

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

REGIONAL BENCH

EXCISE APPEAL NO. 00031 OF 2010

(Arising out of Order-in-Appeal No. 94/2009 dated 9.10.2009 passed by the Commissioner of Central Excise (Appeals-II), Bangalore)

M/s Confident Dental Equipments Limited ...Appellant

Kamakshipalya,
Mangadi Main Road,
Bangalore-560 079.

VERSUS

The Commissioner of Central Excise Respondent
Bangalore III Commissionerate,
Bangalore

APPEARANCE:

Shri M.S. Nagaraj, Advocate for the Appellant

Ms. Sangeeta, Authorised Representative for the Respondent

CORAM:

HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT

HON'BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)

DATE OF HEARING: 27.07.2021

DATE OF DECISION: 04.10.2021

Final Order No. 20773/2021

P.V. SUBBA RAO

This appeal has been filed by M/s Confident Dental Equipment Limited, Bangalore¹ assailing the order in appeal dated 9.10.2009² passed by the Commissioner of Central Excise (Appeals), Bangalore-II whereby the order in original dated 26.5.2008 passed

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1. appellant
 2. impugned order

by the Additional Commissioner of Central Excise was upheld and the appellant's appeal was rejected. The factual matrix which led to the issue of the impugned order is as follows.

2. The appellant is a manufacturer of medical and dental equipment and furniture and is registered with Central Excise department. Its records were audited by the departmental audit party who noticed that the following products were classified by the appellant as medical appliances:

- (i) Autoclave;
- (ii) Glass Bead Sterilizer;
- (iii) Steam Clave and
- (iv) Hot Air Sterilizer.

The appellant classified these products as medical equipment under Central Excise Tariff Heading 9018.00 (up to February, 2005) and 98184900 (from March, 2005 onwards) and discharged duty @ 4% for the period August 2002 to February 2003 and 8% for the period March 2003 to March 2007 by availing benefit of Notification No.10/2002-CE dated 1.3.2002 (Sl. No. 43) and Notification No. 10/2003-CE dated 1.3.2003 (Sl. No. 43) respectively. Audit officers felt that the above goods do not qualify as medical equipment and should be classifiable under Central Excise Tariff Heading 8419.10 (up to February, 2005) and 8419.2010 (from March, 2005). Accordingly, a show cause notice was issued to the appellant proposing to re-classify the above four goods and assess them to duty @ 16% ad valorem as applicable. It was also alleged in the show cause notice that the assessee had suppressed the fact

of manufacture and clearance of these products from the Department with an intention to evade payment of Central Excise duty. Accordingly, the differential duty was demanded invoking the extended period of limitation for the period August 2002 to March 2007 by the show cause notice dated 30 August, 2007 and invoking the extended period of limitation under the proviso to Section 11A.

3. Interest was also demanded at the appropriate rate under Section 11AB. It was also proposed to impose a penalty on them under Section 11AC read with Rule 25 of the Central Excise Rules, 2002.

4. The appellant contested the demand both on merits and on limitation. The Additional Commissioner confirmed the demands as proposed in the show cause notice along with interest and imposed a penalty under Section 11AC equivalent to the amount of duty.

5. Aggrieved, the appellant appealed to the Commissioner (Appeals) who in the impugned order, upheld the order of the Additional Commissioner and rejected the appeal. Hence, this appeal.

6. Learned Counsel for the appellant submits that the following three questions need to be addressed in this case:

- (i) Whether the Autoclaves manufactured by the appellant are classifiable under Central Excise Tariff Heading 841910 (up to February 2005) and 84192010 (from March 2005) as held in the impugned order or under 901800 (up to February, 2005) and 90184900 (from March, 2005) as claimed by the appellant;

- (ii) whether the Glass Bead Sterilizer, Steam Clave and Hot Air Sterilizer manufactured by the appellant are classifiable under 841910 (up to February, 2005) and 84192010 (from March, 2005); or under 9018 as claimed by the appellant;
- (iii) whether extended period of limitation is invocable under the proviso to Section 11A for raising the demand and penalty is also imposable under Section 11AC.

7. After hearing both sides, we find that the dispute is regarding classification of the Autoclave, Glass bead Sterilizer, Steam Clave and Hot Air Sterilizer manufactured by the appellant. Undisputedly, the appellant is a manufacturer of dental equipment and supplies its products to dentists. These four equipments manufactured and cleared by the appellant are used for sterilizing and Autoclaving the dental equipment. It is the case of the appellant that these should be considered as instruments and appliances used in medical, surgical, dental or veterinary sciences and classified accordingly. It is the case of the Revenue that these being equipments meant for sterilization are correctly classifiable under 8419. The relevant entries in the Central Excise Tariff Heading are as follows:

8419	Machinery, plant or laboratory equipment whether or not electrically heated (excluding furnaces, ovens and other equipment of heading 8514), for the treatment of materials by a process involving a change of temperature such as heating, cooking of temperature such as heating, cooking, roasting, distilling, rectifying, sterilising, pasteurising, steaming, drying, evaporating, vaporising, condensing, or cooling, other than machinery or plant of a kind used for domestic purposes; instantaneous or storage water heaters, non-electric.
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9018 Instruments and appliances used in medical, surgical, dental or veterinary sciences, including scientigraphic apparatus, other electro medical apparatus and sight testing instruments."

8. According to the appellant 8419 covers machinery, plant or laboratory equipments and not medical equipment. Goods should be classified according to the common parlance understanding and the equipment which it had manufactured was used in dental establishments and, therefore must be classified under CETH 9018. Secondly, as per Section note 1(m) of Section XVI of Central Excise Tariff, articles under Chapter 90 are excluded from the Section XVI, under which Chapter 84 and Chapter 85 fall. For this reason also, the Autoclave equipment and sterilization equipment manufactured by them for use in dental establishments should be covered under 9018. The third argument is that the specific description of the goods manufactured should prevail over the general description. The disputed goods being specifically meant for dental establishments would not fall under CETH 8419. Therefore, they should be classified under 9018. The Appellant relies on the following judgment:

(i) Metagraphs Pvt. Ltd. Vs. CCE³

(ii) CCE Vs. Wockhardt Life Sciences Ltd⁴

(iii) O K Play (India) Ltd. Vs. CCE, Delhi III, Gurgaon⁵

9. The fourth line of argument of the appellant is that the General Rules of Interpretation for the Central Excise Tariff Rule 3(c) states that goods which cannot be classified with reference to Rule 3(a) or 3(b), should be classified under that heading which

3. 1996 (88) ELT 630 (SC)
 4. 2012 (277) ELT 299 (SC)
 5. 2005 (180) ELT 300 (SC)

occurs last in the numerical order among those which equally merit consideration. Therefore, 9018 being a later entry should prevail.

10. Per contra, learned Departmental Representative submits that the classification of the goods must be done according to their nature. He would submit that Central Excise Tariff is framed based on internationally accepted Harmonised System of Nomenclature (HSN). The Supreme Court has held in the case of **Collector of Central Excise Vs. Bakelite Hylam Ltd.**⁶ that “for resolving any dispute relating to tariff classification, the internationally accepted nomenclature emerging from the HSN is a safe guide, this being the expressly acknowledged basis of the structure of the Central Excise Tariff in the 1985 Act and the tariff classification made therein. In case of any doubt, the HSN is a safe guide for ascertaining the true meaning of any expression used in the Act”. Similarly, in **Collector of Central Excise, Shillong Vs. Wood Craft Product Ltd.**⁷, it has been held in para 18 as follows:

“18. We are of the view that the Tribunal as well as the High Court fell into the error of overlooking the fact that the structure of the Central Excise Tariff is based on the internationally accepted nomenclature found in the HSN and, therefore, any dispute relating to tariff classification must, as far as possible, be resolved with reference to the nomenclature indicated by the HSN unless there be an express different intention indicated by the Central Excise Tariff Act, 1985 itself. The definition of a term in the ISI Glossary, which has a different purpose, cannot, in case of a conflict, override the clear indication of the meaning of an identical expression in the same context in the HSN. In the HSN, block board is included within the meaning of the expression “similar laminated wood” in the same context of classification of block board. Since the Central Excise Tariff Act, 1985 is enacted on the basis and pattern of the HSN, the same expression used in the Act must, as far as practicable, be construed to have the meaning which is expressly given to it in the HSN when there is no indication in the Indian Tariff of a different intention.”

6. 1997 (91) ELT 13 (SC)

7. 1995 (77) ELT 23 (SC)

11. Learned Departmental Representative has referred to the Harmonised System of Nomenclature in which heading 84.19 is shown to specifically cover sterilizer used for medical, surgical or laboratory sterilizing. The relevant entries are as under:

8419	Machinery, plant or laboratory equipment whether or not electrically heated (excluding furnaces, ovens and other equipment of heading 8514), for the treatment of materials by a process involving a change of temperature such as heating, cooking of temperature such as heating, cooking, roasting, distilling, rectifying, sterilising, pasteurising, steaming, drying, evaporating, vaporising, condensing, or cooling, other than machinery or plant of a kind used for domestic purposes; Instantaneous or storage water heaters, non-electric.
8419.11	Instantaneous gas water heaters
8419.19	Other
8419.20	Medical, surgical or laboratory sterilisers

12. The scope of test sterilizing equipment has been explained in the HSN as follows:

"These consist essentially of receptacles or chambers, heated usually by steam or boiling water (or sometimes by hot air), in which the articles or materials to be sterilised are maintained for a period at a sufficiently high temperature to kill bacteria, etc. without alteration of the composition or physical condition of the articles or materials themselves.

Many sterilisers for liquids resemble the apparatus described in Part (I) above (e.g. pasteurisers). Some large types of sterilisers may be equipped with a conveyor on which the goods are carried through the heating medium and, if necessary, subsequently through a cooling apparatus which may also form part of the plant.

The group includes not only sterilisers for industrial use (e.g. for milk, wine, fruit juices, cotton wool) but also those for installation in operating theatres etc."

13. Learned Authorized Representative, therefore, submitted that there cannot be any doubt that the Chapter Heading 8419 covers not only Autoclaves which are sterilizing equipment for general purposes but also includes such Autoclaves which are sterilizing equipment meant for medical or dental purposes. Therefore, the

Central Excise Tariff Heading 8419 is indeed the specific heading for sterilizers and prevails over the general heading of 9018 which deals with medical and dental equipment. On the appellant's assertion that Articles falling under Chapter 90 automatically get excluded from Section XVI (which includes Chapter 84) as per Section note 1(m), learned Departmental Representative asserts that since the goods in question do not fall under Chapter 90 but fall under Chapter 84, this section note does not come to the aid of the appellant. On the third argument of the appellant that the later entry should prevail, learned Departmental Representative submits that the question of later entry will come only if there are two equally applicable entries. 8419 is the entry which specifically covers sterilizers including medical, surgical sterilizer and Autoclaves such as ones manufactured by the appellant. On the other hand, Heading 9018 deals with instruments and appliances used in medical, surgical, dental or veterinary sciences, including scientigraphic apparatus, and other electro medical apparatus and sight testing instrument. The Autoclaves in question are not medical equipment but are sterilizing equipment which are being used by and designed for dentists. Merely because they are being used by dentists they do not become medical equipment. Even if there is any ambiguity, notes of Harmonised System of Nomenclature clarifies that the Autoclaves fall under 8419.

14. After considering the arguments on both sides, we find that the Autoclave, Glass Bead Sterilizer, Steam Clave and Hot Air Sterilizer are not medical equipment but are used for sterilizing medical/dental equipment. The question which arises is whether

such goods should be classified under medical equipment or sterilizers under 8419. The Central Excise Tariff is framed on the lines of the Harmonized System of Nomenclature (HSN). It classifies all goods into Sections, chapters within in each section and headings within each Chapter and sub-headings within the headings. The HSN as well as the Tariff start with very simple goods such as animals and plants to things of increasing complexity. Animals are classified, for instance, in the first section, plants are classified in the second section, and so on. As the complexity increases, there could be a doubt as to which of the two or more entries a good must be classified. An automobile, for instance, is also an article of iron and steel and how should it be classified as an automobile or as an article of iron and steel. To help resolve such issues and facilitate classification, Rules of Interpretation have been incorporated in the Central Excise Tariff which read as follows:

Rules of Interpretation

Classification of goods in this Schedule shall be governed by the following principles:

1. The titles of Sections, Chapters and Sub-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 do not otherwise require, according to the following provisions.
2. (a) Any reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, as presented, the incomplete or unfinished article has the essential character of the complete or finished article. It shall also be taken to include a reference to that article complete or finished (or falling to be classified as complete or finished by virtue of this rule), presented unassembled or disassembled.

(b) Any reference in a heading to a material or substance shall be taken to include a reference to mixtures or combinations of that material or substance with other materials or substances. Any reference to goods of a given material or substance shall be taken to include a reference to goods consisting wholly or partly of such material or substance. The classification of goods consisting of more than one material or substance shall be according to the principles of rule 3.

3. When by application of rule 2(b) or for any other reason, goods are, *prima facie*, classifiable under two or more headings, classification shall be effected as follows

(a) the heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods.

(b) mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to (a), shall be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable.

c) when goods cannot be classified by reference to (a) or (b), they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration.

4. Goods which cannot be classified in accordance with the above rules shall be classified under the heading appropriate to the goods to which they are most akin.

5. In addition to the foregoing provisions, the following rules shall apply in respect of the goods referred to therein:

(a) camera cases, musical instrument cases, gun cases, drawing instrument cases, necklace cases and similar containers, specially shaped or fitted to contain a specific article or set of articles, suitable for long-term use and presented with the articles for which they are intended, shall be classified with such articles when of a kind normally sold therewith. This rule does not, however, apply to containers which give the whole its essential character;

(b) subject to the provisions of (a) above, packing materials and packing containers presented with the goods therein shall be classified with the goods if they are of a kind normally used for packing such goods. However, this provision does not apply when such packing materials or packing containers are clearly suitable for repetitive use.

6. 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 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 Section and Chapter Notes also apply, unless the context otherwise requires.

15. The first of the Rules states that the Section and Chapter titles are only for ease of reference and classification must be done according to the tariff Headings, Section Notes and Chapter Notes. The Section note relied upon by the appellant is note 1(m) to Section XVI (which includes Chapters 84 and 85) which states that

articles of Chapter 90 are excluded from this section. It is the submission of the appellant that since the disputed goods fall under Chapter 90, they get excluded from Section XVI (and therefore, Chapter 84).

16. We are unable to agree with this submission. The entire dispute is whether the goods in dispute fall under Chapter 90 at all. If it is accepted that they fall under Chapter 90, nothing remains to be decided. Since the question as to whether the goods fall under Chapter 90 at all is in dispute, Section note 1(m) to Section XVI does not come to the aid of the appellant.

17. Rule 2 deals with incomplete and unfinished articles and articles mixed with other articles and is not relevant to this case. Rule 3(a) states that a specific description prevails over the general description. According to the appellant, this Rule is in its favour because 'Dental equipment' is a more specific description over 'autoclaves and sterilizing equipment'. According to the Revenue, 'Sterilizing equipment' is a more specific description of the nature of the goods and not 'Dental equipment'. We find that this Rule does not resolve the issue in favour of either side. Rule 3(b) deals with composite articles and hence is irrelevant to this case. Rule 3(c) states that if there are two or more equally valid classification, the last of such headings shall prevail. Rules 4 and 5 are not relevant to this case. We find that none of the Rules of Interpretation satisfactorily resolve the dispute at hand.

18. While the Central Excise Tariff has only Rules of Interpretation, the Harmonized System of Nomenclature based on

which the Tariff is drafted, also has detailed explanatory notes explaining the scope of each heading. It has been held in **Bakelite Hylam** that notes of HSN can be relied upon to decide the classification.

19. The argument of the appellant is that since their sterilizing equipment is used by dentists, the same should be classified under Chapter 90. The argument of the Revenue is that sterilizing equipment, though used by a dentist is not medical equipment and it should fall under 8419 as sterilizing equipment. The Harmonised System of Nomenclature explains that 8419 includes not only autoclaves for industrial purposes but also those used for installation and operation theatres, etc. We, therefore, find that the four goods manufactured by the appellant are classifiable under 8419 as asserted by the Revenue and are chargeable to appropriate duty. Therefore, on merits, the contention of the Revenue should be accepted.

20. The next question which is for consideration is invocation of extended period of limitation. As per Section 11A demand could be raised only within six months. The proviso to Section 11A permitted raising of demand within the extended period of limitation of five years if there is an element of (a) fraud (b) collusion (c) wilful mis-statement (d) suppression of facts or (e) contravention of any provisions of the Act or the Rules made thereunder with intent to evade payment of duty. If none of these elements are established in any case, the demand can only be raised within the normal period of limitation.

21. The allegation in the show cause notice, on the basis of which the extended period of limitation was invoked, reads as follows:

"11. Further, it appears that the assessee had never declared the fact of manufacture and clearance of the above said products in their periodical returns filed with the department or any other correspondences made with the department, and the said fact came to light only during the audit of the records of the assessee by the departmental audit party. But for the visit of the audit party the above facts would have remained unknown to the department. Accordingly, it appears that the assessee had suppressed the facts of manufacture and clearance of the above said products from the department with an intention to evade payment of appropriate Central Excise duty and hence the extended period in terms of Section 11A of the Central Excise Act, 1944 is invocable in this case."

21. Learned Counsel for the appellant submits that these goods were being manufactured by them for a long time and under Rule 173B of the erstwhile Central Excise Rules, 1944 a declaration had to be made and the form of classification list of goods manufactured by them. The appellant had filed such a declaration on 02.04.2001 which was duly acknowledged by the department on 03.04.2001. Therefore, the allegation that the appellant had not declared the manufacture of these products to the Revenue is factually incorrect. Learned Counsel has also placed a few copies of the invoices showing that the goods were manufactured and were sold describing them correctly in the invoices. He further asserts that there is no special requirement to again declare the manufacture of each product of the Department. As far as the excise returns (ER-1) filed by it is concerned, he submits that they have been filed as per the format given which does not include declaration of individual products in every return. It is open for the assessing officer to call for any further details if felt necessary.

22. We find strong force in the arguments of the learned Counsel for the appellant. The assertion in the show cause notice that the appellant has not declared the manufacture of these products is not true as can be seen from the declaration made by the appellant under Rule 173B and its acknowledgement by the department. We also find force in the contention of the appellant that if the excise returns required certain details to be given, it has no obligation to give more details than what is mandated. It is the responsibility of the Central Excise officer to scrutinize whether the return is in order and if considered necessary, he can seek more details. The appellant cannot be held responsible if the officer has chosen not to seek more details. Therefore, we find that allegation of suppression of facts by the appellant in the show cause notice is completely unfounded. The other elements such as fraud, collusion and wilful mis-statement have not even been alleged in the show cause notice. Therefore, the demand cannot be raised by invoking the extended period of limitation. As far as the normal period of limitation is concerned, the appellant submits that although they have been contesting that classification on merits they have already paid the differential duty for the normal period of limitation from September 2006 to March 2007 along with interest.

23. As far as the imposition of penalty is concerned, we find that Section 11AC provides for imposition of penalty for non-levy or short levy or non-payment or short payment or erroneous refund by reason of fraud, collusion, wilful, mis-statement or suppression of facts or contravention of any provisions of the Act or Rules made thereunder with intent to evade payment of duty. In other words,

the elements required for imposing penalty under Section 11AC is the same as those required for invoking the extended period of limitation under proviso to section 11A which we have already found to be non-existent in this case. In view of the above, the penalty under Section 11AC needs to be set aside and we do so.

24. In view of the above, the appeal is partly allowed and the impugned order is modified to the extent it upholds the demand and interest as applicable within the normal period of limitation but set aside the demand for the extended period of limitation. The penalty imposed under section 11AC read with Rule 24 is also set aside.

25. The appeal is allowed to the extent indicated above with consequential relief, if any, to the appellant.

(Pronounced in open Court on **04.10.2021**)

(JUSTICE DILIP GUPTA)
PRESIDENT

(P.V. SUBBA RAO)
MEMBER (TECHNICAL)

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