

**CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE**

Regional Bench COURT-2

Customs Appeal No.22110 of 2015

[Arising out of the Order-in-Appeal No.TVM-EXCUS-000-APP-114-15-16 dated 07.07.2015 passed by the Commissioner of Central Excise, Customs & Service Tax (Appeals-III), Cochin-18.]

M/s. Access Medi Systems,

No.12, Muri Nagar,
32C Near Reliance Exchange,
Thottamala Post,
Kollam – 691 020.

.....Appellant

VERSUS

**The Commissioner of Central Excise
& Service Tax,**

Central Excise Bhavan, Press Club Road,
Trivandrum,
Kerala

.....Respondent

Appearance:

Mr. Hari Radhakrishnan, Advocate Appeared for Appellant

Mr. Maneesh Akhoury, Authorized Representative for Respondent

Coram:

Hon'ble Mr. P.A. Augustian, Member (Judicial)

Hon'ble Mr. Pullela Nageswara Rao, Member (Technical)

FINAL ORDER No. 21258 of 2024

Date of Hearing: 29.02.2024

Date of Decision: 28.08.2024

Per: Pullela Nageswara Rao

M/s. Access Medi Systems the appellant imported 'Glucometer Test Strips' vide 4 (four) Bills of entry Nos. 7556046/01.08.2012, 8111499/03.10.2012, 8522487/19.11.2012 and 9855149/07.01.2013

for the purpose of clearing the same for home consumption and claimed classification under Customs Tariff Item Entry 90189019 with benefit of exemption Notification Nos. 12/2012-Cus. (Sl. No. 486) dated 17.03.2012 and 12/2012-CE (Sl. No.314) dated 17.03.2012 and 21/2012-Cus. (Sl. No. 95) dated 17.03.2012

2. The brief facts are the goods were cleared as per the declaration of the importer. Thereafter on scrutiny of the bills of entry, the Department has issued a notice for classification of the item 'Glucometer Test Strips' under Customs Tariff Item Entry 38220019, without the benefit of Notification No. 21/2012-Cus.dated 17.03.2012 (SAD).

3. The Customs Tariff Chapter Heading (CTH) 3822 reads as "Diagnostic or laboratory reagents on a backing, prepared diagnostic or laboratory reagents whether or not on a backing, other than those of heading 3002 or 3006; Certified reference materials: and Customs Tariff sub-Heading (CTSH) 382200 reads "- Diagnostic or laboratory agents on a backing, prepared diagnostic or laboratory reagents whether or not on a backing other than those of heading 3002 or 3006; Certified reference materials: for medical diagnosis"; Customs Tariff Item Entry 38220019 reads as ----others, whereas Customs Tariff Heading (CTH) claimed by the appellant under Customs Tariff Item Entry 90189019 reads as; ----others, under Chapter sub-heading (CTSH) 901890, - Other instruments and appliance; ---Diagnostic instruments and apparatus.

4. The adjudicating authority confirmed the classification under Customs Tariff Item Entry 38220019 and a differential duty of Rs. 1,56,860/- was confirmed. On appeal, Commissioner (Appeals) has

upheld the order of the adjudicating authority. Aggrieved by the impugned order the appellant filed this appeal before the Tribunal.

5. The appellant in the appeal has contended that; the 'Glucometer Test Strip' by itself cannot indicate the blood glucose level and it is glucometer, which measures the glucose value; the diagnostic purpose is achieved by the test strip, accordingly it forms part of glucometer as per their understanding and placing reliance on Note 2(b) of Chapter 90 to the Customs Tariff Act, 1975, which says that 'other parts and accessories, if suitable or for use solely or principally with a particular kind of machine, apparatus or instrument', therefore they classified the 'glucometer test strip' under Customs Tariff Item Entry 90189019; the glucose test strip contains 7.6% 'glucose oxidise' an enzyme, therefore the classification of the strip as a reagent is flawed; enzymes are specifically covered under Customs Tariff Chapter Heading 3507; enzyme is not a reagent, reagents inactivate the enzyme; the strips cannot be classified as an enzyme because it contains besides the enzyme, electron shuffle 53.3% and non-reactive ingredients 39.1%; As per the literature of the product the biosensor-based Diabetic Check blood glucose test strips employs the 'enzyme glucose oxidise' that is specific for blood measurement from 20 to 600 ml mg per DL; the enzyme reacts with the glucose in the blood and produces an electronic signal, this signal is measured by the Diabetic Check Meter and test results are displayed in 6 seconds; irrespective of the fact that the strips contained reagent or not it is to be classified as part of glucometer only; without the strips the glucometer does not serve any purpose; the 'glucometer test strip' has no use in measurement of glucose level without the glucometer.

6. The appellant further submitted that the provocation for the department to classify the impugned item as reagent was to subject it to levy of SAD, whereas the goods falling under Customs Tariff Item Entry 90189019 do not have to bear the levy of SAD; even if SAD is paid they are eligible to get refund of the same in terms of Notification No. 102/2007-Cus dated 14.07.2007, therefore it is a revenue neutral situation; they relied on the Larger Bench decision in the case of Jay-Yuhshin Ltd., Vs. CCE -2000 (119) ELT 718 (Tri-LB) and the cases reported in-2010 (254) ELT 628 Gujarat, 2007(213) ELT 490(SC) and 2015(38) STR J2975 (SC); in view of the above submissions the classification of the 'glucometer test strips' should be under Customs Tariff Item Entry 90189019. The learned counsel during the hearing has reiterated the submissions in the appeal and also submitted the case laws in the case of Source of Life Technologies India Pvt., Ltd.,- 2021 (48) GSTL 393 (A.A.R-GST-Haryana), wherein the advanced Ruling authority under GST Haryana has classified the 'Glucometer Strips' and 'Glucometer' under chapter 9018 'as instruments and appliances used in medical, surgical dental or veterinary sciences, including scientific apparatus, other electromedical apparatus and sight testing instruments'.

7. The learned counsel during the hearing submitted that oil seals made of rubber are parts of power driven pumps, drain house with cap, standard bowl base plate for electrical pump, cardiovascular sutures, protective covers made of glass fibre and plastic for textile machinery, are held by the Tribunals that they are to be classified along with the instrument, appliance, equipment, etc.

8. The learned Authorised Representative (AR) for the Revenue during the hearing has contended; as regards the contention of the appellant that without strips the glucometer does not serve its purpose, he submitted that glucometer in itself is being sold in market and so are the strips and by no stretch of imagination strips can be called part of glucometer; all the case laws cited with regard to the classification of parts do not pertain to glucometer and its parts hence not relevant to the issue at hand; moreover the classification of glucometer under Customs Tariff Heading 9018, in itself is not correct and he has referred to the decision in the case of **Bayer Pharmaceuticals Pvt., Ltd.-2016 (331) ELT 317 (Tri-Mumbai)**, wherein 'glucometer' is held to be classified under Customs Tariff Chapter Heading 9027 and it has been upheld by the Hon'ble High Court of Bombay in the case of **Ascensia Diabetics Care India Pvt., Ltd., -(2023) 3 Centex 248 (Bom)**, wherein by virtue of the classification under Customs Tariff Chapter Heading 9027, the benefit of effective rate of duty under Chapter 9018 has been denied by the Hon'ble High Court; further the Foreign Trade Policy Notification No. 59/2015-2020 dated 04.04.2020 has classified the 'glucometer test strips' under Chapter heading 3822 and the same has been upheld by the Hon'ble High Court of Delhi in the case of **Green View logistics- [2023) 5 Centex 189 (Del.)]**; as regards the appellants claim of revenue neutrality in case they paid SAD @ 4%, they are eligible for refund in terms of Notification No. 102/2007 dated 14.07.2007 is not a true reflection of the facts and the said notification is a conditional notification and all the conditions have to be strictly fulfilled to get the refund of SAD.

9. Heard both sides and perused the records.

10. We find in this case the appellant has contended that the classification of 'Glucometer Test Strips' as classified by them is correct, since the item is used along with the Glucometer for testing of the blood glucose in the human blood. The appellant has contended that the 'Glucometer Test Strips' are a part/accessory of Glucometer falling under Customs Tariff Item Entry 90189019. We find that the impugned imported item is 'Glucometer Test Strip' for estimation of the blood glucose level. The Test strip is for one time use and cannot be used again. We find that the contention of the importer that it is a part of Glucometer is not correct, since part of any equipment or apparatus or appliance will be essentially and necessarily fitted with the equipment/apparatus and is not for one time use purpose and it has life coterminous with the life of such equipment/apparatus, and is replaced only when required due to wear and tear or malfunction or damage due to any reason. We find that the 'Glucose Test Strips' imported along with the 'Glucometer' are considered as an accessory of the Glucometer subject to the satisfaction of conditions of Accessories (Condition) Rules, 1963. In fact 'Glucose Test Strips' are being supplied along with the 'Glucometer', however when imported separately they are to be classified under Customs Tariff Item Entry 38220019.

10. In our opinion, the impugned item 'Glucometer Test Strip' is for one time use for testing the blood glucose level. The Glucometer Test Strip' has the glucose oxidize, an enzyme, which is on the test strip, the blood droplet extracted with the aid of a lancet device by pricking with the needle fitted to the lancet device is put on the test area of the strip and the test strip is inserted into the glucometer, as per the electro chemical reaction that takes place between the glucose present

in the human blood droplet sample and the glucose oxidize enzyme present on the test strip, the current generated by the reaction is detected by the Glucometer through the contacts, which are on the test strips and based on the level of the micro current generated during the reaction of the glucose oxidize enzyme resident on the test strip and the glucose present in the blood droplet sample, the test result is displayed by the Glucometer.

11. Further, Glucometers are based on the a) principle of detection of the micro current produced by the reaction of the glucose oxidise enzyme present on the test strip and the blood droplet sample of the human, b) colorimetric method, on each test strip there is a test area containing reagents, when blood is applied to the test area, the glucose dehydrogenase enzyme (Mut. G-GDH 2) reacts with the blood glucose. The subsequent chemical reaction changes the colour of the test area. The glucometer registers the colour change and converts it into a blood glucose value and is displayed on the glucometer. The impugned goods are 'Glucometer Test Strips' classifiable work on the principle of electro chemical reaction, which produces the micro current and same is detected and displayed by the Glucometer.

12. We find that learned Authorised Representative (AR) has contended that; the glucometer is classifiable under Customs Tariff heading 9027; he has relied on the decisions in the case of **Bayer Pharmaceuticals(supra)**, which was upheld by the Hon'ble High Court of Bombay in the case of M/s. Ascencia Diabetics Care India Pvt., Ltd.: further the Foreign Trade Policy Notification No. 59/2015-2020 dated 04.04.2020 has classified the 'glucometer test strips' under Chapter heading 3822 and the same has been upheld by the Hon'ble High Court

of Delhi in the case of Green View logistics- [2023] 5 Centex 189 (Del.)). Hence the 'glucometer test strips' are rightly classifiable under Customs Tariff Chapter Heading 3200.

13. In view of the above discussion we find that, the contention of the appellant that the 'Glucometer Test Strip' is part of the 'Glucometer' is not tenable and hence the classification as declared by them under Customs Tariff Item Entry 90189019 is incorrect and the correct classification would be under Customs Tariff Item Entry 38220019 as confirmed by the Revenue.

14. In view of the above discussion, the classification of the item under import under Customs Tariff Item Entry 38220019 as confirmed by the Revenue is upheld. Accordingly, the appeal filed by the appellant is rejected.

(Order Pronounced in Open court on 28.08.2024)

(P.A. Augustian)
Member (Judicial)

(Pullela Nageswara Rao)
Member (Technical)

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