Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench at Ahmedabad

REGIONAL BENCH- COURT NO. 3

Customs Appeal No. 13671 of 2014- DB

(Arising out of OIA-AHM-CUSTM-000-APP-296-297-14-15 dated 16/09/2014 passed by Commissioner of CUSTOMS-AHMEDABAD)

Scan O Plan Systems **........Appellant**
404-214. Aditviya Complex,
Nizampura, Vadodara
Gujarat

VERSUS

C.C.-Ahmedabad **......Respondent**
Custom House,
Near All India Radio Navrangpura,
Ahmedabad, Gujarat

WITH

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APPEARANCE:
None appeared for the Appellant
Shri Sanjay Kumar, Superintendent (AR) for the Respondent

CORAM: HON'BLE MEMBER (TECHNICAL), MR. RAJU
HON'BLE MEMBER (JUDICIAL), MR. SOMESH ARORA

Final Order No. A/ 12422-12423 /2023

DATE OF HEARING: 25.08.2023
DATE OF DECISION: 02.11.2023

RAJU

These appeals have been filed by M/s. Scan O Plan against change of classification of the goods imported by the appellant.

2. None appeared on behalf of the Appellant. Though matter was listed on 15.02.2023, 18.03.2023, 17.04.2023, 16.06.2023, 26.07.2023, 25.08.2023, therefore, the matter is being decided on the basis of available records. The appellant was importing accessories which are primarily used for positioning of the patient and his/her body parts on various machines including X-ray machines during the radiation treatment for cancer. The revenue was of the opinion that the goods imported are not accessories falling under Chapter heading 9022.90 but surgical tools and therefore the same cannot be treated as accessories. He pointed out that the revenue relied on the decision of the Apex Court in the case of Insulation Electrical (P) Ltd – 2008 (224) ELT 512 (SC) according to revenue the said decision holds that the part of a machinery is an essential component of the accessories without which the same cannot function whereas accessories/ machinery is something complementary or subordinate in nature and need not to be essential for the actual functioning of the product.

2.1 The appellant had declared the imported items as accessories whereas the revenue sought to classify the same as surgical tools and all consumable in the nature. The Revenue held that these items cannot be treated as accessories in terms of the decision of Hon'ble Apex Court cited above. The revenue was of the view that these devices are used for the positioning of the patient for radio therapy procedure and are of the nature of supporting medical device. Therefore, they cannot be called as parts/ accessories of the medical device and therefore, the exemption available to parts/ accessories would not be available to these goods.

2.2 The issue regarding accessories has been examined by the Larger Bench of Tribunal in the case of Banco Products India Ltd- 2009 (235) ELT 633(Tri. –LB). In the said decision, it has been held that accessories may or may not be required for essential working of machine. Accessories may not necessarily be designed to be used in particular machine and may be of a kind which is capable of being used as common object in number of machines. However, accessories should be capable of being used with the machine and should advance effectiveness of working of that machine. The impugned order recognizes that the goods imported by appellants are being used with radio therapy machine as head support, pelvis board, portrait frames, adjustable stands, shoulder retractor etc. After recognizing that these goods have been used along with X-ray machines for positioning of body, the impugned order could not have been denied the classification of these goods under the category of accessories of chapter heading 9022.90. The appellant relies on the decision of Apex Court in the case of Kores India reported at MANU/SC/ 0420/1996 wherein it has been held that in order for an article to be considered as an accessory the article must be sold separately in the market. In the said decision it has been held that typewriter and typewriter ribbon being sold separately in the market and therefore, the typewriter ribbons were held as accessories. The appeal contends that the impugned order holds that only if the accessories were attached to the main machines can they be called as accessories.

2.3 The appeal states that if the classification under heading 9018 for the said good is accepted still the benefit of basic custom duty under Notification No 12/2012-CE Serial No 474 (ii) dated 17.03.2012 cannot be denied. The items at Serial No. 1 to 12 and 17 to 57 as the said exemption is available to goods falling under 9018 and there accessories also.

2.4 The appeal states that the authorities have denied the benefit of CVD under Notification No 12/2012-CE Serial No (309) (ii) dated 17.03.2012 to items imported by them at serial no 1 to 57. As per Rules of Classification of parts and accessories in Chapter 90 under Note 2 (b) goods if suitable for use solely and principally with a particular kind of machine, instrument or apparatus are to be classified with that machine, instrument or apparatus of that kind.

2.5 It has been argued that since X-ray Machine falls under 9022 all goods which are used along with the said machine are to be classified under heading 9022 and not under heading 9018 or 9608. He further argued that benefit of CVD under Notification No 12/2012- CE cannot be denied. Reliance has been placed on the explanatory note in respect of parts and accessories under the Chapter heading 9018 and 9022 which reads as follows:-

> ***"90.18 Parts and Accessories***
>
> *Subject to the provisions of Notes 1 and 2 to this chapter (see the General Explanatory Notes), parts and accessories of apparatus or appliances of this heading remain classified here.*
>
> ***90.22 Parts and Accessories***
>
> *Subject to the provisions of Notes 1 and 2 to this chapter (see the General Explanatory Note), parts and accessories identified as being solely or principally for use with X-ray apparatus etc. are also classified in this heading."*

2.6 The appeal affirms that the goods are used solely with the radio therapy machine, the goods have to be classified under 9022 in terms of aforesaid explanatory notes of chapter heading 9022.

3. Learned AR relies on the impugned order. He relied on the decision of Hon'ble Apex Court in the case of Insulation Electrical (P) Ltd – 2008 (224) ELT 512 (SC). He argued that items at Serial No. 1 to 12 and 17 to 57 of bill of entry No. 4604051 dated 11.02.2004 and Serial No 1 to 21 and 26 to 66 of the bill of entry No 5062153 dated 01.04.2004 of the impugned bill of entry are supporting devices for medical procedure of radio therapy but are not parts of radiation machines and hence exemption benefit is not available to them. He further pointed out that items at Serial no. 13 to 16 of bill of entry no. 4604051 dated 11.02.2014 and Serial No. 22 to 25 of bill of entry no. 5062153 dated 01.04.2014 are used for marking of mask and shell and

used for marking directly on patients and have general use. Hence, the same should be classified under 9018 and not under 9022.

4. We have considered the rival submissions. We find that the issue involved in the instant case relates to the items imported by the appellant. Before the lower authorities it is not disputed that the items at Serial No. 1 to 12 and 17 to 57 of bill of entry No. 4604051 dated 11.02.2004 are used for positioning of patient on X-ray or radio therapy table for the purpose of proper treatment. Similarly items at Serial No 1 to 21 and 26 to 66 of the bill of entry No 5062153 dated 01.04.2004 are also undisputedly used along with X-ray or radio therapy machine for the purpose of positioning of the patient for treatment. The item at Serial no. 13 to 16 of bill of entry no. 4604051 dated 11.02.2014 and Serial No. 22 to 25 of bill of entry no. 5062153 dated 01.04.2014 were found to be marker pens. Revenue is of the opinion that they are ordinary marker pens whereas the appellants are of the belief that they are in the nature of consumable goods and therefore, classifiable under 9022 under custom tariff act.

4.1 The alternate classifications are as follows: -

CTH	Particulars
9022	Apparatus based on the use of X-rays or of alpha , beta or gamma radiations, whether or not for medical, surgical, dental or veterinary uses, including radiography or radiotherapy apparatus, X-ray tubes and other X-ray generators, high tension generators , control panels and desks, screens, examination or treatment tables, chairs and the like;
9018	Instruments and appliances used in medical, surgical, dental or veterinary sciences, including scientigraphic apparatus, other electro-medical apparatus and sight testing instruments
9608	Ball point pens, Felt tipped and other porous-tipped pens and markers, Fountain pens, stylograph pens amnd other pens, duplicating stylos,

	propelling or sliding pencils, pen holders, pencil holders and similar holders, parts (including caps and clips) of the foregoing articles, other than those of heading 96.09.

4.2 On perusal of the classification 9022 clearly shows that apparatus used for X-ray or radio therapy would be covered under heading 9022. The heading 9018 is general heading covering instruments and appliances used for in medical, surgical, dental or veterinary science. The HSN explanatory note to Chapter heading 9018 and 9022 reads as follows-

"90.18 Parts and Accessories

Subject to the provisions of Notes 1 and 2 to this chapter (see the General Explanatory Notes), parts and accessories of apparatus or appliances of this heading remain classified here.

90.22 Parts and Accessories

Subject to the provisions of Notes 1 and 2 to this chapter (see the General Explanatory Note), parts and accessories identified as being solely or principally for use with X-ray apparatus etc. are also classified in this heading."

4.3 Chapter note 2 (b) to Chapter 90 reads as below:-

"2. Subject to Note 1 above, parts and accessories for machines, apparatus, instruments or articles of this Chapter are to be classified according to the following rules :

(a) parts and accessories which are goods included in any of the headings of this Chapter or of Chapter 84, 85 or 91 (other than heading 8487, 8548 or 9033) are in all cases to be classified in their respective headings;

(b) other parts and accessories, if suitable for use solely or principally with a particular kind of machine, instrument 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;

(c) all other parts and accessories are to be classified in heading 9033."

4.4 The revenue has relied on the decision of Hon'ble Apex Court in the case of Insulation Electrical (supra). In the said case the dispute before the Hon'ble Apex court was regarding classification of rail assembly front seat, adjuster assembly slider seat, rear back lock assembly. These goods are sought to be classified as accessories. The Hon'ble Apex Court in the said decision observes as follows:-

*"**13.** Before coming to a conclusion, it would be appropriate to look at the two rival entries falling under chapter Headings 8708 and 9401 of the Act. The same are reproduced below for convenience of discussion:*

Heading No.	***Sub-heading No.***	***Description of goods***	***Rate of duty***
87.08	*8708.00*	*Parts and accessories of the motor vehicles of heading Nos. 87.01 to 87.05*	*15%*
94.01	*9401.00*	*Seats [other than those of heading No. 94.02], whether or not convertible into beds and parts thereof.*	*18%*

14. *From the bare reading of the two sub-headings, reproduced above, it is clear that Chapter Heading 8708.00 covers parts and accessories of motor vehicles and this chapter heading is wide enough in its scope so as to cover all accessories of motor vehicles whereas Chapter heading 9401.00 covers all type of seats and parts thereof.*

15. *This is an admitted position that the assessee was supplying the products manufactured by it directly to M/s. Maruti Udyog Limited which manufactures cars and not seats. M/s. Maruti Udyog Limited has given a specific part number to the goods in question and issued purchase orders in the name of the assessee. However, later on, only invoicing pattern was changed for some goods wherein the assessee received purchase orders directly from M/s. Maruti Udyog Limited but invoices were raised to M/s. Krishna Maruti Udyog Limited and M/s. Bharat Seats Limited just for the sake of convenience and economy. The payment for the same was received directly from M/s. Maruti Udyog Limited. Merely supplying the material through M/s. Bharat Seats Limited and M/s. Krishna Maruti Limited which are manufacturing seats classifiable under chapter heading 9401.00 does not lead to the conclusion that the products in question fall under chapter heading 9401.00.*

16. *In Mehra Brothers (supra), this court observed in Para 6 as follows :*

"6. In Supreme Motors v. State of Karnataka case (supra), the Karnataka High Court has taken different view. It held that the car seat covers, at best could make the seat more comfortable, but do not serve as aids to the vehicle as a whole, and therefore, they must fall outside the ambit of Entry 73 of the Second Schedule to the Karnataka Sales Tax Act, 1957 and was not exigible to sales tax at 13 per cent. Undoubtedly this ratio would help the appellant. The learned judges laid emphasis thus :-

"Every part is useful to the car for its effective operation. Likewise should be the aid of other accessories in order to fall within the said entry. The accessory to a part which has no convenience of effectiveness to the entire car as such cannot in our opinion fall within Entry 73".

17. *To the same effect are the judgments of this Court in the case of Pragati Silicons Pvt. Ltd. v. Commissioner of Central Excise, Delhi reported in 2007 (211) E.L.T. 534 (S.C.) and Annapurna Carbon industries. Co. v. State of Andhra Pradesh (1976) 2 SCC 273 .*

18. *After considering in detail, the difference between the 'accessories' and 'parts', this Court in the case of Pragati Silicons (supra) came to the conclusion that 'accessory' is something supplementary or subordinate in nature and need not be essential for the actual functioning of the product.*

19. *Chapter 9401 covers all types of seats and not only the seats of a car and a seat is complete even without the rail assembly from seat, adjuster/assembly slider seat and rear back lock assembly. They are not essential parts of the seat. Chapter heading 9401 covers only the parts of seats and not accessories to the seats. A 'part' is an essential component of the whole without which the whole cannot function.*

20. *We agree with the view taken by the Tribunal that the products manufactured by the assessee cannot be the 'parts' of seats, as claimed by the revenue.*

21. *Chapter heading 8708 covers both the 'parts' as well as 'accessories'. The items manufactured by the assessee are only adjuncts. These are to be affixed on the floor of motor vehicles. When seats are affixed on these rails, seats can slide back and forth with the operation of a lever forming part of other rail assembly front seat adjuster. This enables the driver or the passenger, to adjust the position of the seat to suit his comfort and convenience. These are merely to improve the efficiency and convenience of the seat and does not form part of the seat. The seats are complete in themselves without these mechanisms and therefore it cannot be held that the parts manufactured by the assessee merit classification under chapter 9401. Rather the same would be accessories to the motor vehicle as claimed by the assessee and would merit classification under chapter heading 8708, because they are fitted in the motor car for adjustment of the seats for the convenience and comfort of the passengers. The Rail Assembly front seat (Omni), Adjuster/assembly slider seat, YE-2 rear back lock assembly and 1000 cc rear back lock assembly being manufactured by the assessee can at best be termed as accessories to the motor vehicle for better convenience of the passengers/drivers travelling in the car."*

4.5 The appellant have relied on the decision of the larger bench of Tribunal in the case of Banco Products India Ltd (Supra). In the said decision following has been observed: -

*"**12.** At this stage, we may also take note of Tribunal's decision in case of Collector of Customs v. M/s. Jolly Exports (P) Ltd. - 1990 (45) E.L.T. 612 (T), wherein the term "accessory" was considered in the light of the definition appearing in various dictionaries. For ease of reference, we reproduce the relevant portion of the said judgment :*

"The term 'Accessory' has been defined in McGraw Hill Dictionary of Scientific and Technical Terms as follows :

"Accessory (Mech Eng): A part, sub-assembly, or assembly that contributes to the effectiveness of a piece of equipment without changing its basic function; may be used for testing, adjusting, calibrating, recording or other purposes."

A 'part' has been defined as follows :

"Part (Eng) : An element of a sub-assembly, not normally useful by itself and not amenable to further disassembly for maintenance purposes."

If, in order to determine whether the subject goods are accessories or parts, the distinction to be drawn is on the basis whether they are integral parts used for smooth and efficient functioning. A part of a machinery is capable of being substituted or replaced. An accessory, on the other hand, means something which contributes in a subordinate degree to attain a general result or effect. For example, oil-cans or steel files would be accessories of chaff-cutters. If a machinery cannot be worked without the part, then it ceases to be an accessory. If it adds merely to the convenience or effectiveness of a machinery like a speedometer it would be an accessory. A motor vehicle could run without a speedomotor."

***13.** Similarly, in the case of M/s. Eureka Forbes Ltd. v. CCE, Chandigarh 2000 (120) E.L.T. 533 (Tri.-LB), it was observed that an object was a device which add to the effectiveness of something else, cannot be an integral part of the equipment but can only be an "accessory". Similarly, in the case of CCE, Calicut v. M/s. Keltron Components Complex Ltd. 2005 (191) E.L.T. 580 (Tri.-Bang.), Revenue's appeal was rejected by observing that the Commissioner (Appeals) has rightly observed that though the plastic crates are not used for manufacture of capacitors and resistors, they add to the convenience for collecting machine output and shifting to the next stage of production and hence, they serve as aid for various machines and have to be held as "accessory". Reference may also be made to Hon'ble Rajasthan High Court decision in case of UOI v. M/s. Rishabdev Textiles - 2002 (141) E.L.T. 352 (Raj.), in which, after taking note of the definitions of expression "accessory" as appearing in various dictionaries, it was held that it is not the technical or scientific term and as such, the expression "accessory" has to be considered as it is ordinarily understood. Accordingly, the Hon'ble High Court held that the voltage regulator, which regulates the voltage of electricity supplied to the machine used for manufacture of final goods is an accessory to the machine and entitled for the benefit of Modvat credit as capital goods. For holding so, the Hon'ble High Court referred to the decision of the Hon'ble High Court of Allahabad in case of Sales Tax Commissioner v. Shri Laxman Singh - 1972 (30) STC 372, laying down* *that the articles like oil-can or steel file may not be adjuncts but certainly they are accompaniments of a chaff-cutter. They contribute in a subordinate degree to a general result or effect of a chaff-cutter. Without them, a chaff-cutter cannot work efficiently for a long time. Oil-cans and steel files are accessories of chaff-cutter and their turnover is exempt from tax.*

14. *Reference to all the above decisions was necessary to understand the scope of the term "accessory". If the plastic crates are held to be an accessory to the main machine, appearing against Sr. No. (i) of the definition of the capital goods, as contained in Rule 2(b) of the Cenvat Credit Rules, 2002, they would earn the status of the eligible capital goods for the purposes of Modvat. The appreciation of the various judgments on expression "accessory" as discussed above, leads us to observe that an accessory may or may not be required for essential working of the main unit, but is an object which is used for the convenience and effectiveness of that unit. It may also not be necessary that such accessory must be designed to be used in a particular machine. The same may be of a kind, which is capable of being used as a common object, with number of machines. The only criteria for an object to be held as an accessory, as emerging from the above extracted portion of various judgments is that that a particular item should be capable of being used with a machine and should advance the effectiveness of working of that machine. The plastic crates in question are used for transportation of the raw material to the processing machine and all the finished goods from the machine to the storage area. It can be argued that instead of using such plastic crates as material handling device, the various components or the inputs can be carried manually also. However, the question is as to whether such transportation of the inputs or semi-finished goods in the factory would be convenient way of dealing, and whether the same would not hamper the continuous working of the machine on account of delays in the delivery of the raw material etc. It may be possible in theory to do so, but is neither practical nor possible to do in the actual manner. The delivery of the raw material in time for increasing the effective working of the same and then removal of the finished goods from the vicinity of the machine contributes may be in a subordinate degree to attain a general result or effect. Same adds to definition of effectiveness of the machinery, and when viewed and judged in the light of interpretation of the term "accessory" by various Courts, the plastic crates are required to be held as accessory only. If that be so, the same would fall under Sr.No. 3(i) of Rule 2(b) of Cenvat Credit Rules, 2002."*

4.6 From the above discussion it is apparent that there is no dispute between the parties that items at Serial No. 1 to 12 and 17 to 57 of bill of entry No. 4604051 dated 11.02.2004 and Serial No 1 to 21 and 26 to 66 of the bill of entry No 5062153 dated 01.04.2004 are used for the purpose of X-ray/ radio therapy for positioning the patient.

4.7 It is seen that heading 9018 is a general heading and as prima facie no connection with the items mentioned in Serial No. 1 to 12 and 17 to 57 of bill of entry No. 4604051 dated 11.02.2004 Serial No 1 to 21 and 26 to 66 of the bill of entry No 5062153 dated 01.04.2004 whereas heading

9022 includes X-ray machines for which the items listed in Serial No. 1 to 12 and 17 to 57 of bill of entry No. 4604051 dated 11.02.2004 Serial No 1 to 21 and 26 to 66 of the bill of entry No 5062153 dated 01.04.2004 are specifically made for. The combine reading of Chapter note 2 (b) with HSN explanatory Note 4 clearly shows that the goods which are undisputedly used along with X-ray/ radio therapy machines for positioning patient would be classifiable under heading 9022 as accessories. In view of the above the appeal so far relates to Serial No. 1 to 12 and 17 to 57 of bill of entry No. 4604051 dated 11.02.2004 and Serial No 1 to 21 and 26 to 66 of the bill of entry No 5062153 dated 01.04.2004 is allowed.

5. It is seen that the decision of Hon'ble Apex Court in the case of Insulation Electricals (Supra), the facts were significantly different. In the said case the rival entry i.e. 94.01 specifically covers seats. In the instant case it is seen that the rival entry i.e. heading 9018 has no apparent connection with the items being imported. In these circumstances, the decision of Hon'ble Apex Court cannot be applied to the instant case.

6. In so far as items at Serial no. 13 to 16 of bill of entry no. 4604051 dated 11.02.2014 and Serial No. 22 to 25 of bill of entry no. 5062153 dated 01.04.2014, it is seen that no specific connection has been brought out by the appellant between the said markers and the apparatus of heading 9022. The appeal memorandum does not bring out any connection which makes the said markers exclusively usable along with machine of heading 9022only. In this circumstance we do not find any merit in the appeal in so far it relates to these items. Appeals in respect of these items is dismissed.

7. Consequently, we hold that items at Serial No Serial No. 1 to 12 and 17 to 57 of bill of entry No. 4604051 dated 11.02.2004 and Serial No 1 to 21 and 26 to 66 of the bill of entry No 5062153 dated 01.04.2004 are

classifiable under 9022 of Custom Tariff Act and items at 13 to 16 of bill of entry no. 4604051 dated 11.02.2014 and Serial No. 22 to 25 of bill of entry no. 5062153 are classifiable under 9608.

8. The appeals are partly allowed in above terms.

(Pronounced in the open court on 02.11.2023)

RAJU
MEMBER (TECHNICAL)

SOMESH ARORA
MEMBER (JUDICIAL)

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