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

REGIONAL BENCH- COURT NO.1

Customs Appeal No. 11530 of 2015
(Arising out of OIA-MUN-CUSTM-000-APP-101-15-16 dated 10.06.2015 passed by Commissioner (Appeals) Customs- Ahmedabad)

Cairn India Limited **...Appellant**
Dlf Atria Building, Jacaranda Marg-n Block,
Dlf City, Phase-ii, Gurgaon Haryana-122002

VERSUS

C.C. – Mundra **...Respondent**
Office of Pr. Commr. of Customs, Port User Building
Custom House, Mundra, Mundra-Kutch, Gujarat-370421

APPEARANCE:
Shri Hardik Modh, Advocate appeared for the Appellant
Shri Girish Nair, Authorised Representative appeared for the Respondent

CORAM: HON'BLE MR. SOMESH ARORA, MEMBER (JUDICIAL)
HON'BLE MR. SATENDRA VIKRAM SINGH, MEMBER(TECHNICAL)

FINAL ORDER NO. 10550 /2025

DATE OF HEARING: 07.07.2025
DATE OF DECISION:07.07.2025

SOMESH ARORA:

M/s Cairn India Limited, Vipul Plaza, Sun City, Sector-54, Gurugram, Haryana (Appellant in this case) have imported seamless steel casing and tubing vide Bill of Entry No. 6495588 dated 20.08.2014, 6902574 dated 27.09.2014 and 6956694 dated 04.10.2014. The said bills of entry were assessed levying safeguard duty as applicable under Notification No. 02/2014-Cus (SG) dated 13.08.2014. The importer requested for reassessment of the above mentioned bills of entry in respect of levy of safeguard duty. In their submission dated 24.09.2014, they mentioned that they had been importing seamless pipes and tubings of specialized nature for the purpose of exploration and production of Hydrocarbons in India. They claimed to be covered by the exception provided under Notification No. 02/2014-Custom (SG) dated 13.08.20242 particularly clause-(ii) which reads as **"(ii) Non-API and Patented Premium Joints/ Premium Connections/ Premium Threaded Tubes and Pipes of grades Q-125, 13CR, L-80, P-110, C-90, C-95, T-90 and T-95;".** Therefore, their products were not liable to the safeguard duty. After affording a personal hearing to the appellant, the Joint Commissioner, Customs-Mundra vide order dated 05.12.2014 decided the matter holding that safeguard duty is leviable on goods other than pipes and tubes of 13 Chromium (13Cr) grades under Notification No. 02/2014-Cus (SG) dated 13.08.2014 imported vide three bills of entry as mentioned above by M/s Cairn India Limited. The appellant filed an appeal before the Commissioner (Appeals), Ahmedabad who vide Order-in-Appeal No. MUN-CUSTM-000-APP-101-15-16 dated 10.06.2015 upheld the order of the lower authority and rejected their appeal.

2. The matter went to the Hon'ble Gujarat High Court as well as a clarification dated 25.01.2016 vide F.No.21000/05/2015-OSD(ICD) was issued in the matter by the CBIC Para 3 of this clarification mentions as follows:

> *"3. The matter has been examinedby the Central Board of Excise and it is clarified that the goods under consideration, imported/ proposed to be imported by M/s Cairn India Limited, namely :Patented Premium VAM TOP threaded and coupled connections" fall within the exclusion clause (ii) of the note to the Notification No. 02/2014-Customs (SG) dated 13.08.2014. The said goods therefore do not fall within the scope of the term "Seamless Pipes and Tubes" for the purpose of the said Notification."*

3. The litigation before Hon'ble Gujarat High Court ended as it was considered that the clarification should suffice to provide answer whether the product imported by the appellants were covered or not?

4. The learned AR arguing the matter pointed out that in the clarification as well as in the Notification, it is clear that certain category of patented products were only covered and not all and that the appellants have imported catena of products which all may not be covered under the description as was approved by the CBIC and therefore, the matter is with us.

5. Learned advocate points out that the product imported by them, were patented and in support at this stage, he produces patent No. US 6,789,823 B2 dated September 14, 2004 which takes note of patent granted on June 24, 2002 to assigning Vellourec Mannesmann Oil and Gas France. On being asked what is the connect of the imported product with the Vellourec Mannesmann Oil and Gas France, the learned advocate indicated that the products imported were of the nature of

which patent was granted and since normally the patent has to be valid for 20 years, there cannot be any scope of safeguard duty being imposed on any patented product in India unless various manufacturers have been assigned that patent in India which department has not been able to show. He also indicates that till the time a product is patented there cannot normally be any safeguard duty imposed on them, unless same is assigned to that territory for commercial exploitation. Therefore, the patent product by itself will not be covered in the scope of safeguard duty under the WTO laws as applied to the local municipal laws.

6. We have considered the rival submissions. We find that certain category of products have been stated to be covered in exception by the CBIC and then, there is a larger question to be decided as to whether the other products imported by the appellants are of the nature in which patent has been granted and was existing as on the date of import or not? This question needs examination by adducing of the relevant documents including patents granted, the certificate of patent etc. to be done by the appellants and to be proved by the department that the patents were not existing at the time of import or the goods were not otherwise within the exception. The matter needs detailed examination. Therefore. both sides are given liberty to adduce evidence to the fact as to whether goods were patented or not and should be subjected to safeguard duty, prima facie or not or even otherwise to which category mentioned in clause (ii) as indicated above, it was falling. Matter with these directions is remanded to the adjudicating authority. Appeal allowed by way of remand.

(Dictated & Pronounced in the open court)

(SOMESH ARORA)
MEMBER (JUDICIAL)

(SATENDRA VIKRAM SINGH)
MEMBER (TECHNICAL)

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