

C/41330, 41331/2018

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI**

Regional Bench – Court No. III

Customs Appeal No.41330 of 2018

(Arising out of Order-in-Original No.61955 & 61957/2018 dated 13.02.2018 passed by the Commissioner of Customs-Imports, Chennai)

M/s. Aloka Trivitron Medical Technologies Pvt. Ltd. : **Appellant**

No.A-5,SIPCOT Industrial Park,
Irungattukottai
Sriperumpudur (Taluk)
Kancheepuram (Dist.)
PIN : 602 117

VERSUS

The Commissioner of Customs-Imports (Chennai-II) : **Respondent**

Custom House, Rajaji Salai,
Chennai 600 0001

WITH

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APPEARANCE:

Shri P. Sridharan, Advocate
For the Appellant

Shri M. Jagan Babu, AC (AR)
For the Respondent

**CORAM : HON'BLE MS. SULEKHA BEEVI C.S., MEMBER (JUDICIAL)
HON'BLE MR. ANIL G. SHAKKARWAR, MEMBER (TECHNICAL)**

FINAL ORDER Nos. 40642-40643 / 2020

DATE OF HEARING: 02.03.2020

DATE OF DECISION: 02.03.2020

PER : ANIL G. SHAKKARWAR

The above stated two appeals are taken together for decision since they are arising out of common impugned Order-in-Original No.61955 & 61957/2018 dated 13.02.2018 passed by Commissioner of Customs-Imports, Chennai.

2. Brief facts of the case are that appellants were importing various parts and accessories in SKD condition for further use in the assembly and manufacture of Colour Doppler-SSD 4000 Ultrasound Scanner. Accordingly, on import of the said goods, appellants filed Bill of Entry in which they declared the goods as parts and components for manufacturing colour Doppler SSD-4000 Ultra Sound

Scanners and claimed classification under Customs Tariff Item 90181990. It appeared to Revenue that the said consignment was having various components and some of them if separately classified would fall under Chapter 84 & 85. Therefore, Revenue disputed the classification of such components out of the said consignment imported under SKD condition and contended that the said components were not eligible for exemption for the purpose of assessment for countervailing duty. Therefore, two show cause notices were issued contending that as per chapter note 2 (a) of Chapter 90, the parts and accessories which are goods included in any of the headings of the chapter 84, 85 or 91 then such goods are to be classified under respective headings, Through show cause notices dated 11.11.2016, 22.3.2017, appellants were called upon to show cause as to why components out of such consignment imported under SKD conditions such as, LCD Display Units/Transducers / Hard Disk Drives, Power Supply Units, Cable fixtures, Boots for cable, Softwares, Memory cards, Rubber caps, PCB units etc. should not be classified under respective tariff headings and why exemption from payment of CVD claimed by the appellant under Notification No.6/2006-CE dt. 1.3.2006 and Notification No.12/2012-CE dt.17.3.2012 (Sl.No.309) should not be denied and why an amount of around Rs.2 crores as CVD in respect of SCN dt. 11.11.2016 and why amount of Rs.1.96 crores as CVD in respect of other SCN should not be recovered from the appellant. The said SCNs were adjudicated vide impugned Order-in-Original and the said demands were

confirmed and penalties were imposed. Aggrieved by the said orders, appellant is before this Tribunal.

3. Heard Shri P. Sridharan, Advocate for the appellant. He has submitted that as per General Rules for interpretation of Customs Tariff and particularly, as per Rule 2 (a), any reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, as presented, the incomplete or unfinished article has the essential character of the complete or finished article. He has submitted that all the components imported together in SKD condition, if assembled together, make Colour Doppler and Ultrasound Scanning Equipment which is classifiable under tariff item No.90181990 and there is no scope for removing certain components out of them and classifying the same independently under Chapter 84 & 85. He has further submitted that Revenue has relied on Chapter Note 2(a) to Chapter 90 of Tariff whereas chapter note 2(b) of Chapter 90 reads as follows :

“Other parts and accessories, if suitable for use solely or principally with a particular kind of machine, instruments or apparatus or with a number of machines, instruments or apparatus of the same heading (including a machine, instrument or apparatus of heading 9010, 9013 or 9031) are to be classified with machines, instruments or apparatus of that kind.”

He has further submitted that the Central Board of Indirect Taxes and Customs issued circular from F.No.354/131/2019-TRU dt.11.10.2019 and clarified at Sl.No.9 as follows :

“9. Applicability of GST on the parts and accessories suitable for use solely or principally with a medical device :

9.1 Representations have been received seeking clarification on applicability of GST on the parts of ophthalmic equipment suitable for use solely or principally with an ophthalmic equipment.

9.2 Briefly stated, medical equipment falling under HS 9018, 9019, 9021 and 9022 attract 12% GST. The imports of parts of ophthalmic equipment suitable for use solely or principally with an ophthalmic equipment, were being assessed at 12% GST by classifying it under heading 9018. However, objection has been raised by Comptroller and Auditor General of India (CAG) on the said practice, suggesting that since such goods were not specifically mentioned in the GST rate notification, they fall under tariff item 9033 00 00 [residual entry] and should be assessed at 18% IGST. In this background, representations have been received from trade and industry, seeking clarification in this matter.

9.3 The matter has been examined. As per chapter note 2(b) of the Chapter 90, parts and accessories of the instruments used mainly and principally for the medical instrument of chapter 90 shall be classified with the machine only. Chapter note 2(b) (of Chapter 90) reads as below :-

“2 (b) : other parts and accessories, if suitable for use solely or principally with a particular kind of machine, instruments or apparatus, or with a number of machines, instruments or apparatus of the same heading (including a machine, instrument or apparatus of heading 9010, 9013 or 9031) are to be classified with the machines, instruments or apparatus of that kind;”

9.4 Thus, as per chapter note 2(b), parts of ophthalmic equipment suitable for use solely or principally with an

ophthalmic equipment should be classified with the ophthalmic equipment only and shall attract 12%.

9.5 In view of the above, it is clarified that 12% IGST would be applicable on the parts and accessories suitable for use solely or principally with a medical device falling under heading 9018, 9019, 9021 or 9022 in terms of chapter note 2 (b).

He has further submitted that on the basis of said clarification for subsequent consignments, the components stated herein above were classified under 9018 by Ld. Commissioner (Appeals) through Order-in-Appeal No.143 to145/2019 date 27.08.2019. He has further submitted that said OIA was followed by Revenue and through Order-in-Original No.71560/2019 dt. 26.9.2019, similar goods were ordered to be classified under Customs Tariff heading 9018 for the purpose of assessment of CVD.

4. Heard Ld.A.R Shri M.Jagan Babu who has supported the impugned order.

5. Having considered the submissions from both sides and on perusal of record, we note that when the goods are presented in CKD condition, Revenue does not have authority of law to separate different parts and components and classify them differently in view of Rule 2(a) of General Rules for interpretation of the Customs Tariff. If Revenue wants to remove certain parts from the CKD package and classify differently, then Revenue has to establish that remaining

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parts, if assembled together have essential character of final product. Revenue has not brought forward any such evidence. Further, CBIC issued clarification which is reproduced in foregoing paragraph. The said clarification relies on Chapter Note 2(b) to Chapter 90 and the same is binding on departmental officers. We, therefore, hold that both the impugned orders are not sustainable. Therefore, we set aside both the impugned orders and allow both the appeals. Appellants shall have consequential relief as per law.

(operative part of the order pronounced in open court)

(SULEKHA BEEVI C.S.)
MEMBER (JUDICIAL)

(ANIL G. SHAKKARWAR)
MEMBER (TECHNICAL)