CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
New Delhi

PRINCIPAL BENCH – COURT NO.1
E-hearing
Customs Appeal No.55371 Of 2023
With
Customs Stay Application No. 50557 of 2023
And
Customs Cross No. 50638 of 2023

[Arising out of Order-in-Appeal No. CC(A)/DLH-II/Cus/D-II/Prev./NCH/74/2023-24 dated 17.05.2023 passed by the Commissioner (Appeals) of Customs, New Delhi]

Commissioner of Customs, New Delhi-Prev : Appellant
New Customs House, Delhi

Versus

M/s Vision Diagnostic India Private Limited : Respondent
(IEC No. 0504087878) Plot No. 405, Ground Floor,
Patprganj Industrial Area, Delhi-110092

APPEARANCE:
Shri Mukesh Kumar Shukla, Authorized Representative for the Appellant

Shri Alok Aggarwal, Shri SharadSrivastava and Shri Prachitmahajan, Advocates for the Respondent

CORAM :

HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT
HON'BLE MS. HEMAMBIKA R. PRIYA, MEMBER (TECHNICAL)

FINAL ORDER No. 50091/2025

Date of Hearing/Decision:16.01.2025

JUSTICE DILIP GUPTA

The department has filed this appeal to assail the order dated 17.05.2023 passed by the Commissioner of Customs (Appeals) by which the demand raised for the extended period of limitation under section 28(4) of the Customs Act, 1962[1] has been set-aside, but the

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1 the Customs Act

matter has remanded to the adjudicating authority to take decision on merits on the normal period of limitation.

2. It transpires that the respondent imported consignments by classifying the same under Customs Tariff Item[2] 90189099/90275090/90278090 and claimed the benefit of reduced Basic Customs Duty under Notification No. 24/20058 dated 01.03.2005 and Notification No. 12/2012 dated 17.03.2012.

3. A show cause notice dated 30.06.2020 was issued to the respondent mentioning therein that on investigation carried out on 13.09.2019, it was found that the goods were not used by medical professionals directly for the treatment and so they would not deserve classification under the CTI indicated by the respondent and would deserve classification under Customs Tariff Heading 8479 as 'machines and mechanical appliances'. The show cause notice also invoked the extended period of limitation under section 28(4) of the Customs Act for the following reasons:-

> "They purposely and knowingly mis-declared the IGST Schedule in said Bills of Entry despite the fact that they have correctly classified the goods under CTH 84139190. Such mis-declaration and loss of Govt. Revenue would have gone unnoticed but for the actions of the Departmental officers as all above Bills of Entry were facilitated by RMS System of clearance and no assessment/examination by the Proper Officer was prescribed for the goods covered under said Bills of Entry. Hence, it appears that said act of importer

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2 **CTI**

> made them liable to impose penalty under Section 114 A of the Act ibid."

4. The adjudicating authority, by order dated 28.05.2021, confirmed the differential amount of duty with penalty and interest after holding that the extended period of limitation was correctly invoked. The relevant portion of the order dealing with the extended period of limitation is reproduced:-

> "Thus, in the instant case, by mis-classifying the imported goods and by mis-declaring the value and description of the impugned goods, the importer failed to fulfil the said statutory obligations casted on them. Further, even after the issue of multiple summons the importer failed to submit required documents/detail/information for the correct classification of goods. Thus, from the foregoing discussion I find that the Importer wilfully mis-stated the description of goods in Bills of entry and suppressed the information about the actual functions of the impugned goods with the intention to evade Customs Duty. As a consequence of this, an amount of Customs Duty to the tune of Rs 43,37,801/- (Rupees forty three lakhs thirty seven thousand eight hundred one only) (as per the impugned show cause notice) have been short levied/paid due to this wilful misclassification of impugned goods and therefore made them liable for the recovery of the said amount of duty Rs 43,37,801/- (Rupees forty three lakhs thirty seven thousand eight hundred one only) short levied/paid under Section 28(4) of the Customs Act, 1982."

5. Feeling aggrieved, the respondent filed an appeal before the Commissioner (Appeals). As noted above, the Commissioner (Appeals) has recorded a finding that the extended period of limitation could not have been invoked. However, for the normal period, the Commissioner (Appeals) has remanded the matter to the adjudicating authority since because of the change of address the respondent could not file a reply to the show cause notice nor the respondent could appear for personal hearing. The findings recorded by the Commissioner (Appeals) on the invocation of the extended period of limitation, are reproduced:-

> "5.4.2 I find force in the contention of the appellant that extended period of limitation is not invokable and demand beyond 2 years from date of SCN is not sustainable. I note that requisite details were declared in the bills of entry and the same was open to the Department for scrutiny. The Appellant has also submitted that the consignments were cleared after due scrutiny, assessment, and audit. Moreover, it is trite law that classification is a technical and departmental function. Claim of wrong classification or exemption cannot be considered as suppression of facts or willful misstatement to attract extended period of limitation. No evidence has been brought on record to establish fraud or collusion or suppression of facts with intent to evade duty. Besides the case laws cited by the appellant, I note that similar stand has been taken in case of Sachin Kshirsagar (2023 (383) E.L.T. 190 (Tri.-Mumbai)"

6. In coming to the aforesaid conclusion, the Commissioner (Appeals) placed reliance on the following decisions:-

(i) **Sachin Kshirsagar vs. Commissioner of Customs (Import-I), Mumbai**[3]

(ii) **SirthaiSuperware India Limited vs. Commissioner of Customs, NhavaSheva-III**[4]

(iii) **Principal Commissioner of Customs (Import), Mumbai vs. Signet Chemicals Private Limited**[5]

7. Shri Mukesh Kumar Shukla, learned authorized representative appearing for the department submitted that the Commissioner (Appeals) committed an error in holding that the extended period of limitation could not have been invoked in the facts and circumstances of the case. Elaborating this submission, learned authorized representative pointed out that the contention of the respondent that the classification was inadvertently done is not correct. Different descriptions of identical goods in multiple Bills of Entry reflects a deliberate attempt on part of the respondent to avoid payment of customs duty and mislead the department regarding the correct classification of the goods. Learned authorized representative also submitted that the Commissioner (Appeals) committed an error in remanding the matter to the adjudicating authority for determining the classification for the normal period. In this connection, the learned authorized representative pointed out that ample opportunities had been granted to the respondent to respond to the show cause notice,

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3 **2023 (383) ELT 190 (Tri.-Mumbai)**
4 **2020 (371) ELT 324 (Tri.-Mumbai)**
5 **2022 (382) ELT 602 (Bom.)**

but the respondent did not file a reply to the show cause notice nor the respondent appeared for personal hearing.

8. Shri Alok Agarwal, learned counsel appearing for the respondent placed reliance upon the Cross Objections that have been filed in this appeal. The prayer made in the Cross Objection is to uphold the classification of the goods as indicated by the respondent in the Bills of Entry and also uphold the order passed by the Commissioner (Appeals) to the extent it holds that the extended period of limitation could not have been invoked. To support his plea, learned counsel has placed the order dated 27.09.2023 passed by the customs officer that indicates that 10% of the goods were required to be opened and examined and verified whether the goods are as per the invoice, packing list and Airway Bill. Learned counsel has also placed the report dated 03.01.2019 that mentions that the medical equipments are as per the invoice bill that were attached.

9. The submissions advanced by the learned authorized representative appearing for the department and the learned counsel appearing for the respondent have been considered.

10. The first issue that requires examination is as to whether the Commissioner (Appeals) is justified in holding that the extended period of limitation could not have been invoked in the facts and circumstance of the case.

11. The import was done during the period from 16.04.2016 to 07.10.2019. The respondent classified the goods under a particular Tariff Item as "Automatic Tissue Processors". The view of the

department is that it should have been classified under a different tariff item. The Commissioner (Appeals) has accepted the plea of the respondent that the consignments were cleared after due scrutiny, assessment and audit. The Commissioner (Appeals) also noted that the requisite details of the goods were declared in the Bills of Entry and it was open to the department to scrutinize and that the classification is a technical function. A wrong classification or exemption cannot be considered as suppression of facts or wilful statement with an intent to evade payment of duty. To support this finding, the Commissioner (Appeals) placed reliance upon two decisions of the Tribunal and one decision of the Bombay High Court.

12. In the Cross Objections, the respondent has placed an order dated 27.09.2023 passed by the customs officer in respect of a particular Bill of Entry. The said order directs for opening and examination of 10% of the packages and for verification whether the goods are as per the invoice, packing list and Airway Bill. On record is the examination report dated 03.01.2019 which shows that the medical equipment was as per the invoice and the Bills of Entry. Once, the respondent had declared the goods in the Bills of Entry under a particular Tariff Item, nothing prevented the officers from verifying the same and in the present case, as noted above, the verification was also done after which the goods were cleared. It is subsequently that the department believed that the goods deserved classification under a different Tariff Item declared by the respondent. The invocation of the extended period of limitation was, therefore, for

goods reasons set-aside by the Commissioner (Appeals) as the respondent had not suppressed facts, and in any case it cannot be said that the facts were suppressed with an intent to avoid payment of duty.

13. The next issue that arises for consideration is as to whether the Commissioner (Appeals) was justified in remanding the matter to the adjudicating authority for a fresh determination of classification of the imported goods for the normal period.

14. The Commissioner (Appeals) has remanded the matter for the reason that the show cause notice or the notice for personal hearing could not be served upon the respondent as the address had changed.

15. The contention of the learned authorized representative appearing for the department is that ample opportunities had been given to the respondent but the respondent did not file a reply and did not appear before the Commissioner (Appeals).

16. In view of the findings recorded by the Commissioner (Appeals) that the notices could not be served because of change of address, the respondent was prevented from filing a reply to the show cause notice or appearing before the Commissioner (Appeals). The Commissioner (Appeals) has granted an opportunity to the respondent to file a reply to the show cause notice and also appear before final hearing.

17. It is also not possible to accept the contention advanced by the learned counsel for the respondent that the Commissioner (Appeals) should have himself determined the correct classification of the

imported goods instead of remanding the matter. The matter can only be examined after the respondent files a reply to the show cause notice and this is precisely what has been done by the Commissioner (Appeals). There is, therefore, no infirmity in this part of the order of the Commissioner (Appeals).

18. Thus, for all the reasons stated above, the appeal filed by the department deserves to be dismissed and is dismissed. The Cross Objections filed by the respondent are also disposed of in the aforesaid terms. The stay application also stands disposed of as the appeal itself has been decided.

(Order dictated and pronounced in the open Court)

(JUSTICE DILIP GUPTA)
PRESIDENT

(HEMAMBIKA R. PRIYA)
MEMBER (TECHNICAL)

G.Y.