FAX : 0532-2400149

REGISTERED / AD

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
38,MG Marg Civil Lines,Old Red Building,Allahabad-211001
Regional Branch, Allahabad

Dated: 13/06/2017

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/70546-70551/2017-EX[DB] dated 15/05/2017

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section 35-C(1) of the Central Excise and Salt Act, 1944.

Asstt. Registrar

Application	Appeal	Name and Address of Appellant
1	E/1234/2012	COMMISSIONER OF CUSTOMS-KANPUR 117/7...SARVODYA NAGAR, KANPUR,UTTAR PRADESH 208005
2	E/1561/2008	SHANTI SURGICAL PVT LTD G-28-29, SITE-I,PANKI, KANPUR.
3	E/1562/2008	SHANKET KHERIA,DIRECTOR M/S SHANTI SURGICAL PVT LTD, G-28-29, SITE-I, PANKI, KANPUR.
4	E/1563/2008	SUBHASH CHANDRA KHERIA, GM M/S SHANTI SURGICAL PVT LTD, G-28-29, SITE-I, PANKI, KANPUR.
5	E/1911/2009	SUBHASH CHANDRA KHERIA, GM M/S SHANTI SURGICAL PVT LTD, G-28-29, SITE-I, PANKI, KANPUR

6 E/2841/2010 SUBHASH CHANDRA KHERIA, GM
M/S SHANTI SURGICAL PVT LTD,
G-28-29, SITE-I, PANKI, KANPUR.

Name and Address of Respondent

7 -C.C.E. KANPUR
117/7, Sarvodaya Nagar, Kanpur
208005.

-

8 -C.C.E. KANPUR
117/7, Sarvodaya Nagar, Kanpur
208005.

-

9 -C.C.E. KANPUR
117/7, Sarvodaya Nagar, Kanpur
208005.

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Other Appellants and Respondents as per Annexure

Copy To
10 Advocate(s) / Consultant(s):

Amit Awasthi,ADV
H-1, IST FLOOR, RADHEY
APPARTMENT,
PLOT NO. 7/116A, SWAROOP NAGAR,
KANPUR,UTTAR PRADESH
208002

11. SH BIPIN GARG,ADV

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12 Bar Association, CESTAT, Allahabad

13 Director Publications, Customs, Excise. I.P. Estate. Delhi

14 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, New Delhi-3

15 Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17

16 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005

17 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)

18 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070

19 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad – 38

20 The ICFAI society, 52, Nagarjuna Hill,Punjagutta Hyderabad.-500082

21 M/S Knowledge Processing Pvt. ltd.(taxmanagementindia.com),FF-19,1st Floor,Cross River Mall,CBD Ground,Near Karkardooma Court,Delhi-110032

22 C.D.R. 23 Office Copy 24 Guard File

Asstt. Registrar

v

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

REGIONAL BENCH : ALLAHABAD

COURT No. I

APPEAL No. E/1561, 1562, 1563/2008, E/1911/2009, E/2841/2010 & E/1234/2012-EX[DB]

(Arising out of Order-in-Original No. 01/Commissioner/2008 dated 29/04/2008 in Appeal Nos. E/1561, 1562 & 1563/2008 passed by Commissioner of Central Excise, Kanpur, Order-in-Appeal No. 59-CE/APPL/KNP/2009 dated 25/03/2009 in Appeal No. E/1911/2009, Order-in-Appeal No. 288-289-CE/APPL/KNP/2010 dated 25/05/2010 in Appeal No. E/2841/2010 & Order-in-Appeal No. 15-CE/APPL/KNP/2012 dated 20/01/2012 in Appeal No. E/1234/2012 passed by Commissioner (Appeals) Customs & Central Excise, Kanpur)

M/s Shanti Surgical Pvt. Ltd. (In Appeal No. E/1561/2008),

Shanket Kheria, Director, (In Appeal No. E/1562/2008),

Subhash Chandra Kheria, GM, (In Appeal No. E/1563/2008) &

Commissioner of Central Excise, Kanpur, (In Appeal No. E/1911/2009, E/2841/2010 & E/1234/2012) **Appellant**

Vs.

Commissioner of Central Excise, Kanpur, (In Appeal No. E/1561, 1562 & 1563/2008) &

M/s Shanti Surgical Pvt. Ltd. (In Appeal No. E/1911/2009, E/2841/2010 & E/1234/2012) **Respondent**

Appearance:

Shri Bipin Garg, Advocate &
Shri Amit Awasthi, Advocate for Appellant
Shri Rajeev Ranjan, Joint Commissioner (AR), for Respondent

CORAM:

Hon'ble Mr. Anil Choudhary, Member (Judicial)
Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

Date of Hearing & Date of Decision : 15/05/2017

FINAL ORDER NO. 70546 - 70551/2017

सीमा शुल्क उत्पाद शुल्क एवं सेवा कर अपीलीय अधिकरण CUSTOMS EXCISE & SERVICES TAX APPELLATE TRIBUNAL

Per: Anil G. Shakkarwar

The above stated six appeals are in respect of M/s Shanti Surgical Pvt. Ltd. involving the same issue for different periods. Therefore, these are taken together for decision.

2. Appeal No. E/1561/2008-EX[DB] is filed by M/s Shanti Surgical Pvt. Ltd. challenging OIO No. 01/Commr./2008 dated 29/04/2008. Appeal No. E/1562/2008-EX[DB] is filed by Shri Shanket Kheria, Director of M/s Shanti Surgical Pvt. Ltd. challenging OIO No. 01/Commr./2008 dated 29/04/2008 & Appeal No. E/1563/2008-EX[DB] is filed by Shri Subhash Chandra Kheria, GM of M/s Shanti Surgical Pvt. Ltd. challenging the personal penalty imposed on them through said OIO No. 01/Commr./2008 dated 29/04/2008. Further Appeal No. E/1911/2009-EX[DB] is filed by Revenue challenging OIA No. 59-CE/APPL/KNP/2009 dated 25/03/2009 and the respondent in the said appeal M/s Shanti Surgical Pvt. Ltd. Appeal No. E/2841/2010-EX[DB] is filed by Revenue challenging OIA No. 288 289-CE/APPL/KNP/2010 dated 25/05/2010 and the respondent in the said appeal M/s Shanti Surgical Pvt. Ltd. Appeal No. E/1234/2012-EX[DB] is filed by Revenue challenging OIA No. 15-CE/APPL/KNP/2012 dated 20/01/2012 and the respondent in the said appeal M/s Shanti Surgical Pvt. Ltd. & all the Orders-in-Appeals are passed by Commissioner of Central Excise (Appeals), Kanpur. Further details of said appeals are as follows:-

M/s Shanti Surgical Pvt. Ltd Versus Commissioner of Central Excise, Kanpur		
Order-in-Original No. 01/Commissioner/2008 dated 29/04/2008		
Appeal Nos. (E/1561, 1562, 1563/2008)		
Time period	2005-07	E/1561/2008
Demand	Rs.57,92,123/-	E/1561/2008
Penalty	Rs.57,92,123/-	E/1561/2008
On Directors		
Penalty	Rs.5,00,000/-	E/1562/2008
Penalty	Rs.5,00,000/-	E/1563/2008

Commissioner of Central Excise, Kanpur Versus M/s Shanti Surgical Pvt. Ltd	
Appeal No. : E/1911/2009	
Order-in-Appeal No. 59-CE/APPL/KNP/2009 dated 25/03/2009	
Relevant Period	02.02.2007 [2007-08]
Demand	Rs.16,81,711/-
Duty/Penalty	Rs.16,81,711/-
Appeal No. : E/2841/2010	
Order-in-Appeal No. 288-289-CE/APPL/KNP/2010 dated 25/05/2010	
Relevant Period	2008-09
Demand	Rs.16,81,735/-
Duty/Penalty	Rs.16,81,735/-
Appeal No. : E/1234/2012	
Order-in-Appeal No. 15-CE/APPL/KNP/2012 dated 20/01/2012	
Relevant Period	2009-10
Demand	Rs.15,24,913/-
Duty/Penalty	None

3. The brief facts of the case are that M/s Shanti Surgical Pvt. Ltd., were engaged in manufacture of Absorbent Cotton

Wool, Carded Cotton/Non-Absorbent Cotton, Handloom Gauze, Handloom Bandages & Bandages etc. under the Product License No. 1/97 dated 13/01/1997 issued by the Drug Controller, Lucknow. M/s Shanti Surgical Pvt. Ltd. manufactured above stated goods which were classified under Chapter 56 and the same were eligible to avail exemption under Notification No. 30/2004 dated 09/07/2004. On visit of the manufacturing premises it appeared to Officers of Central Excise that M/s Shanti Surgical Pvt. Ltd. should have registered with the Central Excise Department since it appeared to them that the goods manufactured by them were inappropriately classified under Chapter 56. Further, the claim by M/s Shanti Surgical Pvt. Ltd. that some of the goods manufactured by them were classifiable under Chapter 52 which attracted nil rate of duty as per tariff and same were classifiable under Chapter 38 which were eligible for benefit of Notification No. 30/2004-CE dated 09/07/2004 did not appear to be tenable to the Officers of Central Excise. It appeared to Revenue that M/s Shanti Surgical Pvt. Ltd. should have registered themselves with Central Excise Department and should have paid Central Excise duty on the goods manufactured by them. The investigations were conducted and a Show Cause Notice C. No. V(15) OFF/ADJ/77/07 dated 30/01/2008 was issued to M/s Shanti Surgical Pvt. Ltd., Shri Shanket Kheria & Shri Subhash Chandra Kheria. The contention of Revenue in the said Show Cause Notice dated 30/01/2008 was that the goods manufactured by M/s Shanti Surgical Pvt. Ltd. were Wadding, Gauze, Bandages and similar articles (for example – dressings, adhesive plasters, poultices), impregnated or coated with pharmaceutical substances or put up in forms or packings for retail sale for medical, surgical, dental or veterinary purposes and therefore they were falling under Chapter 3005. It, therefore, appeared to Revenue that M/s Shanti Surgical Pvt. Ltd. failed to take registration, failed to pay appropriate duty, failed to properly maintain the records & failed to file periodical returns with the Central Excise Department. Therefore, through the said Show Cause Notice M/s Shanti Surgical Pvt. Ltd. were called upon to show cause as to why Central Excise duty amounting to Rs.1,29,02,271/- (BED) + Education Cess Rs.2,14,224/- & Higher Education Cess of Rs.6,476/- should not be demanded from them under the provision of Section 11A of the Central Act, 1944. Further, there were proposals to impose personal penalty on Shri Shanket Kheria & Shri Subhash Chandra Kheria under Rule 26 of the Central Excise Rules, 2002. M/s Shanti Surgical Pvt. Ltd. submitted before the Original Authority that they were manufacturing Absorbent Cotton Wool, Carded Cotton/Non-Absorbent Cotton, Handloom Gauze, Handloom Bandages & Bandages etc. without bearing any brand name and after having filed the declaration way ~~baok~~ back in 2002 the said products were cleared at nil rate of duty in terms of

Notification No. 10/2003 dated 01/03/2003. They, further, claimed that disposals, syringes were attracting nil rate of duty under Notification No. 6/2002-CE dated 01/03/2002. They further submitted that they were manufacturing Carded Cotton falling under Chapter 52 of Central Excise Tariff Act, 1985 and the goods were exempted from payment of duty. Further, they submitted that for the Financial Years 2005-06 & 2006-07 eight digit tariff was introduced in Central Excise Tariff Act, 1985 and after the said introduction Absorbent Cotton Wool was classified under Tariff Item No. 5601210 and the goods were chargeable to nil rate of duty in terms of Notification No. 30/2004-CE dated 09/07/2004. It was further contended that Absorbent Cotton Wool was specifically classified under Chapter 56 and therefore, it cannot be classified under residual entry under so-called chapter 3005. The Original Authority did not appreciate the arguments putforth by M/s Shanti Surgical Pvt. Ltd. and through Order-in-Original dated 29/04/2008 confirmed the demand of Rs.58,86,591/- and imposed equal penalty under Section 11AC of the Central Excise Act, 1944 read with Rule 25 of the Central Excise Rules, 2002. He dropped the demand for an amount of Rs.72,36,180/-. Further, he imposed penalty of Rs.5,00,000/- each on Shri Shanket Kheria, Director of the party & Shri Subhash Chandra Kheria, General Manager of the party under Rule 26 of the Central Excise Rules, 2002. Aggrieved by the said OIO No.

01/Commr./2008 dated 29/04/2008 appellants filed these appeals before this Tribunal.

4. The grounds of appeal are as follows:-

(A) The Original Authority should have appreciated the fact that Chapter 3005 90 10 with effect from 01/04/2005 specified Cotton Wool, Medicated, and after Cotton Wool the use of the word "Medicated" indicated that Cotton Wool should be impregnated or coated with the pharmaceutical substance exclusively fall within the description of the goods as classified under Chapter 3005 90 10. It was further contended that Absorbent Cotton Wool manufactured and cleared by them was specifically covered in the specific entry under 56 and the classification of specific entry prevail over classification of general description.

(B) Shri Shanket Kheria, Director of the party & Shri Subhash Chandra Kheria, General Manager of the party have challenged the personal penalty imposed on them.

5. In respect of Appeal No. E/1911/2009, a Show Cause Notice on the similar line was issued on 22/09/2008 wherein Central Excise duty amounting to Rs.20,43,256/- was demanded for period subsequent to the earlier Show Cause Notice with the same contention that the goods manufactured by M/s Shanti Surgical Pvt. Ltd. were classifiable under so-called Chapter 3005. The said Show Cause Notice dated 22/09/2008 was adjudicated through Order-in-Original No.

03/Combined Commissioner/2009 dated 18/02/2009 wherein the proposals in the said Show Cause Notice were confirmed. M/s Shanti Surgical Pvt. Ltd. challenged the said Order-in-Original No. 03/Combined Commissioner/2009 dated 18/02/2009 before Commissioner (Appeals). Learned Commissioner (Appeals) has decided the appeal through Order-in-Appeal No. 59-CE/APPL/KNP/2009 dated 25/03/2009 wherein the ld. Commissioner (Appeals) has held that classification adopted by the Original Authority was not appropriate and as claimed by the M/s Shanti Surgical Pvt. Ltd. that the goods manufactured by them were classifiable under Chapter Sub-heading 5601, 5203 & under Chapter 58. The said Order-in-Appeal dated 25/03/2009 is challenged by Revenue and grounds of appeal are that the goods are packed in bulk packets and used for medical purposes and therefore, they should have been classified under Chapter 3005.

6. For subsequent period a Show Cause Notice 23/11/2009 in respect of Appeal No. E/2841/2010 was issued demanding Central Excise duty amounting to Rs.16,18,735/-. The same was decided through Order-in-Original No. 26/C. Ex./Additional Commissioner/2010 dated 31/03/2010 wherein the proposals in the said Show Cause Notice was confirmed. The said adjudication order was challenged before Commissioner (Appeals). Learned Commissioner (Appeals) decided the appeal through Order-In-Appeal No. 288-289-CE/APPL/KNP/2010 dated 25/05/2010

wherein the ld. Commissioner (Appeals) has held that as per the rules of interpretation specific entry will prevail over the general description and gave similar relief to M/s Shanti Surgical Pvt. Ltd. Aggrieved by the said Order-In-Appeal dated 25/05/2010 Revenue filed appeal before this Tribunal. The grounds of appeal are that the goods manufactured by M/s Shanti Surgical Pvt. Ltd. are used for medical purposes and are sold in bulk pack and therefore, they should have classified under so-called Chapter 3005.

7. Another Show Cause Notice 31/08/2010 in respect of Appeal No. E/1234/2012 was issued demanding Central Excise duty amounting to Rs.5,24,913/-. The same was adjudicated through Order-in-Original No. 20/C. Ex./Additional Commissioner/2010 dated 01/09/2011 wherein the proposals of the Show Cause Notice was confirmed. The same was challenged before Commissioner (Appeals). The ld. Commissioner (Appeals) decided the appeal through Order-in-Appeal No. 15-CE/APPL/KNP/2012 dated 20/01/2012 wherein ld. Commissioner (Appeals) passed a similar order holding that specific entry will prevail over the general description and granted similar relief to M/s Shanti Surgical Pvt. Ltd. Being aggrieved by the said Order-in-Appeal dated 20/01/2012 Revenue filed appeal wherein Revenue has calimed that M/s Shanti Surgical Pvt. Ltd. were manufacturing the goods which were used for medical purposes and sold in bulk packing.

8. Heard the ld. Counsel for the appellants who has submitted that in all the said Show Cause Notices issue is common. He has submitted that M/s Shanti Surgical Pvt. Ltd. were manufacturing the goods which were properly classifiable under eight (08) digit Tariff Item No. 5601 21 10 which was specific entry but Revenue wanted to classify the same under so-called Chapter 3005 which is a title of a group of commodities where it is mentioned that "put up in forms or packings for retail sale for medical, surgical, dental or veterinary purposes." He has further taken us through the findings by ld. Commissioner (Appeals) in Order-in-Appeal No. 59-CE/APPL/KNP/2009 dated 25/03/2009 on Page No. 39 to 46 of the said Order-in-Appeal dated 25/03/2009 and urged that appeals filed by M/s Shanti Surgical Pvt. Ltd. and that against the personal penalty may be allowed and the Departmental appeal may be rejected with consequential relief to M/s Shanti Surgical Pvt. Ltd.

9. Heard the ld. D. R. who has supported the Order-in-Original in respect of Appeal Nos. E/1561/2008, E/1562/2008 & E/1562/2008 and grounds of appeal filed by Revenue.

10. Having considered the rival contentions and on perusal of the facts on record, we find that the main issue in the present 6 appeals is the classification of the products mainly Absorbent Cotton Wool, Carded Cotton/Non-Absorbent Cotton, Handloom Gauze, Handloom Bandages & Bandages

etc. Revenue has claimed the classification of the said items under so-called Chapter 3005. The appellant (M/s Shanti Surgical Pvt. Ltd.) claimed the classification of the said items under Chapter Sub-heading No. 5601, 5203 & Chapter 58 whereas Revenue ordered for classification of aforesaid goods under so-called Chapter 3005. We have gone through the findings recorded by ld. Commissioner (Appeals) in his Order-in-Appeal No. 59-CE/APPL/KNP/2009 dated 25/03/2009 wherein the findings by ld. Commissioner (Appeals) ~~bearing~~ appearing on Page No. 39 to 46 ~~which~~ are as follows:-

> "From the facts of the case, I notice that the matter for decision before me is the proper classification of the final products viz. "Absorbent Cotton Wool", "Wool Cotton Non-absorbent or Carded Cotton", "Open Wove Bandage (Handloom)", "Handloom Cotton Gauze" and Rolled Dressing Handloom", all non-sterilized, being manufactured by the appellants. The appellants have claimed the classification of the said items under respective headings of textiles items Viz. 5601, 5203 and various Sub-headings of Chapter 58 whereas, the department has ordered for classification of aforesaid goods under Chapter 30, specifically under various headings of Chapter No. 3005. The period of dispute is Financial Year 2007-08. On going through the entire order, I notice that the dispute relating to classification of Sanitary Napkins and duty liability on syringes was

settled upto the satisfaction of the appellants and controversy regarding classification of said items rests settled. I also notice that the impugned order has been passed while deciding the Show Cause Notice that was issued in continuation to one earlier Show Cause Notice issued for the period from Financial Years 2003-04 to 2006-07.

I further observe that the department has intended to classify the said goods under Chapter Heading No. 3005 on the grounds that the goods were "put up in forms or packings for retail sale for medical, surgical, dental or veterinary purposes" because appellants were selling their goods to various government hospitals and hospitals of railway and defence establishments. The first part of broad definition of Chapter Heading 3005 was not considered because the fact that the goods were not coated or impregnated with pharmaceutical substances has not been disputed. For determining the classification under Chapter Heading No. 30, the department has consulted and relied upon the Section notes, the Chapter note, the explanations of HSN and the case laws of various judicial forums.

On the contrary, the appellants have pleaded that the goods in question were rightly classifiable under their respective Sub-headings as claimed by them, on the basis of nomenclature. The basic submission of the appellants was that the specific entry cannot be overridden by the residuary entry. In support of their contention they have relied upon various judicial pronouncements of Hon'ble Apex Court and Hon'ble Tribunal, wherein it has been settled that the specific entry will prevail over the general. The next submission of the appellant was that their sales were not the 'retail sales' as the goods were not sold for retail consumption to ultimate consumers; rather their buyers were the industrial and institutional buyers. They have also submitted that their packages were not the 'retail packages'. The appellants in their defence have relied upon the definition of terms 'retail sale' and 'retail package' as defined in "The Standards of Weight and Measures (Packaged Commodities) rules, 1977 (SWMPCR in short)issued under the Standards of Weight & Measures Act, 1976 (SWMA in short). They have also relied upon various other provisions of said Rules alongwith the provisions of Drugs & Cosmetic Act & Rules made thereunder and the case laws of various judicial forums including the landmark judgment of the Apex Court in the Case of Jayanti Foods (supra).

Now, I take up the issue of classification of the goods in question. On going through the facts of the case, I observe that prior to introduction of eight (08) digit tariff classification, the impugned goods were being classified under Chapter Sub-heading No. 3004 and it was being done because no specific entry so as to cover the goods was in existence. By virtue of an exemption notification the said goods were exempted from the Central Excise duty. After introduction of the new eight (08) digit based tariff classification in the Year 2005-06, a specific Chapter Sub-heading No. 56012110 was allotted to the "Absorbent Cotton Wool", therefore the appellants started classifying the said goods under the said tariff heading. However, the goods continued to remain exempt by virtue of conditions contained in Notification No. 30/2004.

After going through the discussions and finding portion of the impugned order, I have observed that the department instead of classifying the goods under the specific CSH as per their nomenclature and the material used therein has resorted to consider various Section notes, Chapter notes, HSN explanations and end use of the goods. The use of letter 'IP' standing for "Indian Pharmacopoeias" on the packing material and the fact that the appellants were having Drug Licence issued under Drugs & Cosmetic Act, has also been made a base for classification of goods under the aforesaid Chapter 30.

I have gone through the various provisions of the Central Excise Act, 1944; the Rules for interpretation;

relevant provisions of Drugs & Cosmetic Act, the Standards of Weight & Measures Act, 1976, the Standards of Weight & Measures (Packaged Commodities) Rules, 1977; the samples of the goods in question produced before me and the submissions made by the appellant in the grounds of appeal and at the time of personal hearing. Before proceeding to decide the appropriate classification, let us go through the correct method to be adopted for classification.

In my opinion the basics of the classification are that initially an attempt should be made to search a specific entry where the goods can be classified as per the nomenclature and the constituent material. In case no specific entry is available the next attempt should be to find the nearest entry where the goods can be classified. In case both the attempts turn to be futile then the attempt should be made to consider the end uses, the inclusion and exclusion clauses provided in the section notes, the chapter notes and the explanatory notes given the HSN. While doing so the interpretation of the said Note will depend upon the context in which the entries have been worded. If an entry is clearly worded and is broad in character, the same would lead to the conclusion. An entry is to be given its ordinary meaning. If any goods fit in within one entry, the same for any purpose would not be held to be included in the other and in particular the residuary. Now coming to the issue, I observe that the goods "Absorbent Cotton Wool" and "Cotton Carded" specifically find place in the Chapter Sub-heading 56012110 & 52030000 respectively. Nothing regarding its uses, its packing, its end use or its being of 'IP' grade has been specified therein so as to exclude it from classification under said heading.

For appreciation of facts and ready reference the relevant portion of the Tariff in respect of Chapter 30, 52 & 56 are being reproduced below:-

3005		**Wadding, Gauze, Bandages & similar articles (for example- dressings, adhesive, plasters, poultices), impregnated or coated with pharmaceutical substances or put up in forms or packings for retail sale for medical, surgical, dental or veterinary purposes**	**Unit**	**Rate of Duty**
3005 10		*-Adhesive dressings and other articles having an adhesive layer*		
	3005 10 10	---Adhesive Gauze	Kg	16%
	3005 10 20	---Adhesive Tape	Kg	16%
	3005	---Other	Kg	16%

	10 90			
3005 90		-Other:		
	3005 90 10	---Cotton Wool, Medicated	Kg	16%
	3005 90 20	---Poulitice of Kaolin	Kg	16%
	3005 90 30	---Lint, Medicated	Kg	16%
	3005 90 40	---Bandages	Kg	16%
	3005 90 50	---Burn therapy dressing soaked in protective gel	Kg	16%
	3005 90 60	---Micro pores surgical tapes	Kg	16%
	3005 90 70	---Corn removers and callous removers	Kg	16%
	3005 90 90	---Other	Kg	16%

5202		**Cotton waste (including yarn waste and garneted stock)**	Unit	Rate of Duty
	5202 10 00	-Yarn waste (including thread waste)	Kg	Nil
		-Other:		
	5202 91 00	--- Garneted Stock	Kg	Nil
	5202 99 00	---Other	Kg	Nil
	5203 00 00	**Cotton, Carded or combed**	Kg	Nil
5204		**Cotton sewing thread, whether**		

		or not put up for retail sale.		

Heading No.		Description of Article	Unit	Rate of Duty
(1)		(2)	(3)	(4)
5601		**Wadding of textile materials and articles thereof; textile fibres, not exceeding 5 mm in length (flock), textile dust and mill neps.**		
	5601 10 00	-Sanitary towels and tampons, napkins and napkin liners for babies and similar sanitary articles, of wadding	Kg	Nil
		-Wadding; other articles of wadding:		
5601 21		--of Cotton		
	5601 21 10	---Absorbent Cotton Wool	Kg	8%
	5601 21 90	---Other	Kg	8%
	5601 22 00	--Of man made fibres	Kg	16%
	5601 29 00	--Other	Kg	8%
	5601 30 00	-Textile flock and dust and mill-neps	Kg	8%
5602		**Felt, whether or not impregnated, coated, covered or laminated.**		

It is well settled what is not excluded would be held to be included. In this regard, I would like to quote the provisions of Rule 1 of the Rules for the Interpretation which clearly provides that ***"1.** The titles of Sections and chapters are provided for ease of reference only; for legal purposes, classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes and, provided such headings or Notes don not otherwise require, according to the provisions hereinafter contained."* In the aforesaid rule there is no ambiguity and it has clearly been held that the classification has to be determined according to the terms of headings and in case of any ambiguity the Rule 2, 3 Or 4 as the case may be, shall be applied. Furthermore, the Rule 5 of aforesaid Rules again clarifies the position. For the sake convenience the provisions of said rules are reproduced as follows:- ***"5.** For legal purposes, the classification of goods in the Sub-headings of a heading shall be determined according to the terms of those Sub-headings and any related Sub-heading notes and mutatis and mutandis, to the above rules, on the understanding that only Sub-headings at the same level are comparable. For the purposes of this rule, the relative Chapter and Section notes also apply, unless the context otherwise requires.* The said rule is self explanatory. The reference to Chapter notes and Section notes has been placed at last. In the present case the provisions of Rule 2, 3 or 4 are not attracted because the Chapter Sub-heading 56012110 & 52030000 specifically provide for the classification of goods in question without any exclusion.

I further observe that my above said findings also get support from the findings of Hon'ble Supreme Court in the case of MOORCO (INDIA) LTD. *Versus* COLLECTOR OF CUSTOMS, MADRAS 1994 (74) E.L.T. 5 (S.C.), which have also been relied upon by the appellants. A similar situation came for decision before the Hon'ble Judges in the said case, wherein it was held that the specific entry will prevail over the general entry. It would be in the interest of justice to discuss the case. The appellant party in the said case imported Flow Meters, which were specifically classified in Heading 90.24. The departmental view was to classify the same under the Heading 90.26, which was general in nature and applied to every production meter or calibrating meter for gas, liquid and electricity supply. In respect of findings given by the Adjudicating Authority, the Hon'ble Apex Court while explaining the provisions of Rule 2 & 3 of rules for the interpretation appended with the Customs Tariff and which are also similar to the Rule 2 & 3 of the Rules for interpretation of Central excise Tariff Act observed that, *"the goods produced by the appellant specifically fall in Heading No. 90.24. they may also fall in Heading No. 90.26 but that being more general entry preference should have been given to the entry 90.24 as the goods satisfy most specific description of being flow meter. The Tribunal or the Appellate Authority without adverting to it applied clause (c) would apply only if clauses (a) and (b) do not apply. Since the goods manufactured by the appellant satisfied the specific description of Tariff Heading 90.24 being a flow meter, the Tribunal committed an error of law in classifying it under Tariff Heading 90.26 as it was a letter item under the classification list."*

In the same order, in Para 4 the Hon'ble Bench while comparing various Chapter Headings has further noticed that *"Flow meters are specifically covered in Tariff Heading 90.24. Specific excludes general, is the well-known principle. Heading 90.29 permits levy on parts or accessories which are used solely in the manufacture of one or more of the articles falling within Heading 90.24. The Assistant Collector held that the accessories imported by the appellant were used solely for the meter manufactured by the appellant. Therefore, if the meter manufactured by the appellant can be said to satisfy the description of | Tariff Heading 90.24, then by virtue of Tariff Heading 90.29 the rate of duty on the* *components imported by the appellant could be levied as in Tariff Heading 90.24. On the finding recorded by the Assistant Collector the end-product manufactured by the appellant being specifically provided for by 90.24, the accessory imported by the appellant which was solely used for manufacture of it was liable to be classified on the same rate as the item in which it was used, namely, flow meter."* The findings above clearly lay that the specific will prevail over the general. I notice that the Adjudicating Authority has referred the said judgment in the order but the same has not been appreciated in right perspective. The following case law has further strengthened my views. The findings given by Hon'ble Supreme Court in above Case have further been relied by Hon'ble Tribunal while deciding the case of Commissioner of Central Excise *Versus* SPM India Ltd. 2007 (211) E.L.T. 573 (Tribunal) relating to classification in a similar situation. After relying the case law in the case of Moorco India (supra) it has been held that "*When there is a specific entry, there is no need to come to residual entry preferred by the Revenue."* Hon'ble High Court Allahabad in the case of Superintendent Central Excise *Versus* Vacmet Corporation Pvt. Ltd. has also affirmed my view and has held that *"When an article falls within specific entry such goods must necessarily be excluded from general entry."*

We find that the above findings recorded by ld. Commissioner (Appeals) are sustainable in law. Therefore, we allow the Appeals bearing Nos. E/1561/2008, E/1562/2008 & E/~~1562~~1563/2008 respectively filed by M/s Shanti Surgical Pvt. Ltd., Shri Shanket Kheria, Director & Shri Subhash Chandra Kheria, General Manager. Further, we dismiss the remaining appeals filed by Revenue bearing Appeal Nos. E/1911/2009, E/2841/2010 & E/1234/2012. M/s Shanti Surgical Pvt. Ltd., Shri Shanket Kheria, Director & Shri Subhash Chandra Kheria, General Manager will be entitled for consequential relief, if any, in accordance with law.

(Dictated and pronounced in Court)

-Sd/-
(ANIL CHOUDHARY)
Member (JUDICIAL)

-Sd/-
(ANIL G. SHAKKARWAR)
Member(TECHNICAL)

Ansari

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