

**wIN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE
TRIBUNAL,
SOUTH ZONAL BENCH, CHENNAI
COURT HALL No.III**

**(1) CUSTOMS APPEAL No. 40968 OF 2013 &
CUSTOMS MISCELLANEOUS APPLICATION No.40312 of 2023**

(Arising out of Order-in-Appeal No.1590/2012 dated 31.12.2012 passed by Commissioner of Customs (Appeals), No.60, Rajaji Salai, Custom House, Chennai 600 001)

M/s.Agfa HealthCare India Pvt. Ltd.

.... Appellant

Technosoft Knowledge Gateway,
2nd Floor, B-14, Road No.1,
Wagle Industrial Estate,
Thane (W)-400 604,
Maharashtra.

Versus

The Commissioner of Customs

...Respondent

Custom House,
No.60, Rajaji Salai,
Chennai 600 001.

WITH

**(2) CUSTOMS APPEAL No. 42105 OF 2014 &
CUSTOMS MISCELLANEOUS APPLICATION No.40310 of 2023**

(Arising out of Order-in-Appeal No.1013/2014 dated 24.06.2014 passed by Commissioner of Customs (Appeals), No.60, Rajaji Salai, Custom House, Chennai 600 001)

M/s.Agfa HealthCare India Pvt. Ltd.

.... Appellant

G.R.R. Zone, No.271/2,
Maraimalai Adigal Salai,
Puducherry 605 001.

Versus

The Commissioner of Customs

...Respondent

Custom House,
No.60, Rajaji Salai,
Chennai 600 001.

AND

**(3) CUSTOMS APPEAL No. 40830 OF 2018 &
CUSTOMS MISCELLANEOUS APPLICATION Nos.40311 & 40313 of 2023**

(Arising out of Order-in-Appeal C. Cus II No.972/2015 dated 30.10.2015 passed by Commissioner of Customs (Appeals-II), No.60, Rajaji Salai, Custom House, Chennai 600 001)

M/s. Agfa HealthcCare India Pvt. Ltd.

.... Appellant

4th Floor Nitco Biz Park, Plot No.C/19,
Road No.16, Wagle Industrial Estate,
Thane -400 604.

Versus

The Commissioner of Customs

...Respondent

Custom House,
No.60, Rajaji Salai,
Chennai 600 001.

APPEARANCE :

Mr. Anish Kumar, Advocate
For the Appellant

Mr. R. Rajaraman, Assistant Commissioner (A.R)
For the Respondent

CORAM :

**HON'BLE MS. SULEKHA BEEVI C.S., MEMBER (JUDICIAL)
HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)**

**DATE OF HEARING : 24.08.2023
DATE OF DECISION : 01.09.2023**

FINAL ORDER No.40743-40745/2023

ORDER :

The MA No.40311/2023 filed in C/40830/2018 to rectify the name of the appellant in appeal memo which is wrongly typed by the appellant as M/s.Agfa India Private Ltd. instead of M/s.Agfa HealthCare India Pvt. Ltd. is allowed.

2. Brief facts are that the appellant imported goods as X-Ray Plates (CRMD4.OT General Cassette contains of a CRMD 4.1 Cassette and plate inside) vide various Bills of Entry dt. 22.10.2010, 21.12.2010, 07.08.2010 and 19.08.2010 classifying them under Customs Tariff Heading No.90229090 and claimed benefit of concessional rate of Basic Customs Duty at 5% vide sl.No.357B (2) of the Customs Notification No.21/2002 dated 01.03.2022, Nil rate of CVD vide Sl.No.59 (ii) of Central Excise Notification No.6/2006-CE, and full exemption from SAD at Sl.No.72 of Customs Notification No.20/2006 dt. 01.03.2006 as amended. Thus the effective rate of duty as claimed by the importer (appellant) works out to be 5% (BCD) + 3% Customs Cess+ 0% CVD + 0% C.E. Cess + % SAD. The importer cleared the goods on payment of duty as self assessed above. Subsequently, it was noticed by the department that the goods being X-ray plates are actually classifiable under CTH 37011010 and are not accessories to Digitizer as claimed by the importer. It thus appeared that the goods are liable to be classified under CTH 37011010 applicable would be @ 10+10+3+3+4%. The misclassification and availment of concessional rate of duty vide various notifications claimed by the importer resulted

in short payment of duty. Show cause notices / memos were issued to the appellant proposing to re-determine the classification and to demand differential duty along with interest. After due process of law, the original authority re-determined the classification of goods under CTH 37011010 and confirmed the differential duty along with interest. Against such orders, the appellant preferred appeals before Commissioner (Appeals) who upheld the same. Hence these appeals.

3. Learned counsel Sri Anish Kumar appeared and argued for the appellant.

3.1 It is explained that appellant had imported "C.R.MD4.OT General set" and "ADCOM CAS+ Plate". The C.R MD4.OT General Cassette consists of a CRMD4.0 cassette with a plate inside. The General cassette contains a permanently mounted memory chip to store data at the Id terminal. This enables identification of data and the linking of the image. The General Cassette and the plate inside it are pre-initialized in the factory as one unit which is a part of the ADC Solo Digitizer which is also imported. Earlier appellant had sought classification of the 'ADC Solo Digitizer' under 84716056 of CTA 1975 and CETA 1985. However, department classified the same under 9022 of CTA, 19745 & CETA 1985 respectively as 'Computer Radiography System'. The issue travelled upto Tribunal. In the appellant's own case, *Agfa India (P) Ltd. Vs CC Chennai* – 2017 (353) ELT 251 (Tri.-Chennai, it was held that the goods serves the purposes digitalized X-ray as per technical literature and would fall under CTH 90221900. Thus the classification adopted by appellant under 8471 was rejected

by Tribunal and the appeal was dismissed. The present dispute is with regard to CRMD4.OT General Cassette and plate only. These goods are used solely and principally with the equipment ADC Solo Digitizer. The appellant adopted the classification of 9022 as the 'ADC Solo Digitizer' was held to be classifiable under 9022 by the department. However, now the department has taken the view that the plates & cassettes are classifiable under CTH 3701.

3.2 It is submitted by the learned counsel that the authorities below have re-determined the classification of imported goods, viz. CR MD4.0T General Set imported under various Bills of Entry under CTH 37011010 and has rejected the classification adopted by the appellant under CTH 90229090. The relevant tariff headings of the competing classifications were adverted to by the learned counsel to explain which are as under :

Tariff Item	Description of Goods	Unit	Rate of duty	
			Standard	Preferential
(1)	(2)	(3)	(4)	(5)
9022	Apparatus based on the use of X-rays of alpha, beta or gamma radiations, whether or not for medical, surgical, dental or veterinary uses, including radiography or radiotherapy apparatus, X-ray tubes and other X-ray generators, high tension generators, control panels and desks, screens, examination or treatment tables, chairs and the like - Apparatus based on the use of X-rays of alpha, beta or gamma radiations, whether or not for medical, surgical, dental or veterinary uses, including			

	<i>radiography or radiotherapy apparatus</i>			
9022 12 00	-- <i>Computed tomography apparatus</i>	u	7.5%	-
9022 13 00	-- Other, for dental uses	u	7.5%	-
9022 14	-- <i>Other, for medical, surgical or veterinary uses:</i>	u	7.5%	-
9022 14 10	---X-ray generators and apparatus (non-portable)	u	7.5%	-
9022 14 20	---Portable X-ray machine	u	7.5%	-
9022 14 90	---Other	u	7.5%	-
9022 19 00	--For other uses <i>-Apparatus based on the use of alpha, beta or gamma radiation, whether or not or medical, surgical dental or veterinary uses, including radiography radiotherapy apparatus:</i>			
9022 21 00	--For medical, surgical, dental or veterinary uses.	u	7.5%	-
9022 29 00	--For other uses	u	7.5%	-
9022 30 00	-X-ray tubes	u	7.5%	-
9022 90	- <i>Other, including parts and accessories</i>			-
9022 90 10	---X-ray valves	u	7.5%	-
9022 90 20	---Radiation generation units	u	7.5%	-
9022 90 30	---Radiation beam delivery units	u	7.5%	-
9022 90 40	---X-ray examination or treatment table, chairs and the like	u	7.5%	-
9022 90 90	---Other	kg.	7.5%	-

Tariff Item	Description of Goods	Unit	Rate of duty	
			Standard	Preferential rate
(1)	(2)	(3)	(4)	(5)
3701	Photographic plates and film in the flat, sensitized, unexposed, or any material other than paper, paperboard or textiles; instant print-film in the flat, sensitized, unexposed, whether or not in packs			
3701 10	-For X-ray:			
3701 10 10	---Medical	m ²	10%	-
3701 10 90	--- Other	m ²	10%	-

4. The relevant Notification No.21/2002-Cus. is noticed as under :

Exemption and effective rates of basic and additional duty for specified goods falling under chapters 1 to 98 — In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962) and in supersession of the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 17/2001-Customs, dated the 1st March, 2001 [G.S.R. 116(E), dated the 1st March, 2001, the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts the goods of the description specified in column (3) of the Table below or column (3) of the said Table read with the relevant List appended hereto, as the case may be, and falling within the Chapter, heading or sub-heading of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) as are specified in the corresponding entry in column (2) of the said Table, when imported into India,-

- (a) **from so much of the duty of customs** leviable thereon under the said First Schedule as is in excess of the amount calculated at the rate specified in the corresponding entry in column (4) of the said Table;
- (b) **from so much of the additional duty** leviable thereon under sub-section (1) of section 3 of the said Customs Tariff Act, as is in excess of the rate specified in the corresponding entry in column (5) of the said Table, subject to any of the conditions, specified in the Annexure to this notification, the condition No. of which is mentioned in the corresponding entry in column (6) of the said Table:

TABLE

S.No.	Chapter or Heading No. or sub-heading No.	Description of goods	Standard rate	Additional duty rate	Condition No.
(1)	(2)	(3)	(4)	(5)	(6)
...	...	...	...		...
357A	9018, 9010, 9020, 9021 or 9022	Goods required for medical, surgical, dental or veterinary use Explanation – For the purposes of this exemption, the term “Goods” refers to medical instruments/appliances required for medical, surgical, dental or veterinary use only and does not refer to Parts and spares thereof.	2.5%	-	-
357B	90 or any other Chapter	Parts required for the manufacture of the goods at Sl.No.357A; and (ii) accessories of the goods at S.No.357A	2.5% 2.5%	-	5 -

5. It is explained by the learned counsel that the at Sl.No.357B, goods falling under Chapter 90 or any other chapter is eligible for the benefit of the notification if the goods are accessories of the goods at Sl.No.375A. In the notification at Sl. No.357A speaks about the goods falling under Chapter heading 9086, 9090, 9020, 9021 or 9022. The

description of the goods given in column 3 of the table against this is goods required for medical, surgical, dental or veterinary use. In the present case, the appellant has imported goods which are for medical purposes in the nature of X-ray imaging. These goods are used as accessories to the ADC solo digitizer and therefore merit classification under Chapter heading 90229090 of Customs Tariff Act, 1975. The authorities below have confirmed the classification under CTH 3701 alleging that its function is to capture image which is akin to photographic plate falling under CTH 3701 of Customs Tariff Act, 1975. The appellant had clearly stated that the plate inside the cassette is not a photographic plate. In spite of this, the authorities below have chosen to incorrectly treat the goods as 'photographic plate' alleging that its function is akin to photographic plate falling under CTH 3701. The goods are essential to ADC Solo Digitizer and has to be classified under CTH 8473 or under 9022. Both the authorities below have ignored the fact that the imported goods including the plates housed in the cassette are required for medical treatment. There is no comparison between the photographic plates falling under Chapter 37 and the imported goods. The first appellate authority failed to note that the plates under Chapter 37 capture visible images directly or indirectly by the action of light or other form of radiation on its photosensitive surfaces. In fact, X-ray sheet is developed on the plate / film itself which is not the case of imported goods. In the present case, no images are formed on the goods as in the case of photographic plate. The plates on its exposure to X-ray, the molecules of phosphor get excited

and remain active for about 24 hours. This is processed in the ADC Solo Digitizer as an X-Ray image. The plates can be reused multiple times and thus different from an ordinary X-ray plate. The authorities below have failed to note that no visible images are made on the imported goods. The imported goods are capable of repeated use whereas the usual X-ray plate when exposed once, cannot be used repeatedly.

6. Ld. Counsel submitted that in the appellant's own case when the Digitalized X-Ray Equipment (ADC) was imported, the department sought to classify it under CTH 9022. The present dispute is with regard to the imaging plates and accessories which are used in the ADC for display of the X-Ray taken. This issue of classification of imaging plates and cassettes have already been decided by the Tribunal in the case of *Jindal Photo Ltd. Vs CC (Imports) Nhava Sheva* - 2014 (300) ELT 568 (Tri.-Mumbai) it was held that the items are rightly classifiable under 90189099 and are eligible for the benefit of notification No.21/2022 dt. 01.03.2022.

7. The said decision was doubted and deviated by the Tribunal in the case of *Fujifilm India Pvt. Ltd. Vs CC (Import), Nhava Sheva* - 2015 (316) ELT 270 (Tri.-Mumbai). In *Fujifilm*, the facts of the case are that the original authority classified the goods under 90229090 but however denied the benefit of exemption notification No.21/2002 observing that imaging plates and cassettes are not accessories of goods required for medical, surgical equipment falling under Chapter 90. Against this, an appeal was filed by the importer before the Tribunal wherein the

Tribunal held that the classification rendered by the original authority that the goods fall under 90229090 was erroneous and held that the goods would rightly be classifiable under 3701. However, the Tribunal held that the Imaging Plates and Cassettes would come under the category of accessories to a machine and the benefit of Notification No.21/2002 would be available to the appellant. Against this order as the classification of the goods was disturbed, the appellant approached the Hon'ble Supreme Court. As per judgment reported in 2017 (349) ELT 203 (SC), the Hon'ble Apex Court observed that there was no dispute before the Tribunal with regard to classification and the dispute was only with regard to benefit of notification as to whether the goods are accessories or not. The Tribunal ought not to have disturbed the classification. It was also held that if the Tribunal doubted the decision of the co-ordinate bench rendered in *Jindal Photo Ltd.* (supra) with regard to classification ought to have referred the issue to a Larger Bench. The Hon'ble Apex Court thus remanded the matter to the Tribunal.

8. Pursuant to such remand order, the matter was again taken by the Tribunal and vide Final Order No.A91590 / 2017 dated 29.11.2017 in Appeal No.C/192/2012. The Tribunal held that imaging plates and cassettes are eligible for the benefit of Notification No.21/2002-Cus. The classification of the Imaging Plates & Cassettes under 9022 was untouched. It is thus submitted by the learned counsel that the decision of the Tribunal rendered in the first round of litigation, wherein classification was held to be under CTH 3701 having been set aside by

the Hon'ble Supreme Court, the classification of the goods as under 9022 and also that these are accessories to Solo Digitizer stands settled. There was an observation made by Commissioner (Appeals) that the appellant did not produce the brochure/literature of the imported goods. The Appellant has filed miscellaneous applications in all the appeals to accept and consider the catalogue of impugned goods. This catalogue of the goods was relied by the learned counsel for appellant to put forth the argument that the imported goods are not ordinary X-Ray plate to be classified under 3701. Ld. Counsel prayed that the appeal may be allowed.

9. Ld. A.R Sri R. Rajaraman appeared for the Department and supported the findings in the impugned orders. The description of the goods described in OIO No.322/2011 dated 01.07.2011 at para 9 reads as under :

"The CR MD cassette is a user friendly and durable CR cassette containing a photostimulable phosphor imaging plate and featuring a memory chip for storing the data entered at the ID terminal. The exposure equipment and routines do not have to be modified when switching from conventional to digital imaging. The cassettes are in this case loaded with the corresponding imaging plates and pre-initialized in the factory"

10. It is submitted by the learned A.R that from the description of goods in the catalogue of the manufacturer it is clear that the cassette contains a photostimulable phosphor imaging plate. This plate is used to capture / form the image of the part of the patient's body which is required to be captured. This function of the plate is akin to the function of the photographic plate falling under CTH 3071. It is not disputed

that the x-ray plates are used in the medical field. The fact that the plate is phosphor based and the image is formed on it, indicates that there is some sort of chemical action involved in formation of image. Further, the foreign supplier themselves had indicated in the heading of impugned goods as CTH 3701 and therefore the goods are rightly classifiable under CTH 3701 and not under 9022 as adopted by the appellant. Ld. A.R prayed that the appeal may be dismissed.

11. Heard both sides.

12. The issue is with respect to the classification of the imported goods in the nature of Imaging Plates and Imaging Cassettes. Undisputedly, these goods are used in the X-Ray Digitizer. The department is of the view that the goods fall under CTH 37011010 whereas the appellant (importer) has adopted the classification under CTH 90229090. The catalogue produced by the appellant describes the nature of the goods. The goods are CR MD4.0 General Plate which is an imaging plate for computed radiography with increased sensitivity and sharpness at low dose, ensuring improved image quality for dedicated applications. It is said to have superior image quality, exceptionally long life span, extremely wide dynamic range, eliminating retakes. The department is of the view that the goods merit classification under CTH 3701 because the plates have a layer of phosphur. However, these plates cannot be compared with the ordinary X-ray plates as they have long life span and are compatible with ADC. Even after a single exposure, the plates can be reused several times which gives it more life span. The catalogue says that the image

retention is for two hours after exposure and 70% of the stored energy is still present with no visible loss of information upon readout. The argument of the Ld. AR that, as there is coat of phosphor on the plate these goods fall under 3701 cannot be accepted as these plates can be used for capture of images many times unlike an X-ray plate.

13. The very same issue as to the classification of Imaging Plates and Cassettes came up for consideration before the Tribunal in the case of *Jindal Photo Ltd.* (supra). The Tribunal in the said case held that the goods are classifiable under CTH 90189090 and are eligible for the benefit of Notification No.21/2002-Cus. The importer therein had adopted the classification under 90189099 and not under 90229090.

Relevant para of the Tribunal order reads as under :

"6. We have carefully considered the submissions and perused the records. The only dispute in this case is classification and benefit of the Notification with regard to the following 3 items :

- (i) Dry pix 7000,
- (ii) FCR Capsula, and
- (iii) I.P. Cassette & Imaging Plate.

The appellants claimed the classification of Dry Pix 7000, FCR Capsula and IP Cassette & Imaging Plate under CTH 90189099. The Lower Adjudicating Authority classified Image Plates, IP Cassettes and Capsula under CTH 90229090 and classified Drypix under CTH 84433990 and denied the benefit claimed. For better appreciation Chapter Tariff Headings 9018 & 9022 are reproduced hereunder :-

9018 : Instruments and appliances used in medical, surgical, dental or veterinary sciences, including scientigraphic apparatus, other electromedical apparatus and sight-testing instruments.

9022 : Apparatus based on the use of X-ray or of Alpha, Beta or gamma radiations, whether or not for medical, surgical dental or veterinary uses, including radiography or radiotherapy apparatus. X-ray tubes and other X-ray generators,

High Tension generators, control panels and desks, screens, control panels and desks, screens, examination or treatment tables, chairs and the like.

.. . . .

6.3 We find that Imaging plates & I.P. Cassettes. Imaging place (IP is used instead of film to record X-ray images). The IP contains photostimulable phosphors that store X-ray energy. Scanning, the IP releases the energy, producing electronic signals, which are converted to digital values. Barium fluorohalide (BafX) phosphors in a high density layer deliver the sensitivity, sharpness and low noise in computed radiographic diagnosis the I.P. is inserted in a cassette for X-ray exposure. In these circumstances, we find that the items are rightly classifiable under 90189099 and eligible for the benefit of Notification as applicable.”

(emphasis supplied)

14. Later, in the case of *Fujifilm India Pvt. Ltd. Vs CC (Import), Nhava Sheva* (supra) the assessee/importer classified the Imaging Plates and Cassettes for medical use under CTH 90229090 and claimed benefit of notification under Sl.No. 357B of Notification No.21/2002-Cus. dt.1.3.2002. The department was of the view that these are integral part of X-ray machine and are required for getting a readable image. Though the classification adopted by the assessee was accepted, the benefit of notification was denied holding that these are not accessories. The matter reached the Tribunal. As per the decision reported in 2015 (316) ELT 270 (Tr.-Mum.) the Tribunal doubted the classification decided in the case of *M/s.Jindal Photos Ltd.* (supra) under 90189099 and held that the IP plates and Cassettes are rightly classifiable under CTH 370110. However, it was held that these are accessories. The Tribunal categorically observed that it is not a part. It was also observed that the benefit of notification 21/2002 would be available even if the goods fall under CTH 370110, as the Sl.No.357B

of the notification covers all goods falling under Chapter 90 or any other chapter. The relevant part of the order reads as under :

“4.1 The benefit of exemption under Notification No. 21/2002-Cus, dated 1-3-2002 would still be available as serial No. 357B covers accessories of goods required for medical, surgical, dental or veterinary use, falling under Chapter 90 or any other chapter. An accessory by its very nature is something which aids or improves the efficiency of the main machinery. A photographic plates or film cannot be said to be a part of a camera or an X-ray machine. A camera or an X-ray machine is complete even without a film. Therefore, a film or an imaging plate would come under the category of accessories to a machine. Since the coverage under 357B includes all products falling under Chapter 90 or any other chapter, goods falling under CTH 3701 would also be eligible for the benefit of concessional rate of 5% *ad valorem* under the aforesaid notification. Thus, IP and IP cassette, which is only a protective cover for the imaging plates would be eligible for the exemption. As regards the FCR Capsula it has already held by this Tribunal that the same falls under CTH 90229090/90221490 and will not be eligible for the exemption under the aforesaid notification.”

15. The assessee being aggrieved by the redetermination of classification under 3701 filed appeal before the Hon'ble Apex Court. As per the judgement reported in *Fijifilm India Pvt. Ltd. Vs CC (Import), Nhava Seva* - 2017 (349) ELT 203 (SC) it was held that as there was already a decision of co-ordinate bench in the case of *M/s.Jindal Photo Ltd.* (supra) the Tribunal ought not to have deviated. In case of doubt should have sought for Larger Bench. It was observed that as the dispute before the Tribunal was only with regard to the eligibility of notification, the Tribunal ought not to have disturbed the classification. After remand, in the second round of litigation, the Tribunal held that Imaging Plates and IP cassettes for medical use are accessories and therefore eligible for the benefit of Notification No.21/2002-Cus. Relevant para reads as under :

“2. On the above background, appellant pleaded that once the classification claimed by appellant remain undisputed as reported in the case of *Jindal Photo Ltd.* – 2014 (300) ELT 568 (Tri.), decision of Tribunal in para 5 of the its order dated 29.10.2014 holding that above two goods falling under 357B (ii) of the Notification No.21/2002-Cus. dated 1.3.2002 are eligible to the necessary benefit of notification, appellant succeeds.

3. To the above contention of the appellant, Revenue says that classification dispute is still open and that may be agitated. But, it is noticeable that Revenue is not in appeal against the classification from the beginning. Therefore, stand of Revenue does not survive.

4. We could have examined above argument of Revenue had that been open with clear proposition in the show-cause notice to disturb the classification. That is not the present case. Adjudication was completed on the Bill of Entry without disturbing the classification. It is elementary principles of jurisdiction that burden of proof lies on Revenue to prove its case if it disturbs classification. That was not done.

5. In so far eligibility to notification is concerned, there is nothing much to debate thereon since Tribunal has decided on such issue on 29.10.2014 holding that the Imaging Plates and IP Cassettes are eligible to benefit of Notification NO.21/2002- Cus. dated 1.3.2002 under Sr.No.357B(ii). Accordingly, appeal is allowed.”

16. Further, in the case of Bill of Entry dt. 16.8.2011 (Appeal No.C/42105/2014) the appellant had imported the very same goods adopting the classification under CTH 9022. The original authority vide OIO dt. 23.09.2011 held that the imported items CRMD4.OT cassettes which contain photostimulable phosphor imaging plates being used for Computed Radiography (CR) systems though rightly classifiable under CTH 90229090 are not accessories and hence not eligible for the benefit of notification. On appeal, the Commissioner (Appeals) vide order impugned herein upheld the classification, but however held that the goods are consumables and therefore not eligible for the benefit of notification.

17. From the above it can be seen that in the case of *Fujifilms Pvt. Ltd.* the classification of the goods has been settled to be under 90229090. So also, the department in the OIO dt. 23.09.2011 has held the goods to be classifiable under 90229090 against which no appeal has been filed by the department. We therefore hold that the classification adopted by the appellant under CTH 90229090 is to be sustained. The re-determination of classification under CTH 370110 is set aside.

18. The next question to be answered is whether the goods are eligible for exemption under notification 21/2002. The Ld. Counsel for appellant has submitted that these are accessories to the main machine and therefore eligible for exemption. The Commissioner (Appeals) vide order dt. 24.06.2014 has held that these are consumables and therefore not eligible for the exemption. The meaning of the word 'consumables' as per Advanced Law Lexicon is 'a thing (such as food) that cannot be used without changing or extinguishing its' substance. Something that is used up (eg. Computer printer ink, degreasing solvents, welding rods) in a business or industry as opposed to things that are incorporated into a product'. The Commissioner (Appeals) has not made any discussion as to how the impugned goods fall under the category of 'consumables' and not 'accessories'. The meaning of 'accessory' has to be understood in relation to the nature of the main machine and the type of accessory in relation to which it is used. The Tribunal in the case of *Fujifilm (P) Ltd.* (2nd round of litigation) has held that the impugned goods being

accessories are eligible for the benefit of notification. Judicial discipline binds us to follow this view.

19. After considering the facts and appreciating the evidence and following the decisions as cited above, we are of the considered opinion that the imported goods merit classification under CTH 90229090 and are eligible for benefit of exemption under Notification No.21/2002-Cus. The impugned orders are set aside. The appeals are allowed with consequential reliefs, if any. MAs stand disposed of.

(pronounced in court on 01.09.2023)

sd/-

(VASA SESHAGIRI RAO)
Member (Technical)

sd/-

(SULEKHA BEEVI C.S.)
Member (Judicial)

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