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

REGIONAL BENCH- COURT NO. 3

Customs Appeal No. 12812 of 2018- DB

(Arising out of OIO-KDL-COMMR-SKA-02-2018-19 dated 31.05.2018 passed by Commissioner Customs - Kandla)

Commissioner of Customs - Kandla **........Appellant**
Custom House, Near Balaji Temple,
Kandla-Gujarat

VERSUS

The Dy Director Animal Husbandry **......Respondent**
District Panchayat Anand. Sardar Patel Bhavan,
Amul Dairy Road, Anand, Gujarat

WITH

(i) Customs Appeal No. 12813/2018 (Commissioner of Customs, kandla);
(ii) Customs Appeal No. 12814/2018 (Commissioner of Customs, kandla);
(iii) Customs Appeal No. 12815/2018 (Commissioner of Customs, kandla);
(iv) Customs Appeal No. 12816/2018 (Commissioner of Customs, kandla);
(v) Customs Appeal No. 12817/2018 (Commissioner of Customs, kandla);
(vi) Customs Appeal No. 12818/2018 (Commissioner of Customs, kandla);
(vii) Customs Appeal No. 12819/2018 (Commissioner of Customs, kandla);
(viii) Customs Appeal No. 12820/2018 (Commissioner of Customs, kandla);
(ix) Customs Appeal No. 12821/2018 (Commissioner of Customs, kandla);

(Arising out of OIO-KDL-COMMR-SKA-02-2018-19 dated 31.05.2018 passed by Commissioner Customs - Kandla)

APPEARANCE:
Shri Hardik Modh, Advocate for the Appellant
Shri Prashant Tripathi, Authorised Representative for the Respondent

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

FINAL ORDER NO. 11066-11075 /2024

DATE OF HEARING: 02.05.2024
DATE OF DECISION:16.05.2024

RAJU

These appeals have been filed by Revenue against order of Commissioner dropping the demand of Customs duty.

1.1 No-one appeared for The Dy Director Animal Husbandry, however a letter was received to decide the issue on merits. Learned counsel appeared for the Respondents namely Blow Kings and Plastipack in appeal No. C/12815 & 12820/2018 and no one appeared for other parties.

2. Learned Authorised Representative argued that the goods imported by the Respondents are made of plastic materials. They are boxes with ability to maintain temperature inside. He argued that in terms of Rule 3(a) of the General Rules of Interpretation of Import Tariff, the heading which provide the most specific description should be preferred to more general description. He also pointed out that Rule 3 of the said Rules provides that when goods cannot be classified with reference to Rule 3(a) or 3(b) then they shall be classified under the heading which occurs last in the numerical order among those which equally merit consideration. He argued that Rule 3(c) can be taken only if it is not possible to determine the classification in accordance with to Rule 3(a) or 3(b).

2.1 Learned Authorised Representative argued that in the instant case, the goods are insulated boxes which are used for carrying vaccines and are manufactured as per the WHO specifications. He argued that this fact that the goods are used for carrying vaccine and are made as per WHO specifications, does not change the essential character of the product in question. The said goods continue to remain insulated boxes, therefore, the heading 39231030 which specifically covers insulated ware should be preferred over any other heading.

2.2 He argued that though the Commissioner has reached the conclusion that the goods are insulated ware in para 3.10.8 of the impugned order, the Commissioner has ignored Rule 3(a) and proceeded to Rule 3(c) of the Interpreted Rules to determine the classification. Learned authorized representative pointed out that the Commissioner has relied on note 2(u) of Chapter 39 while ignoring the HSN Explanatory Notes to sub heading 3923. The HSN Explanatory Note to sub-heading 3923 specifically provide as follows:

> ***"This heading covers all articles of plastic commonly used for packing or conveyance of all kinds of products."***

It is apparent that the heading 3923 would cover insulated packing material made for conveyance of all kinds of products which imply that those insulated boxes which are intended to carry vaccines or blood are also covered under heading 3923.

2.3 Learned authorized representative also relied on the HSN Explanatory Note-I(L) of heading 9018 which prescribes as follows:

> *"(L)* ***Portable pneumo-thorax apparatus, blood transfusion apparatus, artificial leeches****.*
>
> *The heading also covers sterile hermitically sealed containers of plastics, from which air has been evacuated but containing a small quantity of anti-coagulant and fitted with an integral donor tube and a phlebotomy needle, used for the collection, storage and transfusion of human whole blood. However, special blood storage bottles of glass are excluded (****heading 70.10****)"*

2.4 Learned Authorised Representative after relied on the decision of Tribunal in case of **Laxbro Manufacturing Co. 2009 (234) ELT 556**, wherein dispute related to laboratory equipment such as Petri dishes, tissue culture plates, pipettes, filters, spatula, swab stick block, collection vials etc. The appellant in that case had classified the goods under heading 3923, 3926 and 9018. The Revenue, on the other hand, was of the view that the goods are classifiable under heading 9027. While deciding the case, the Tribunal observed as follows:

> "**3.** The issue for determination is, whether the goods manufactured by the appellants fall for classification under CET sub-heading 9027.00 as held by the Revenue or under CET sub-heading 9018.00 as contended by the assessee. The rival entries are set out herein below :-
>
> | | |
> |---|---|
> | 9018.00 | Instruments and appliances used in medical, surgical, dental or veterinary sciences including scientigraphic apparatus, other electro medical apparatus and sight testing instruments. |
> | 9027.00 | Instruments and apparatus for physical or chemical analysis (for example, polarimeters, refractometers, spectrometers, gas or smoke analysis apparatus); instruments and apparatus for measuring or checking viscosity, porosity, expansion, surface tension or the like, instruments and apparatus for measuring or checking quantities of heat, sound or light (including exposure meters); microtomes. |
>
> **4. …..**
>
> **5.** From the above it is seen that the Commissioner himself has accepted that none of the items in dispute are instruments or apparatus either for physical or chemical analysis or for measuring or checking viscosity or porosity and expansion…… or for measuring or checking quantities of heat, sound or light. However, he has relied upon HSN explanatory notes to Heading 90.18 which *inter alia* excludes instruments and appliances used in laboratories to test blood, tissue fluids, urine etc. whether or not such tests serve in diagnosis, and which the HSN states would be covered under Heading 90.27, to classify all the products enumerated herein above under CET sub-heading 9027.00 on the ground that the items assist in physical and chemical analysis. However, the Commissioner himself has held that the end-use of the item is for storage or for holding of samples or slides."

After this the Tribunal examined the products and their use and came to following conclusion:

> "**7.** The use of the items for sample handling and storage for various laboratory tests has also been certified by the National Aids Research Institute by its certificate dated 26-12-01. The National Institute of Virology, Pune has certified that the items are consumable products which are used to carryout research and they are labwares and not instruments and that they are incinerated after use for biosafety measures.
>
> **8.** In view of the above, the products cannot fall for classification under CET 9027.00 and the demand confirmed on the basis of the above classification cannot be sustained. We, therefore, set aside the duty demand and penalty and allow the appeal. However, we make it clear that we are not accepting the contention of the assessee that the goods fall for classification under CET 9018.00, for the reason that they are neither instruments nor appliances used in medical surgical dental or veterinary sciences including scientigraphic apparatus other electro magnetic

apparatus covered by this heading but appear to be articles of plastics used in laboratory."

Consequently, the learned authorized representative sought that the impugned order should be set aside.

3. Learned counsel Shri Hardik Modh appearing for M/s Blow Kings and Plastipack, pointed out that they are manufacturing Vaccine carriers, vaccine boxes, blood transmission box, water pack and Ice pack as per the specifications provided by WHO, UNICEF and Ministry of Health & Welfare. These products are used for in the immunization programmes for carrying vaccines to different places.

3.1 He pointed out that as per WHO guidelines, vaccines and blood are highly susceptible to temperature and have to be stored at optimum temperature range for safe use. The products manufactured by the appellant are used for storage and transport of medical products which require a safe temperature for storage. The goods are manufactured out of high density polyethylene and the same are insulated by Polyurethane Foam (PUF). Learned counsel pointed out that the Revenue was of the opinion that the goods are classifiable under Chapter Tariff Heading 39231030. The Commissioner has classified the goods under heading 9018. The heading 3923 and 9018 read as under:

3.2 Learned counsel pointed out that note 2(u) to Chapter 39 reads as under:

"2. This Chapter does not cover:

(a)…

(b)…

(c)…

(d)…

…

2(u) Articles of Chapter 90 (for example, optical elements spectacle frames, drawing instruments)"

He argued that in terms of said notes goods which are also classifiable under chapter 90 are excluded from chapter 39.

3.3 Learned counsel pointed out that heading 9018 specifically covers instruments and appliances used in medical, surgical or veterinary science. He argued that it does not matter the material out of which said goods are made. In the instant case, he pointed out that the goods are manufactured out of plastic but are intended for medical use and are made as per the specifications provided by WHO, UNICEF and Ministry of Health and Family Welfare. The goods are also primarily supplied to these very organizations. The goods are designed for use as carriers of vaccines and blood. He argued that in these circumstances, the goods are rightly classifiable under Chapter 90.

3.4 He further argued that Commissioner has also held the classification to be in chapter 9018. He has particularly relied on the HSN Explanatory Note relating to Chapter Tariff Heading 9018 which reads as follows:

> "It should also be noted that a number of instruments used in medicine or surgery (human or veterinary) are, in effect, tools (e.g., hammers, knives, saws, chisels, gouges, forceps, pliers, spatula, etc.). **Such articles are classified in this heading only when they are clearly identifiable as being for medical or surgical use by reason of their special shape, the ease with which they are dismantled for sterilization, their better quality manufacture, the nature of the constituent metals or by their get-up (frequently packed in cases or boxes containing a set of instruments for a particular treatment: childbirth, autopsies, gynecology, eye or ear surgery, veterinary cases for parturition, etc.)**."

4. We have considered the rival submissions.

5. The product in question are undisputedly, the insulated boxes designed as per specifications of WHO, UNICEF, Ministry of Health and Family Welfare and manufactured out of plastics. While Revenue is of the opinion that the goods are classifiable Chapter Tariff Heading 3923

whereas, the respondents have sought the classification under heading 9018. The heading 3923 and 9018 reads as follows:

Chapter 39

Tariff Item	Description of goods	Unit	Rate of duty (standard)	Rate of duty (Preferential)
3923	Articles for the conveyance or packing of goods, of plastics; stoppers, lids, caps and other closures, of plastics.			
39231030	- - - - Insulated ware	Kg	10%	

CHAPTER 90

Tariff Item	Description of Goods	Unit	Rate of duty (standard)	Rate of duty (Preferential)
9018	Instruments and appliances used in medical surgery, dental or veterinary sciences, including scientigraphic apparatus and other medical particulars and science designed instruments			
9018				
9099	- - - - Other	(u)	7.5%	

The HSN Notes of Relevant entry under are as follows : -

90.18 ***INSTRUMENTS AND APPLIANCES USED IN MEDICAL, SURGICAL OR VETERINARY SCIENCES INCLUDING SCINTIGRAPHIC APPARATUS, OTHER ELECTRO-MEDICAL APPARATUS, AND SIGHT - TESTING INSTRUMENTS (+).***

This heading covers a very wide range of instruments and appliances which, in the vast majority of cases, are used only in professional practice (e.g., by doctors, surgeons, dentists, veterinary surgeons, midwives), either to make a diagnosis, to prevent or treat an illness or to operate, etc. Instruments and appliances for anatomical or autoptic work, dissection, etc., are also included, as are, under certain conditions, instruments and appliances for dental laboratories (see Part (II) below). The instruments of the heading may be made of any material (including precious metals).

…

….

….

Other respondents have also relied on extract from sub-heading 9018. The respondents have relied on Note 1(L) of heading 9018 which prescribes as follows:

"(L) ***Portable pneumo-thorax apparatus, blood transfusion apparatus, artificial leeches****.*

*The heading also covers sterile hermitically sealed containers of plastics, from which air has been evacuated but containing a small quantity of anti-coagulant and fitted with an integral donor tube and a phlebotomy needle, used for the collection, storage and transfusion of human whole blood. However, special blood storage bottles of glass are excluded (****heading 70.10****)"*

The revenue has relied on the extract from the HSN Explanatory Note to Chapter heading 3923 which reads as follows:

"This heading covers all articles of plastic commonly used for packing or conveyance of all kinds of products."

6. The revenue has relied on the decision in the case of Laxbro manufacturing Co. (supra) wherein the dispute was if the goods which the appellants in that case sought classification under heading 9018 and Revenue sought classification under heading 9027. The dispute is reproduced in para 3 of the said order as follows:

"3. The issue for determination is, whether the goods manufactured by the appellants fall for classification under CET sub-heading 9027.00 as held by the Revenue or under CET sub-heading 9018.00 as contended by the assessee. The rival entries are set out herein below :-

9018.00	Instruments and appliances used in medical, surgical, dental or veterinary sciences including scientigraphic apparatus, other electro medical apparatus and sight testing instruments.
9027.00	Instruments and apparatus for physical or chemical analysis (for example, polarimeters, refractometers, spectrometers, gas or smoke analysis apparatus); instruments and apparatus for measuring or checking viscosity, porosity, expansion, surface tension or the like, instruments and apparatus for measuring or checking quantities of heat, sound or light (including exposure meters); microtomes."

It is seen that in the said case, the goods are described as laboratory ware. The Tribunal after examining the issue came to the conclusion in the said case the National Institute of Virology, Pune certified that the items are consumlable products which are used to carry out research and that they are labwares and not instruments and that they are incinerated after use for biosafety measures. In this context, the Tribunal in para 8 observe as follows:

> **"8.** In view of the above, the products cannot fall for classification under CET 9027.00 and the demand confirmed on the basis of the above classification cannot be sustained. We, therefore, set aside the duty demand and penalty and allow the appeal. However, we make it clear that we are not accepting the contention of the assessee that the goods fall for classification under CET 9018.00, for the reason that they are neither instruments nor appliances used in medical surgical dental or veterinary sciences including scientigraphic apparatus other electromagnetic apparatus covered by this heading but appear to be articles of plastics used in laboratory."

The Revenue has relied on the para 8 of the said decision but it is found that para in para 8, the observations regarding the heading 9018 are for laboratory ware which are products of different kind moreover there is no assertion in the said order that the goods are for use for medical purposes. In these circumstances, the facts in the case of Laxbro Company (supra) are significantly different from the facts in the instant case, and therefore, the said decision is not applicable to the instant case.

7. Learned counsel for the respondent has relied on the decision in the case of Cognate India 2017 (345) ELT 122. In the said case, the dispute are related to operation theatre lights which are specializes lamps having shadow less operations, heat diffusing capacity and colour correction capability specially designed for use in operation theatre. The dispute related to classification under sub-heading 9018 of Central Excise Tariff as medical equipment or not under Heading 9405 as search light/ spot lights not elsewhere specified. After examining the product in detail after relying on the decision of Hon'ble Apex Court, the Tribunal in case of Cognate India 2017 (345) ELT 122 has come to following conclusions:

> **"6.** We note that these specialized lamps have shadowless operation, heat defusing capacity and also colour correction capabilities. We are in agreement with the lower authority that these lamps are specially designed and made to be used only in operation theatres. We find that the reliance placed by the Commissioner (Appeals) on the observation of Hon'ble Supreme Court in the case of *M/s. Metagraph (P) Ltd.* v. *CCE* reported in 1996 (88) E.L.T. 630 (S.C.) is appropriate."

8. Learned counsel for the respondent also relied on the decision in the case of Becton Dickinson 1998 (103) ELT 177 (Tri.) wherein the issue

related to the classification of Destruclip. Destruclip is designed to destroy used disposable syringe and needles to prevent misuse through unauthorized recycling. In the said goods after examining the issue in detail, it observes as follows:

> *"**5.** We have carefully considered the arguments on both sides and the records of the case. We have also inspected the sample of the product, when its functioning was demonstrated to us. We find that the product is specially designed for uses as follows :*
> *(a) its design is totally dedicated to destroy by clipping the plastic body of the syringe and the steel needles, one each at a time;*
> *(b) the 2 orifices are having respective diameters only to accept these and nothing else can be cut;*
> *(c) the contaminated cut ends are automatically falling into a receptacle so that the user need not touch them for risk of infection, and when the chamber is full, it can be emptied at periodic intervals;*
> *(d) that the box (housing) containing the cutting devices and receptacles is a rectangular cube, in which these are two orifices - a bigger one for inserting tip of syringe and a very small one for inserting the needle;*
> *(e) that both these get cut at a predetermined point, after they are inserted, (and not at any point of user's choice).*
> *(f) that the cutting is activated by a lever mechanism; and that*
> *(g) of necessity, the box has to be kept on a table (plane surface) as while one hand holds the syringe/needle, the other hand manipulates the lever for cutting them.*
> ***6.** The facts are therefore clear :*
> *(a) This is not a multi-purpose or general use hand tool; instead it is a dedicated machine;*
> *(b) The cutting cannot be done at a point chosen by the user;*
> *(c) The box has to be normally kept on a plane surface while being used and not held in the hand; and*
> *(d) there is a receptacle for the cut portion, to avoid infection to the user.*
> ***7.** We find that applying these facts to the CTA, it is difficult to treat it as a hand-tool due to reasons at para 6(a) to (d) above. We note that being a specific end-use machine/appliance, it can only be used to destroy syringes and needles (medical equipment). Therefore, as against a general use hand-tool, which cuts many items at any desired point and normally does not have a receptacle, this is a specific appliance for use of clipping such medical equipment to prevent infection. It is a cardinal rule in matters of classification that the specific overrides the generic.*
> ***8.** We also find that because of above features, classification also under Chapter 90 cannot be ruled out, even if we conclude that the department's claim under Chapter 82 cannot be totally ruled out. Then, at best, we come to a position where the item is classifiable under both Chapter 82 to (sic) Chapter 90 and, therefore, as per Rule 3(c) of Interpretative Rules, the latter is to be applied.*
> ***9.** In view of the aforesaid analysis, we conclude that the product "Destruclip" is a medical appliance and shall be classifiable under 9018.90 of CTA. We therefore set aside the impugned order-in-original and the appeal succeeds with consequential relief."*

9. From the above decisions, it is apparent that it has consistent stand of the Tribunal and courts that if the items are specifically designed for medicinal use, the classification under heading 9018 should be preferred over any other classification given to similar products not used

for medicinal purposes. In this regard, the Note 2(u) of the Chapter 39 also becomes relevant which also confirms the same view. The goods in the instant case are specifically designed for medical use and supplied to actual users. Revenue has relied on the classification of blood storage bottles of glass which are specifically excluded from heading 7010 by virtue of Note I(L) which reads as under:

> *"(L)* ***Portable pneumo-thorax apparatus, blood transfusion apparatus, artificial leeches****.*
>
> *The heading also covers sterile hermitically sealed containers of plastics, from which air has been evacuated but containing a small quantity of anti-coagulant and fitted with an integral donor tube and a phlebotomy needle, used for the collection, storage and transfusion of human whole blood. However, special blood storage bottles of glass are excluded (****heading 70.10****)"*

From the above Note, it is apparent that the special blood storage bottles are specifically excluded from Chapter 90 and Heading 9018. This also implies that ordinarily such bottles could have been classified under Chapter heading 9018 but the HSN has specifically excluded and take it to heading 7010. There is no such heading excluding the boxes made for vaccine from Chapter heading 9018. Moreover this note also holds that containers of plastic for carrying blood would be classifiable under Chapter Tariff Heading 9018. In these circumstances, the argument of Revenue does not hold any merit.

10. Revenue has relied on the assertion that the Commissioner has ignored Interpretative Rule 3(a) before applying Interpretative Rule 3(c) of the Interpretative Rules for classification of the Customs Tariff. We find no mention of these Rules in the orders of the Commissioner. We find that Commissioner has specifically come to the conclusion that goods are more specifically classifiable under heading 9018 as medical equipment and therefore, there is no application of Rule 3(c) in the order of the Commissioner.

11. In these circumstances, we do not find any merit in the appeal filed by the Revenue, the same is dismissed.

(Order pronounced in the open court on 16.05.2024)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

Neha