

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

REGIONAL BENCH - COURT NO. 1

Central Excise Appeal No. 21562 of 2018

(Arising out of Order-in-Original No. MLR-EXCUS-000-COM-MS-04-18-19 dated 13.06.2018 passed by the Commissioner of Central Excise & Central Tax, Mangaluru.)

**M/s. Mangalore Refinery and
Petrochemicals Limited,**

Bala Village,
Kuthethoor,
P.O. Via Katipalla,
Mangaluru – 575 030.

Appellant(s)

VERSUS

**The Commissioner of Central
Excise and Central Tax,**

7th Floor, Trade Centre,
Bunts Hostel Road,
Mangalore – 575 003.

Respondent(s)

APPEARANCE:

Mr. Ravi Raghavan and Mr. Nischal K.M., Advocates for the Appellant
Mr. P.R.V. Ramanan, Special Counsel (AR) for the Respondent

**CORAM: HON'BLE DR. D.M. MISRA, MEMBER (JUDICIAL)
HON'BLE MR PULLELA NAGESWARA RAO,
MEMBER (TECHNICAL)**

Final Order No. 20031 /2026

DATE OF HEARING: 18.07.2025

DATE OF DECISION: 16.01.2026

PER : DR. D.M. MISRA

This is an appeal filed against the Order-in-Original No. MLR-EXCUS-000-COM-MS-04-18-19 dated 13.06.2018 passed by the Commissioner of Central Excise and Central Tax, Mangalore.

2. Briefly stated the facts of the case are that the appellant is engaged in the manufacture and clearance of petroleum products falling under Chapter 27 of the Central Excise Tariff Act, 1985 (CETA, 1985). On the basis of intelligence, DGCEI initiated investigation against the appellant since the appellant were clearing one of their products viz. Mixed Xylene by misclassifying the same under Chapter heading 2902 of CETA. It is alleged that constituents of Xylene contained in the Mixed Xylene manufactured by the appellant is less than 82.72%; hence it merits classification under Chapter heading 2707 instead of 2902 of CETA, 1985. Consequent to completion of the investigation, show-cause notice was issued on 02.05.2017 demanding differential duty of Rs.11,74,60,396/- for the period from April 2012 to September 2016 along with interest and penalty. On adjudication, the demand was confirmed with interest and penalty of equivalent amount. Hence, the present appeal.

3.1. At the outset, the learned advocate for the appellant has submitted that the manufactured product Mixed Xylene is classifiable under Entry 29024400 of CETA, 1944. He has submitted that a combination of Ortho-xylene, Meta-xylene and Para-xylene i.e. Mixed Xylene is classifiable under the said Tariff Entry 29024400 of CETA, 1985. Relying on the Chapter Note 1(a)/(b) to Chapter 29 of CETA, he has submitted that it includes separate chemically defined organic compounds and mixtures of two or more isomers, which originate from the same organic compound. There is no specification prescribed in the Chapter Note which makes reference to purity or weight of isomers in the mixture. Therefore, by virtue of Chapter Note and the Tariff Entry, the mixed Xylene is correctly classifiable under Tariff Entry 2902 44 00 of CETA, 1985. He has submitted that the combination of or percentage of isomers by weight has no significance to determine the classification.

3.2. Rebutting the finding of the adjudicating authority which placed reliance on the HSN Explanatory Notes at Para (C)(I)(c) to Chapter 2902, the learned advocate has submitted that such reference is uncalled for when there is no ambiguity in the Chapter Heading of CETA, 1985. It is his contention that HSN being external aids to construction, need not be mandatorily referred to in all cases. Alternatively, he has submitted that by applying HSN Explanatory Notes, the goods are classifiable under Heading 2902 of CETA, 1985. Further, referring to the definition of Xylene in the Explanatory Notes, he has contended that from the said definition, it is clear that Xylene, which contains 95% or more by weight of Xylene isomers, with all isomers being taken together, would be classifiable under Tariff Entry 29024400 of CETA, 1985 while Xylene of lower purity would be classifiable under Heading 2707 of CETA, 1985. He has submitted that Ethyl Benzene is also an isomer of Xylene; hence, the weight of the same to be considered for the purpose of calculating the percentage of weight of Xylene isomers. He has submitted that Ortho-xylene, Meta-xylene, Para-xylene and Ethyl Benzene are isomers of Xylene which together form at least 95% of the weight of the entire product. Thus, the requirement of the HSN Explanatory Notes for classification of Mixed Xylene satisfies the Tariff Entry 29024400 of CETA, 1985. In support, he has placed reliance on the decision of this Tribunal in the case of Berger Paints India Ltd. & Ors. Vs. CC (Port) & Ors. [Final Order Nos.75215-75219/2025 dated 30.01.2025]. Further, referring to the Circular No.83/9/74-CX dated 26.12.1974 and Notification No.159/74-CE dated 26.12.1974, he has submitted that the Notifications clearly state that Mixed Xylene consists of Ortho-xylene, Meta-xylene, Para-xylene and Ethyl Benzene; therefore the weight of Xylene isomers being Ortho-xylene, Meta-xylene, Para-xylene & Ethyl Benzene is crucial in identifying the purity of

Mixed Xylene. Further, he has submitted that the appellant had paid an amount of Rs.4,86,61,783/- along with interest much before issuance of show-cause notice; hence, applying Section 11A(2) of the Central Excise Act, 1944 (CEA, 1944), the show-cause notice itself should not have been issued for the period September 2014 to September 2016.

3.3. Learned advocate for the appellant has further submitted that the demand has been confirmed invoking extended period of limitation for the period April 2012 to March 2015. He has submitted that in the year 2007 itself, the appellant had intimated the Department on the issue of classification of Mixed Xylene adopted by them and had been filing ER-1 returns periodically wherein the details of Mixed Xylene cleared by them had been correctly declared including the classification adopted by them. Also, he has submitted that the Department has been conducting regular Central Excise audit and in all audit reports, it is duly recorded that Mixed Xylene is manufactured by the appellant classifying the same under Tariff Entry 29024400. Further, he has submitted that wrong classification of the product cannot termed as suppression of fact or misdeclaration when the constituents of the product has been disclosed to the Department. Hence, alleging suppression of fact and invocation of extended period of limitation cannot be sustained. In support, they have referred to the following judgments:-

- i. Kalyani Steels Ltd. Vs. CCE, Belgaum [2024(3) TMI 6 – CESTAT Bangalore.
- ii. Federal Mogul TPR India Ltd. Vs. CCE, Bangalore-II [2024(4) TMI 31 – CESTAT, Bangalore.
- iii. CCE, Bangalore Vs. Pragathi Concrete Products (P) Ltd. [2015(322) ELT 819 (SC)]
- iv. Densons Pultretaknik Vs. CCE [2003(155) ELT 211 (SC)]
- v. Hikoki Power Tools India Pvt. Ltd. Vs. CC, Bangalore [2024(3) TMI 137 – CESTAT, Bangalore]

3.4. Further, he has submitted that extended period of limitation cannot be invoked against the appellant being a Public

Sector Undertaking (PSU) as there exists presumption of being bona fide transaction on the part of the PSU. Consequently, imposition of penalty under Section 11AC is also unsustainable in law. In support, he has referred to the following judgments:-

- i. Commissioner Vs. Markfed Refined Oil & Allied Indus [2009(7) TMI 1204 – Punjab and Haryana High Court]
- ii. Indian Oil Corporation Vs. CCGST&CE, Bhubaneswar [2023(12) TMI 1063 – CESTAT Kolkata]

4. Learned Special Counsel for the Revenue reiterating the finding of the learned Commissioner has submitted that the Mixed Xylene manufactured and cleared by the appellant are correctly classifiable under Tariff Entry 27073000 and confirmation of demand of Rs.11,74,60,396/- for the period April 2012 to September 2016 with interest is sustainable. He has submitted that the learned Commissioner while deciding the classification has referred to the Explanatory Notes to the HSN and the decision of the Tribunal in the case of Oswal Petrochemicals Ltd. [2000 (126) ELT 1232] which has been affirmed by the Supreme Court reported as [2001 (127) A51 (SC)] and also the decision of the Tribunal in the case of Addisons Paints & Chemicals Ltd. [2006(196) ELT 231]. Further, he has submitted that the results of laboratory tests indicating that the Xylene content in the impugned product was less than 95% and an essential requirement for classification under Tariff heading 2902; hence, the learned Commissioner has rightly rejected the plea of *bona fide* belief and confirmed demand invoking extended period of limitation.

5. Heard both sides and perused the records.

6. The dispute in the present appeal relating to classification of the manufactured product viz. Mixed Xylene which the appellant claimed to be classifiable under Chapter sub-heading 29024400 attracting 12% *ad valorem*, whereas, the Revenue's

allegation is that the product in question is classifiable under Tariff 27073000 attracting 14% *ad valorem*; also, whether the demand can be confirmed invoking extended period of limitation for the period 2012 to 2016.

7. The competing Tariff entries read as under:-

Chapter sub heading 2707 30 00

Tariff Item	Description of goods	Unit	Rate of duty
(1)	(2)	(3)	(4)
2707	Oils and other products of the distillation of high temperature coal tar similar products in which the weight of the aromatic constituents exceeds that of the non-aromatic constituents		
2707 30 00	- Xylol (xylenes)	Kg.	12.5%

Chapter sub-heading 2902 44 00

Tariff Item	Description of goods	Unit	Rate of duty
(1)	(2)	(3)	(4)
2902	Cyclic hydrocarbons		
2902 44 00	-- Mixed xylene isomers	Kg.	12.5%

It is not in dispute that the internal test reports of Mixed Xylene reveal the constituents by weights as follows:

- a. Ethyle Benzene: 20%
- b. Benzene: 0.05%
- c. Toluene: 0.5%
- d. Aromatic Hydrocarbons: 1%
- e. Non-aromatics: 2.5%
- f. The balance proportion being isomers of Xylene in the form of Ortho-Xylene, Meta-Xylene and Para-Xylene.

8. The isomers of Xylene in the form of Ortho-xylene, Meta-xylene, Para-xylene is less than 95% by weight. The learned Commissioner held that to fall under Chapter sub-heading 29024400, Xylene must contain 95% or more of weight of Xylene isomers and all isomers are being taken together in calculating the weight.

9. The relevant HSN Explanatory notes to Heading 2902 reads as follows:-

(C) Aromatic Hydrocarbons

These compounds contain one or more fused or unfused benzene rings, benzene being a hydrocarbon composed of 6 atoms of carbon and 6 atoms of hydrogen, arranged in 6 groups of (CH) to form a hexagonal ring.

(I) Hydrocarbons with only one benzene ring. These include benzene and its homologues

(a).

(b).

(c) Xylene (dimethylbenzene) (C₆H₄(CH₃)₂). A benzene derivative in which two atoms of hydrogen have been replaced by two methyl groups. There are three isomers: *o*-xylene, *m*-xylene and *p*-xylene. Xylene is a clear, inflammable liquid found in light coal tar oil.

To fall in this heading, xylene must contain 95% or more by weight of xylene isomers, all isomers being taken together. Xylene of lower purity is excluded (heading 27.07).

10. It is the contention of the appellant that Ethylbenzene manufactured by them is also considered as one of the isomers of Xylene in addition to Ortho-Xylene, Meta-Xylene and Para-Xylene; hence be added in computing the total weight of Xylene mixture. The said issue has been addressed by the Division Bench of this Tribunal in the case of Addisons Paints & Chemicals Ltd. Vs. CCE, Ahmedabad [2006(196) ELT 231 (Tri. Chennai)], wherein it has been held as follows:-

5. We have carefully considered the submissions. The tariff entry canvassed by the assessee (2902.44) reads "Mixed xylene isomers", whereas the one canvassed by the Revenue (2707.30) reads "Xylol". Admittedly, the goods in question is a mixture of three Xylene isomers and Ethyl benzene, the xylene content being only 82.4%. The assessee has claimed that Ethyl benzene and Dimethyl benzene (xylene) are the same organic compound, which is unacceptable to Chemistry. Ethyl benzene and Dimethyl benzene are different organic compounds, the former being the ethyl derivative of benzene and the latter being dimethyl derivative of benzene. The two compounds are two different derivatives of benzene and hence two different organic compounds. Hence the subject goods, which is a mixture of dimethyl benzene and ethyl benzene, cannot be considered as a "mixture of

two or more isomers of the same organic compound". It does not attract Note 1 (b) to Chapter 29. On the other hand, the following HSN Note (relied on by Id. SDR) would clinch the classification issue under consideration :

"Xylene (dimethyl benzene) ($C_6H_4(CH_3)_2$). A benzene derivative in which two atoms of hydrogen have been replaced by two methyl groups. There are three isomers : o-xylene, m-xylene and p-xylene. Xylene is a clear, inflammable liquid found in light coal tar oil.

To fall in this heading, xylene must contain 95% or more by weight of xylene isomers, all isomers being taken together. Xylene of lower purity is excluded (heading 27.07)"

According to the above Note, to fall in Heading 29.02, xylene must contain 95% or more by weight of xylene isomers, all isomers being taken together and xylene of lower purity would fall in heading 27.07. In the instant case, the subject goods is a mixture containing less than 95% by weight of xylene isomers and hence would be appropriately classifiable under Heading 27.07 (SH 2707.30-Xylole).

11. While recording the reason in the aforesaid judgment, this Tribunal has categorically held that Ethylbenzene and Dimethyl benzene are different organic compounds; hence, Ethylbenzene cannot be considered as an isomer of Xylene for the purpose of its classification under Tariff entry 29.02. The learned advocate for the appellant has submitted that the Tribunal in the case of Berger Paints India Ltd. Vs. CC(Port) (supra) held that Mixed Xylene is classifiable under CTH 29024400. On going through the said judgment, we find that the Tribunal had nowhere recorded that Ethylbenzene and Dimethyl benzene are the same organic compound and Ethylbenzene is an isomer of Dimethyl benzene. The Tribunal decided the issue on the basis of an invoice issued by M/s. Reliance Industries and accepting the claim of the appellant that molecular weight of the item in question before them is same; hence be treated as isomer of Xylene. Hence, the said judgment cannot be made applicable to the facts of the present case.

12. Reading the HSN Note of Chapter 29.02, we find that under the category "Aromatic Hydrocarbons" while explaining the meaning and scope of 'Xylene' at clause (I)(c), it is clearly mentioned that Ortho Xylene, Meta Xylene and Para Xylene are the isomers of Xylene and under clause (d), Ethylbenzene has been mentioned as a colourless inflammable, mobile liquid, contained in coal tar, normally manufactured from benzene and ethylene. Therefore, we are of the opinion that the view expressed by this Tribunal in Addisons Paints & chemicals Ltd.'s case is in consonance with the HSN notes and accordingly Ethylbenzene cannot be considered as an isomer of Xylene and accordingly its weight cannot be added to other constituents to arrive at the total weight of Xylene which ought to be 95% or more to classify the same under Chapter 2902 of CETA, 1985.

13. In a recent judgment in the case of Thermax Limited vs. Commissioner of Central Excise, Pune-1 [2022 (382) E.L.T. 442 (S.C.)], the Hon'ble Supreme Court emphasizing the role of HSN in understanding and resolving the classification dispute under Central Excise Tariff Act observed as:

"6. The definition of a product given in the HSN should be given due weightage in the classification of a product for the purpose of levying excise duty. This is because in the Statement of Objects and Reasons of the Bill leading to enactment of *Central Excise Tariff Act, 1985*, it was clearly stated that the pattern of tariff classification is broadly based on the system of classification derived from the *International Convention on the Harmonised Commodity Description and Coding System* (Harmonised System) with such contraction or modification thereto as are necessary, to fall within the scope of the levy of Central Excise duty. The tariff so suggested for the levy under the Indian Tariff Act is based on an internationally accepted nomenclature, in the formulation of which, all considerations, technical and legal, have been taken into account. This was done to reduce avoidable disputes on tariff classification. Besides, the tariff would be on the lines of the harmonized system. It was also borne in mind that the tariff on the lines of the harmonized system would bring about considerable alignment, between the customs and central excise tariffs, which in turn, would facilitate charging of additional customs duty on imports, equivalent of excise duty. It was therefore expressly stated in the Statement of Objects and Reasons that the central excise tariff are based on the HSN and the internationally accepted nomenclature was as such taken Page 13 of 28 into account, to reduce

tariff classification disputes. Thus, it was suggested that a safe guide for classification is the internationally accepted nomenclature emerging from the HSN and in case of doubt, the HSN should be chosen advisory for ascertaining the true meaning of any expression used in the Tariff Act....."

Therefore, in our opinion, the correct classification of the product would be under Tariff entry 2707 30 00 as held in the impugned order.

14. Coming to the issue of limitation, we find that the appellant vide letter dated 08.02.2007 intimated the Department about the manufacture of Mixed Xylene and all along they have been filing ER1 returns declaring the manufacture and clearance of Mixed Xylene classifying the same under Tariff entry 2902 44 00. Also, their records have been audited periodically by the Department which reveals that the manufacture and clearance of Mixed Xylene, its constituents available in the internal test reports have been within the knowledge of the Department and at no point of time, any chemical tests have been directed by the Department and its classification has been disputed. Since the appellant chose to classify the product 'Xylene' under Chapter sub-heading 29024400 instead of 2707 30 00 of the Central Excise Tariff Act, 1985, it cannot be construed that they had suppressed the correct classification and thereby intended to evade payment of duty; on the other hand, the plea of *bona fide* belief about the classification claimed by the appellant cannot be ruled out. In these circumstances, invocation of extended period of limitation cannot be sustained. However, the demand is sustainable for the normal period of limitation. Since we have opined that the issue relates to determination of correct classification on the basis of facts available on record, which is purely a question of law, imposition of penalty is unwarranted. In the result, the impugned order is modified to the extent of setting aside the penalty and confirmation of demand for the

extended period of limitation. Confirmation of demand for the normal period with interest is upheld.

15. Accordingly, appeal is partly allowed to the extent mentioned as above.

(Order pronounced in Open Court on 16.01.2026)

(D.M. MISRA)
MEMBER (JUDICIAL)

(PULLELA NAGESWARA RAO)
MEMBER (TECHNICAL)

Raja...