The Hon'ble Apex Court in the case of *Azra Poultry* had allowed the SLP to be withdrawn so as to pursue the matter with the Commissioner (Appeals) to consider the merits of the case, uninfluenced by any observation of the Delhi High Court, and therefore the reliance placed by the adjudicating authority on the judgment of the Hon'ble High Court is erroneous.

19. The adjudicating authority failed to consider the reliance placed by the appellant on the decision of the Tribunal in the case of *CCE Vs Weld Fuse Pvt. Ltd.* - 2007 (2018) ELT 564, wherein identical poultry items such as poultry cage made out of plastics and / or iron mesh were held to be classifiable under 8436. It is pointed out that the Tribunal in the said decision had considered the Board circular as well as the decision of the Delhi High Court

and thereafter on the basis of the tariff and Explanatory Notes has held that the items are classifiable under 8436. The same principle has been laid down in the case of *Alchemist Ltd. Vs CCE* - 2017 (5) GSTL 285, and *Shiva Poultry Equipments Vs CCE* - 2017 (7) GSTL 243.

20. The Ld. Counsel put forward arguments on the ground of limitation also. The SCN in appeal E/40389/2018 is issued invoking the extended period, alleging that there was fraud, suppression with intent to evade payment of duty. The issue is with regard to classification and purely interpretational in nature. Moreover, when the appellant started the poultry equipment unit in 2011, the appellant sent a letter dt. 28.10.2010 to the Superintendent of the Commissionerate pointing out that they intend to manufacture chick drinker, auto feeder made out of plastic. The appellant also attached photographs of the products and informed that they intend to classify under Tariff Heading 84361000 chargeable to 'nil' rate of duty. This being so, there is no positive act of suppression made out against the appellant. That there are no grounds to invoke extended period and the demand may be set aside on limitation.

21. The Ld. Counsel prayed that the appeals may be allowed.

22. The Ld. A.R Ms. Sridevi Taritla appeared for the department. The findings in the impugned order was reiterated and also relied on the Board circular dated 31.8.1996 and the judgment of the Hon'ble High Court of Delhi in the case of *Azra Poultry*

Equipments (supra). The Ld. A.R prayed that the appeals may be dismissed.

23. Heard both sides.

24. The issue involved is (1) whether the Chick drinker and Auto feeder manufactured by the appellant are classifiable under CETH 84361000 of Central Excise Tariff Act, 1985 as claimed by the appellant or whether to be classified under CETH 39269099 as held by the department ?

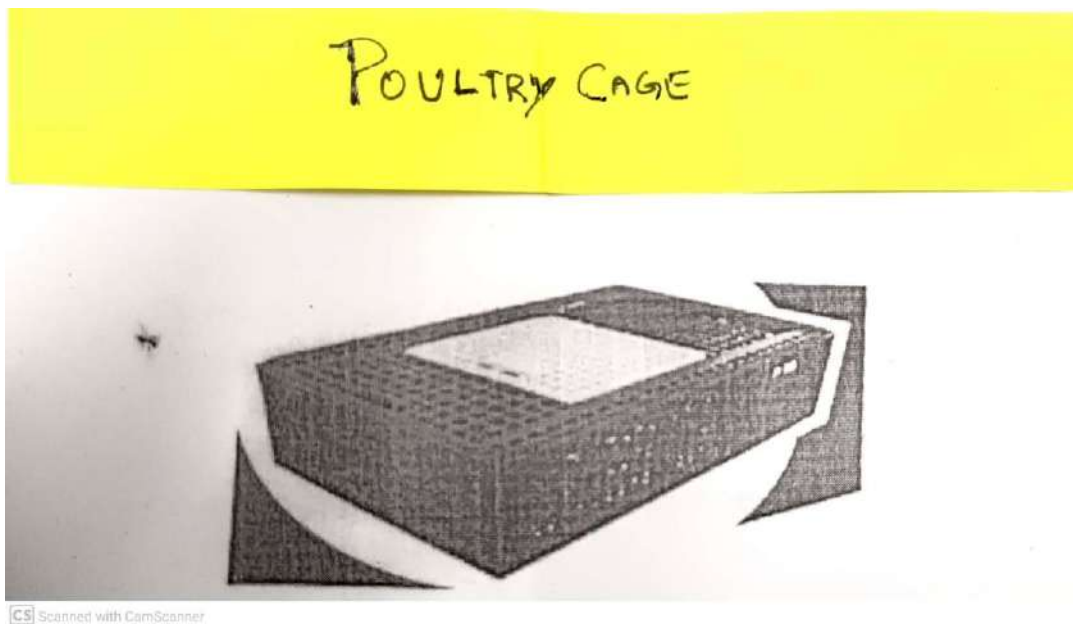
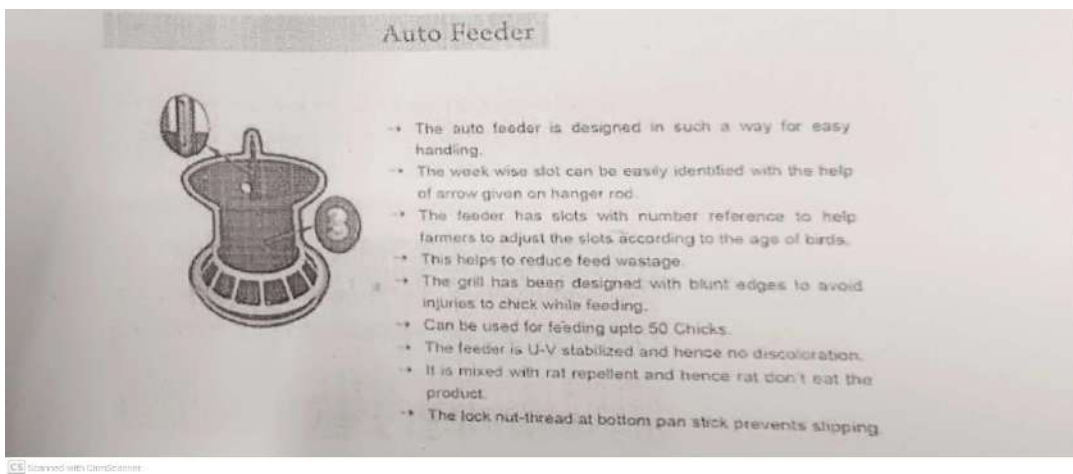
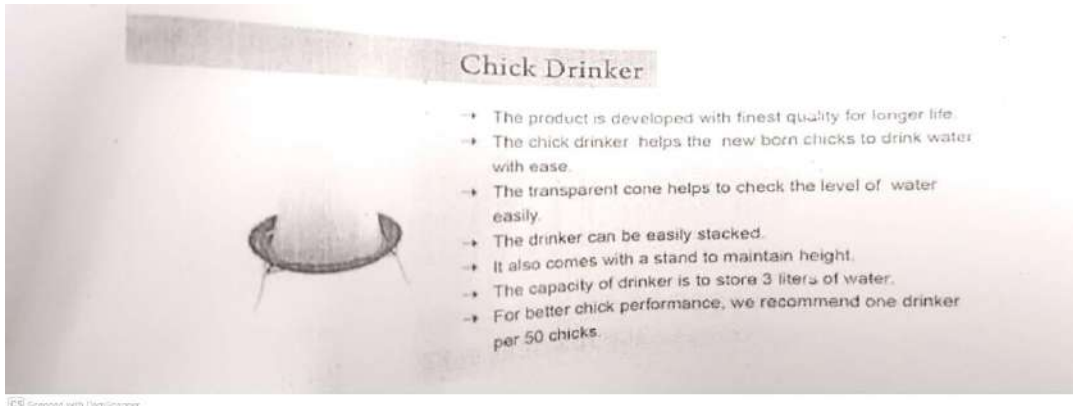
(2) whether the poultry cage manufactured by the appellant is classifiable under CETH 84361000 as claimed by the appellant or whether to be classified under CETH 39231090 as held by the department ?

(3) whether the demand of duty, interest and penalties are sustainable.

25. The Ld. Counsel has explained the nature and functioning of the impugned goods, namely Chick drinker, Auto Feeder and Poultry cage. The allegation in para 9.3 of the SCN is that the goods do not have mechanical function and therefore cannot be classified as poultry machinery under 84361000. It is also alleged that as the goods are made of plastic they would come under chapter 39 which covers articles of plastic.

26. It would be convenient to refer the image of the goods under dispute for better appreciation of facts.

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27. In regard to the first item, chick drinker, the Ld. Counsel has submitted that there is a water flow regulating mechanism in the top cone which functions by an air locking mechanism. As and when the chicks drink water, and the water level decreases, the

water gets filled into the bottom plate from the top cone. In the case of Auto Feeder, it is designed in such a way that the feed comes down slowly from the feeder cone to the bottom plate as the chick has the feed, and the bottom plate will have the requisite feed always. The feed is filled manually from the top when required. The mechanism using the principle of gravity applied in both these products help to prevent over flow of water and feed. So also, it ensures that water and feed is available to the chick when required only and is not wasted.

28. The adjudicating authority has held that there is no inbuilt mechanical function so as to call the items as 'machines'. To derive this conclusion, the Commissioner has relied on the dictionary meaning of machine / machinery. In para 41 of OIO is noted as under :

"The Concise Oxford Dictionary 10th Edition defines "machine" as an apparatus using or applying mechanical power and having several parts, each with a definite function and together performing a particular task. "Machinery" is defined as machines collectively, or the components of a machine. Similarly, the Black's Law Dictionary 8th Edition defines "machine" as a device or apparatus consisting of fixed and moving parts that work together to perform some function."

28.1 The Commissioner has adverted to various decisions also. Apart from the fact that these decisions are not at all applicable to dispute in the present case, it has to be noted that the Commissioner ought not to have resorted to the dictionary meaning and these decisions, when the HSN Explanatory Notes (at para 5 of Section XVI) gives the meaning of 'machine'. When

the Tariff itself gives the meaning of the word 'machine', the Commissioner ought not to have relied on extraneous aids. In para B of this Section Note XVI-(General) it is mentioned that goods even if made of plastics would fall into the meaning of machines.

28.2 In the said HSN Explanatory Notes to Chapter 84, the heading 8436 is industry specific. In other words, the heading covers, *'other agricultural, horticultural, forestry poultry keeping or bee-keeping machinery, including germination plant fitted with mechanical or thermal equipments; poultry incubators and brooders'*. The heading 8436.10 is for poultry-keeping machinery. 8436 takes in the parts of such machinery also. [The chapter headings and HSN Explanatory Notes have already been noticed].

28.3 We therefore have to hold that the impugned goods are indeed poultry keeping machinery and merits classification under 84361000. The adjudicating authority has held that the miscellaneous products namely, Hose-PVC, Flexible Blue, Tee joint Nipple etc. cleared along with the above goods are also to be classified under CETH 39269099 / 39231090. As we have already held that the Chick drinker, Auto feeder, and Poultry cage are rightly classifiable under CETH 84361000, we hold that these miscellaneous products cleared along with and corresponding to the finished products are also to be classified under CETH 84361000. We hold that the appellant is eligible for the benefit of 'nil' rate of duty. Our conclusion is also supported by the decision

of the Tribunal in the case of *Shiva Poultry Equipments Vs CCE* - 2017 (7) GSTL 243; *Alchemists Ltd. Vs CCE* - 2017 (5) GSTL 285, and *Weld Fuse Pvt. Ltd* (supra).

29. The Commissioner has relied on the Board Circular No.36/90-CX.4 dated 31.08.1990 in which it is clarified that 8436 will cover only 'Poultry keeping Machinery', but not equipment which does not have any mechanical function. The Hon'ble Delhi High Court in the case of *Azra Poultry Equipments Vs - UOI* 2015 (323) ELT 88 (Del.) was pleased to apply the circular to hold that the wire mesh manufactured and sold to poultry farmer cannot qualify as machinery under 84.36. On appeal, the Hon'ble Apex Court remanded the matter to the adjudicating authority to reconsider the issue without being influenced by the observations on the issue by the Hon'ble High Court. Surprisingly, even then the Commissioner has applied the ratio laid by Delhi High Court in the case of *Azra Poultry Equipments*.

30. The Tribunal in the case of *Shiva Poultry Equipments* - 2017 (7) GSTL 243 (Tri.-Chand.) has discussed, the Board circular, the decision in the case of *Azra Poultry* as well as the decision of the Tribunal in the case of *Weld Fuse Pvt. Ltd*. The Tribunal held that the welded wire mesh supplied to poultry farms merit classification under 84.36 as poultry keeping machinery. The relevant part of the decision of the Tribunal reads as under :

“5. We find that in the decision of the Bangalore Bench of this Tribunal, the classification is under Chapter Heading 8436.99. We note that this decision is in respect of the Central Excise Tariff existing during the period 1999-2000, whereas the Hon’ble High Court’s decision is in respect of the tariff as it existed in the late 1980s. We also further note that the Central Excise Tariff was switched over to 8 digit classification in 2005. The classification of the goods in the impugned order covering the period 2009-13 is to be decided on the basis of 8 digit tariff existing at the time of the present proceedings, viz. 2009-13. We have seen the Entry No. 8436 as it existed prior to 2005 and post-2005. The entry in the new tariff includes the parts of poultry keeping machinery which was not included in this heading prior to 2005. The Hon’ble Delhi High Court dismissed the writ petition pertaining to the earlier Entry No. 8436 (relating to only Poultry Keeping Machinery) and held that wire mesh cannot be treated as poultry keeping machinery. We further note that in the 8 digit classification, since the subsequent Entry No. 8436 specifically included the parts of the poultry keeping machinery, the Hon’ble Delhi High Court’s decision may not be applicable to the new tariff entry including parts. We also note that this decision of Delhi High Court was challenged before the Hon’ble Supreme Court by way of filing SLP and the Apex Court vide its order dated 23-7-2012 [*Azra Poultry Equipments v. Union of India* - [2015 \(323\) E.L.T. A21](#) (S.C.)] allowed the SLP to be withdrawn, so as to pursue the matter with the Commissioner (Appeals) and directed that the Commissioner (Appeals) will consider the case on its merit uninfluenced by any observation by the Delhi High Court. We also find that the Commissioner of Central Excise, Hyderabad vide his separate Order-in-Original dated 16-5-2014, in the case of *Weld Fuse Pvt Ltd.* (supra) has taken note of the above developments and has decided that welded wire mesh, used in the poultry farms, is properly classifiable under Item No. 8436 91 00.

6. The goods manufactured by the appellant are in the form of Welded Wire Mesh and are supplied to poultry farms and claimed to be specifically designed parts of poultry keeping machinery. If the goods are considered as simple products of Iron & Steel, the classification indicated is Heading 7314. Further, we find that in the cases discussed above, where the classification of similar goods have been examined, it has been decided that the goods in question are more appropriately classifiable as parts of poultry

machinery falling within the scope of Tariff Item No. 8436 91 00. For clear understanding of the above conclusion, we reproduce Paras 16 and 17 of the order dated 16-5-2014 passed by the Commissioner of Central Excise, Hyderabad, which read as under :

“16. The assessee’s plea regarding earlier period is correct. The classification of these items in their own case has been settled by the Hon’ble Tribunal in the above-mentioned case and reiterated again in the Final Orders 1425 to 1427, dated 11-12-2007 [[2008 \(224\) E.L.T. 451](#) (Tri.-Bang.)]. In order to arrive at different conclusion in the present proceedings new developments either in facts or in legal position are required. It is seen that Hon’ble Delhi High Court has decided a similar issue in respect of *Azra Poultry Equipment* [2012-TIOL-287-HC-Del-CX]. In the said order, Hon’ble High Court of Delhi held that wire mesh manufactured by the petitioner even if sold to poultry farmer for assembling cages for poultry or battery of such cages cannot qualify as machinery under heading 8436 and would be an article of iron and steel wire within the meaning of heading 7314. This decision was passed after examining the above mentioned CESTAT order. However, M/s. Azra Poultry Equipments filed an SLP and Hon’ble Supreme Court vide order dated 23-7-2012 allowed the withdrawal of the said SLP to pursue the matter with Commissioner (Appeals). The Supreme Court specifically directed that in case the appeal is entertained by the Commissioner (Appeals), it will be considered on its own merits uninfluenced by any observation by the Delhi High Court in the impugned judgment. It is ascertained that the Commissioner (Appeal-II), Bangalore had rejected the assessee’s appeal on the grounds of limitation without considering or passing order on merits of the case. The net effect of these developments is that there is no contrary decision of higher forum regarding classification, of the subject items and the Delhi High Court’s order is held to be not binding on the lower appellate authority by the Hon’ble Supreme Court while disposing of the SLP filed by the assessee.

17. On the legal position, it is seen that Tariff Heading 8436 91 00 is not dealing with machinery or equipments *per se* but with parts of poultry keeping machinery or poultry incubators and broodes. Reading together Note-I of Section XV, Note-2 of Section XVI and the scope of the entry in the above Tariff heading, it is apparent that there is no changed circumstances to warrant the change of classification as already upheld by the Hon’ble Tribunal in the assessee’s own case and followed by this office vide the above-mentioned order-in-original for all the subsequent periods. It is pertinent to note that CTH 8436 91 00 dealing with parts in the tariff in the column for unit ‘Kg’ is mentioned. In respect of specific machinery and equipment ‘u’ unit is mentioned indicating thereby that in respect of parts of poultry incubators and broodes, the standard unit is ‘kilogram’. The standard unit is indicative of the nature of product. In the case, it is not individual part of machinery

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but wire mesh. The HSN Explanatory Note for poultry keeping machines, incubators and broodes specifies batteries, large installations equipped with automatic devices for filling the feeding trays, clearing floors and collecting eggs. The installation is very large and wire mesh supplied by the assessee forms part of said batteries which are attached to various other mechanical devices to make a functional poultry keeping machine. Since the claim of the assessee is only to classify the product as part of such overall machinery, there could be no sustainable ground to deny the same only on the ground of absence of mechanical function of the said parts. All parts of machinery will not have individual mechanical functions. The Board's clarification vide Circular No. 36/90-CX4, dated 31-8-1990 deals with scope of exemption under Notification No. 111/88-C.E., dated 1-3-1988 more specifically Sl. No. 11 of the table in the said notification. The present case is regarding classification parts of poultry machinery and the scope of the tariff entry 8436 91 00."

7. As discussed above, we find that the issue of classification of welded wire mesh made specifically for poultry keeping is no longer *res integra*. In line with the above discussion, the classification is ordered under [Tariff Item] 8436 91 00.

8. The impugned order is set aside and the appeal is allowed."

31. Similar view has been taken in the case of *Alchemist Ltd. Vs CCE* (supra). From the above discussions, after appreciating the facts, evidence and applying the ratio laid in the case of *Shiva Poultry Equipments*, we hold that the impugned goods merit classification under CETH 84361000, as adopted by the appellant. The duty demand, interest and penalty therefore cannot sustain and requires to be set aside, which we hereby do.

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32. In the result, the impugned order is set aside. The appeals are allowed with consequential reliefs, if any. The MA filed by appellant for change of cause title is allowed.

(pronounced in court on 21.06.2023)

Sd/-

(M. AJIT KUMAR)
Member (Technical)

Sd/-

(SULEKHA BEEVI, C.S.)
Member (Judicial)

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