CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT AHMEDABAD

REGIONAL BENCH – COURT NO. 03

EXCISE Appeal No. 12076 of 2016-DB

[Arising out of Order-in-Original/Appeal No VAD-EXCUS-001-APP-272-2016-17 dated 01.08.2016 passed by Commissioner of Central Excise, Customs and Service Tax-VADODARA-I]

Reckon Diagnostics P Ltd **...Appellant**
3/7, Industrial Estate, Gorwa,
Vadodara
Gujarat
390016

VERSUS

C.C.E. & S.T.-Vadodara-i **...Respondent**
1st Floor...Central Excise Building,
Race Course Circle,
Vadodara,
Gujarat-390007

WITH

EXCISE Appeal No. 13265 of 2014-DB

[Arising out of Order-in-Original/Appeal No VAD-EXCUS-001-APP-255-2014-15 dated 11.07.2014 passed by Commissioner of Central Excise, Customs and Service Tax-VADODARA-I]

Reckon Diagnostics P Ltd **...Appellant**
3/7, Industrial Estate,
Gorwa,
Vadodara
Gujarat-390016

VERSUS

C.C.E. & S.T.-Vadodara-i **...Respondent**
1st Floor...Central Excise Building,
Race Course Circle,
Vadodara,
Gujarat-390007

AND

EXCISE Appeal No. 10962 of 2015-DB

[Arising out of Order-in-Original/Appeal No VAD-EXCUS-001-APP-41-2015-16 dated 20.04.2015 passed by Commissioner of Central Excise, Customs and Service Tax-VADODARA-I]

Rackon Diagnostics P Ltd **...Appellant**
3/7, Industrial Estate,
Gorwa,

Vadodara
Gujarat-390016

VERSUS

C.C.E. & S.T.-Vadodara-i **...Respondent**
1st Floor...Central Excise Building,
Race Course Circle,
Vadodara,
Gujarat-390007

APPEARANCE:
Shri Dhaval K Shah, Advocate for the Appellant
Shri. A R Kanani, Superintendent (Authorized Representative) for the Respondent

CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR
HON'BLE MEMBER (TECHNICAL), MR. RAJU

FINAL ORDER NO. A / 12629-12631 /2023

DATE OF HEARING:16.11.2023
DATE OF DECISION:17.11.2023

RAMESH NAIR

The brief facts of the case are that whether the product "Salmonella Antigens: manufactured by the appellant is classifiable under Central Excise Tariff 3822 or 3002.

2. Shri Dhaval K Shah, learned Counsel appearing on behalf of the appellant submits that this issue has been decided in their own case as per this Tribunal's Final Order No. A/11371/2013 dated 17.10.2013 and recently the same issue decided in the case of Reckon Diagnostics P Ltd vide order dated 27.09.2023. Therefore, the issue is no longer *res-integra*.

3. Shri A R Kanani, learned Superintendent (AR) appearing on behalf of the appellant reiterates the findings of the impugned order.

4. We have carefully considered the submissions made by both the sides and perused the records. We find that the issue involved in the present case has been settled in the favour of the appellant's own case vide Final order No.

A/12170-12171/2023 dated 27.09.2023, wherein the Tribunal passed the following order:

> *"4. We have carefully considered the submission made by both the sides and perused the records. We find that the issue involved in the present case has been settled in the favour of the appellant in their own case as per this Tribunal Final Order No. A/11371/2013 dated 17.10.2013, wherein this Tribunal passed the following order:*
>
> > *"4. Heard Learned AR and perused the case records. In the present appeal the issue involved is the classification of the product 'Widal Salmonella Antigen Kit' whether under 3822 claimed by the Revenue or under 3002 claimed by the appellant. The same issue has been decided by this very bench in the case of the appellant under order No A/1834- 1835/WZB/AHD/2011 dated 3.10.2011. Para 12 to 14 of the earlier order dated 3.10.2011 in case of the appellant are reproduced below:*
> >
> > *2. It can be seen from the above reproduced findings of the learned Commissioner (Appeals) that he has come to the conclusion that the product manufactured by the appellant would not fall under heading 30.02, by holding that head 30.02 covers antigens and other vaccines and excludes diagnostic kits. The case of appellant before the lower authorities was very same. The appellants have always argued that antigens remain antigens as received from the supplier and goods were received under Chapter heading No. 30.02 from the bulk supplier. The bulk supplier has classified the product under chapter 30.02 and the said classification of the bulk supplier has not been challenged or changed by the Revenue till date and it remains the same. It is also seen from the record that this factual matrix is not disputed by the Revenue. On perusal of HSN Notes under Chapter 30, as correctly pointed by the learned counsel that product 'Diagnostic Kits' has been classified under Chapter heading 30, which the answer to the following description, we reproduce the same :-*
> >
> > *"(E) Diagnostic Kits. Diagnostic kits are classified here when the essential character of the kit is given by any of the product of this heading. Common reactions occurring in the use of such kits include agglutination,, precipitation, neutralization, binding of complement, hoemagglutination, enzyme-linked immunoscrbent assay (ELISA), etc. The essential character is given by that single*

component which governs to the greatest extent the specificity of the test procedure."

It can be seen that, group which answer to the description of 'Agglutination' would fall under chapter 30. On perusal of show cause notice, we find that the show cause notice starts with the premise that the 'WIDAL-SALMONELLA ANIGENS KIT' is functioning on the parameters of agglutination of the blood in order to test whether the patient/person is infected with typhoid or not. We also find that the HSN explanatory notes under chapter 38.22 clearly exclude those, which are falling under chapter heading 30.02 or 30.06. It has been amply demonstrated before us by the learned counsel that the 'WIDALSALMONELLA ANIGENS KIT' is nothing but antisera and other blood fractions. We find that the apex court in the case of Span Diagnostics had an occasion to look into the rival entries of 30.02 and 38.22 for classification of such antisera and other blood fractions. We may respectfully reproduce the ratio of their Lordships, which is found in Para 21 and 22.

21. As stated above, Chapter Heading 30.02 refers to antisera and other blood fractions. According to the Explanatory Note in HSN (Seventh Edition), antisera is obtained from the blood of humans or animals which are immune against diseases. Antisera is used for diagnostic purposes, including in-vitro tests. There is nothing like crude antisera and refined antisera. In the present case, even according to the Department, PTK is an antisera, however, according to the Department, PTK is a refined antisera. As stated, antisera fall under Chapter Heading 30.02. In the circumstances, 'antisera' is covered by Chapter Heading 30.02 and since it is covered by that Heading. Chapter Heading 38.22 will not apply. If one reads Chapter Heading 38.22, it becomes clear that there could be diagnostic or laboratory reagents which could fall under Chapter Heading 30.02 and also under Chapter Heading 38.22. However, if a diagnostic or laboratory reagent like antisera falls under Chapter Heading 30.02 then it stands excluded from Chapter Heading 38.22.

22. Before concluding we may record the statement made on behalf of M/s J Mitra & Co Ltd. that they have closed down their business in producing the following two items, namely, Syphilis RPR (VDRL) and Salmonenella Antigens. Hence, they do not seek to press the classification issue concerning the said two items."

13. It can be seen from the above reproduced ratio of their Lordship's judgement, the product in question in this case gets covered under Chapter heading No. 30.02. The leaned SDR's reliance placed on J Mitra & Company's case is also over ruled by the apex court in the case of Span Diagnostic case.

14. In view of the foregoing, we hold that the classification of product 'WIDAL-SALMONELLA ANIGENS KIT'would be correct by classified under Chapter heading 30.02, as claimed by the assessee.

5. As the issue of the classification of appellant's product has already been decided under CETH 3002 therefore, the present appeal filed by the appellant is allowed."

5. In view of the above decision of this Tribunal which is based on this Tribunal's earlier order dated 03.10.2011, and order dated 17.10.2013, in the appellant's own case, the issue is no longer *res-integra*.

6. Accordingly, the impugned order is set aside. Appeals are allowed.

(Pronounced in the open Court on 17.11.2023)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

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