CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH
CHENNAI

Appeal No.E/493/2012

[Arising out of Order-in-Original No.03/2012 (Commissioner) dt. 31.08.2012 passed by Commissioner of Customs & Central Excise, Salem]

Needle Industries (India) Private Ltd. Appellant

Versus

Commissioner of Central Excise,
Salem Respondent

Appearance :

Shri R. Janardhanan Pillai, consultant
For the Appellant

Shri C. Arul Durairaj, Superintendent (AR)
For the Respondent

CORAM :

Hon'ble Ms. Sulekha Beevi, C.S., Member (Judicial)
Hon'ble Shri Madhu Mohan Damodhar, Member (Technical)

Date of hearing / decision : 02.08.2018

FINAL ORDER No. 42190 / 2018

Per Bench

The facts of the case are that appellants are manufacturers of needles for sutures. On verification, it emerged that appellants manufactured and cleared two types of needles for sutures i.e. one having horizontal punch and the another having vertical punch. Appellants had cleared the former type on payment of duty as "Needles for Suture" falling under Central Excise Tariff Heading (CETH)

90183210. However, needles having vertical punch were cleared on payment of duty as "parts of needle for suture" under CETH 90189019 by claiming exemption under Sl.No.59 of Notification No.6/2006-CE dt. 1.3.2006. Department took the view that there cannot be two classifications for minor variations in the products and that they were not eligible for exemption under Notification No.6/2006-CE. Hence show cause notice dt. 25.4.2011 was issued to appellants inter alia proposing classification of disputed goods under CETH 90183210, to levy duty as per Notification No.10/2006-CE, demand of duty liability of Rs.1,22,49,114/- with interest thereon and imposition of penalty under Section 11AC of the Act read with Rule 25 of the Central Excise Rules, 2002. Another SCN dt. 22.11.2011 was also issued to appellants for subsequent period with proposed demand of Rs.25,21,855/- with interest and other proposals identical to what was made in the earlier SCN dt. 25.4.2011. In adjudication, the commissioner vide an impugned order dt. 31.08.2012 confirmed the proposals in the SCNs, classified the impugned item under CETH 90183210, confirmed demand of Rs.1,47,70,969/- with interest thereon and also imposed penalties under Section 11AC of the Act. Aggrieved the appellants are before this forum.

2. On the date of hearing, on behalf of the appellant, ld. Consultant Shri R.Janardhanan Pillai made the following arguments which can be summarized as under :

i) The Supreme Court in the judgment of *Johnson & Johnson Ltd. Vs CCE Aurangabad* – 1997 (92) ELT 23 (SC) have clearly held that Atraumatic Needled Sutures are classifiable more appropriately under "surgical appliances" under Heading 90.18 and not as "suturing appliances" of Heading 3005.90. Hence there cannot be any more dispute about the fact that the impugned items manufactured by the appellants will fall only in CETH 9018.

ii) Sl.No.59 of Notification No.6/2006-CE extends Nil rate of duty to parts and accessory of goods and Headings of 9018 and 9019. There are no conditions to be specified for availing the exemption.

iii) What is cleared by the appellant is only one component part i.e Atraumatic Needles (eyeless) which is component part of 'Atraumatic Needled Suture'. Only after attachment of suturing material by sophisticated equipment, the complete "Atraumatic Needled Suture" comes into being. The appellant cleared only the said component part to manufacture of the complete product.

iv) Sl.No.59 of Notification No.6/2006-CE only indicates 4 digit CET Heading and not specific 8 digit tariff heading thereon. It is not disputed that the impugned item manufactured by appellant would definitely fall within CETH 9018. In the circumstances, they are fully entitled to avail benefit of Notification No.6/2006.

v) The disputed demand for the period April 2006 to October 2010 is hit by time-bar since SCN was issued only on 25.4.2011. The SCN has alleged that appellant had not provided details of clearances, quantity, value etc. However in para-6 of the SCN itself it is admitted that appellants had cleared 8092686 dozens of Autramatic Suture Needle as per the ER-1 returns for the period from 04/06 to10/2010. When ER-1 returns have indicated impugned clearances no suppression can be alleged by the department.

3. On the other hand, Ld. A.R Shri C.Arul Durairaj supports the impugned order. He submits that when the appellants were paying Central Excise duty on finished goods manufactured and cleared as "Suture Needles", they cannot claim

a different treatment for finished goods manufactured and cleared as "Atraumatic Needles". Both the needles are used for suturing human tissue and known and classified as 'needles for suture'. Hence the adjudicating authority is very much correct in classifying the disputed goods also as "suture needles" only under CETH 90183210. Ld.AR submitted that, for the same reason, the impugned goods are nothing but needles for suture and cannot be called 'parts and accessories of needles'. In the circumstances, impugned goods cannot get benefit of exemption claimed by the appellant.

4. Heard both sides and have gone through the facts of the case.

5.1 At the outset, it is important to note that the classification of "Atraumatic Needled Sutures" have been held to be classifiable under CETH 9018 by the Hon'ble Apex Court in the case of *Johnson & Johnson Ltd*. (supra) relied upon by the Ld.Consultant.

5.2. This being so, what is required to be adjudged is whether disputed goods are complete Atraumatic Needled Sutures or whether they are only parts and accessories thereof. Notwithstanding the stand of the department that items are required to be classified under CETH 90183210 as needles for suture, the fact is that they cannot be used as such for suturing purposes.

5.3 Even in para 5.11 of the impugned order, this aspect has been considered by the adjudicating authority wherein it is noted that type 2 needle suture thread is fused with the needle by the manufacturer and the due is sterilized and packed.

5.4 The appellants have been crying hoarse right from the stage of issue of SCN that only after fusing the suture thread would the needles cleared by them become an ‘Atraumatic Needled Suture’ and that items cleared by them cannot be used as such and is complete only after attachment of the suture by another manufacturer.

5.5 In the event, while the cleared “needles having vertical punch”, may well be final goods for the appellants, it can only be considered as a part or accessory for the manufacturer who would eventually be manufacturing ‘Atraumatic Needled Suture’.

5.6 It therefore stands to reason that the impugned item being part / accessory of the ‘Atraumatic Needled Suture’ required to be classified under CETH 9018, the said impugned goods would fall within the beneficial scope of Sl.No.59 of Notification No.6/.2006-CE and be eligible for the exemption provided thereunder.

6. In the circumstances, the impugned order to the contrary cannot sustain and will require to be set aside, which we hereby do. Appeal is therefore allowed with consequential benefits, if any, as per law.

(operative part of the order pronounced in court)

(Madhu Mohan Damodhar)
Member (Technical)

(Sulekha Beevi C.S)
Member (Judicial)

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