

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
South Zonal Bench, Chennai
Court Hall No. III**

**CUSTOMS MISCELLANEOUS APPLICATION No.40460 of 2023
&
CUSTOMS APPEAL No.41872 OF 2016**

(Arising out of Order-in- Original No.736/2016 ACC dated 08.08.2016 passed by Principal Commissioner of Customs, Chennai VII Commissionerate (Air Cargo Complex), Meenmabakkam, Chennai)

M/s Philips India Limited,
9th Floor DLF Phase -3,
DLF Cyber City, Gurgaon,
Haryana – 122 002.

...Appellant

Versus

The Commissioner of Customs (Air Cargo), ...Respondent
Chennai VII,
Commissioner of Customs (Airport),
ACC, Integrated Air Export Complex,
Meenambakkam, Chennai - 600 027

APPEARANCE:

For Appellant : Shri T. Viswanathan, Advocate

For Respondent : Shri. N. Sathyanarayanan, AC (A.R)

CORAM:

HON'BLE MEMBER (JUDICIAL) : MS. SULEKHA BEEVI. C.S.

HON'BLE MEMBER (TECHNICAL): SHRI VASA SESHAGIRI RAO

Final Order No. 40194/2024

Date of Hearing: 20.02.2024

Date of Decision: 26.02.2024

Per Ms. Sulekha Beevi C. S.,

Brief facts of the case are that the appellant filed Bills of Entry dated 25.07.2011, 18.10.2011, 13.06.2011 and 12.10.2011 for clearance of imported goods declared as "Sonalleve MR HIFU KIT (Accessories for MRI system)" declaring assessable value at Rs.11,05,381/-. These Bills of entry were assessed under RMS. The importer had declared the goods as accessories of MRI system and classified them under 90181300 claiming concessional rate of Basic Customs Duty at 5% as per serial no.357B (ii) of Customs Notification

No. 021/2012 - Cus and CVD at nil rate in terms of serial no. 59(i) of Central Excise Notification No.6/2006. A Show Cause Notice dated 04.06.2012 was issued alleging wrong availment of benefit of Notification 021/2002- Cus. at serial no.357B (ii), alleging that the imported goods are not accessories. After due process of law, the original authority passed the impugned order denying the exemption of BCD as per Notification No. 21/2002 and also exemption of CVD under Notification 06/2006 at serial no. 59 (i). The differential duty demand was confirmed along with interest. No penalties were imposed. Aggrieved by such order the appellant is now before Tribunal.

2. The Learned Counsel Sri T. Viswanathan, appeared and argued for the appellant. It is submitted that the subject goods are accessories of MRI machines. The Hon'ble apex court in a plethora of decisions has held that the word accessory is used to describe goods which may have been manufactured for use as an aid or addition; Thus goods when used to aid the function are add to the function of a machine would fall under the category of accessory. The imported items are recognised as accessories to machines. To support this argument the learned counsel relied on the decision in the case of Annapurna Carbon industries Co. Vs. State of Andhra Pradesh, 1976 (3) TMI 156 of Supreme Court and Mehra Bris Vs. Joint Commercial Officer, 1990 (11) TMI 144 – Supreme Court.

2.1 The department has taken the view that the subject goods are not accessories and therefore are not eligible for the benefit under serial no.357B (ii) of Notification 021/2002 – Cus. The Learned Counsel explained that the subject goods the Sonalleve MR HIFU, are used as a special transducer to focus a beam of ultrasound waves to the fibroid located within the body. The focused ultrasound waves generate high temperature within smaller area. The temperature when

maintained for sufficient period of time results in the ablation of the fibroids. The therapy procedure guided by Magnetic Resonance Imaging (MRI) with real time feedback helps in the focused ablation of the target location. The real time feedback loop ensures that adequate heating takes place, treating every bit of tissue that has been targeted and volumetric ablation (a Philips proprietary technology) helps treat larger volumes efficiently and adequately. The above activity performed by Sonalleve MR HIFU equipment is a specialized medical intervention.

2.2 Even though it is linked with MRI machine, it works only with Philips MRI machines. The Sonalleve MR HIFU when linked with MRI machines performs much more advanced medical activity of non-invasive targeted and volumetric ablation with the help of MRI machine. The Learned Counsel submitted that the original authority has erroneously held that the imported item is a full-fledged apparent itself and not an 'accessory' to MRI machine.

2.3 The original authority having observed that the goods can be used only with MRI machine, ought not to have held that they are not accessories. The functioning of the machine itself shows it enhances the function of MRI machine from a diagnostic to therapeutic machine. It is usually used for treatment of uterine fibroids. In order to accurately target and treat the fibroids present in the uterus, the subject goods are used in consonance with MRI machine. In essence, the subject goods increase the efficiency of MRI machine from a mere diagnostic machine to therapeutic machine. Further, in the absence of the MRI machine, the subject goods cannot be operated.

2.4 The decision in the case of Manipal Academy of Higher Education Vs. CC, Chennai, 2005 (190) ELT 113 (Tri - Bang) was relied by the

learned counsel to submit that in the said case a path speed work station (a computer) which only enhances the utility of a MRI machine must be considered to be an accessory to MRI. The said decision of the Tribunal has been affirmed by the Hon'ble Apex Court in Commissioner Vs. Manipal Academy of Higher Education, 2006 (198) ELT A128 (S.C).

2.5 It is submitted by learned counsel that though the department has denied the eligibility to concessional rate of CVD, under the Notification No. 6/2006, the department has not disputed the classification adopted by the appellant. The subject goods were classified under CTI 9018 13 00 by the appellant. The said heading refers to MRI apparatus. The appellant had adopted the said classification by applying Note 2 (b) to Chapter 90. As per Note 2 (b) to Chapter 90 the parts and accessories of goods of Chapter 90 if suitable for use solely or principally with the particular kind of machine, are to be classified with the machines, instruments or apparatus of that kind. The subject goods are used with MRI machines in order to enhance the MRI machine from a diagnostic machine to a therapeutic machine. The appellant has classified the goods as accessories to MRI under CTI 9018 13 00. This classification having not disputed by department, it is not open for the department to deny the benefit of exemption to CVD alleging that the goods are not accessories to MRI machine. To support this contention the Learned Counsel relied on para 4.3 of the decision of the Tribunal in the case of Motherson Sumi Electric Wire Vs. CC (I), Nhava Sheva, Final Order No. A/85972/2022 (CESTAT, Mumbai). The decision of the Tribunal in the case of Lallbhai Amichand Ltd., Vs. CCE, Mumbai – II, 2018 (362) ELT 359 (Tri.-Mumbai) was also relied.

2.6 The Learned Counsel submitted that the demand confirmed cannot sustain for the reason that the Show Cause Notice is cryptic and does not contain the details of the allegations. It is pointed out by the Learned Counsel that the allegation in the SCN is " wrong availment of benefit of Notification No 21/2002 at Sl. No. 357B (ii) as accessories ". The said allegation is too vague and does not specify as to why the department alleges that the subject goods are not accessories. Further, the decision in the case of CCE BAN VS. Brindavan 2007 (6) (TMT) 4 SC was relied by the Learned Counsel to argue that the Show Cause Notice is the foundation on which the department has to build the case and if the allegations in the Show Cause Notice are not specific, it would be sufficient ground to hold that the noticee was not given proper opportunity to meet the allegations. The decision in the case of Amrit Foods Vs. CCE -2005 (190) ELT 433 (S.C) and other cases were relied to argue that Show Cause Notice is the foundation for the judicial proceedings and it should contain details of the allegations. The Show Cause Notice dated 04.06.2012 does not provide any reason as to why the subject goods cannot be considered as accessories of MRI system. For this reason, the appellant was not able to defend the case properly, and amounts to violation of natural justice.

2.7 It is pointed out by the Learned Counsel that the impugned order has travelled beyond the Show Cause Notice. In the Show Cause Notice the proposal is to deny the benefit under serial no. 357B (ii) of the exemption Notification No.21/2002. However, the adjudicating authority has travelled beyond the scope of Show Cause Notice and has in addition to the above proposal also denied the benefit of exemption from payment of CVD under serial no. 59 (i) of Central Excise Notification No.6/2006. Thus a new ground has been taken in

the impugned order to confirm the differential duty which has not been proposed in the Show Cause Notice. The decision in the case of Reckitt and Coleman (I) Ltd., Vs. CCE – 1996 (88) ELT 641 (SC) and the decision in the cases of Commissioner of C. Ex., Nagpur Vs. Ballarpur Industries Ltd., 2007 (215) ELT 489 (S.C.) were relied to argue that the impugned order cannot travel beyond the Show Cause Notice.

2.8 Learned Counsel submitted that the demand is time barred and that the appeal may be allowed with consequential relief.

3. The Learned AR Shri. N. Sathyanarayanan appeared and argued for the department. The findings in the impugned order was reiterated. It is submitted that the original authority discussed in para 10 the functioning of the subject goods and correctly concluded that the subject good is a full-fledged apparatus in itself and it is not an accessory to a MRI machine. The subject good is a sophisticated medical equipment which carries out advanced role of High Intensity Focused Ultrasound for the treatment of uterine fibroid without surgery and so cannot be termed as an accessory to MRI machine. The benefit of notification has been correctly denied and the confirmation of duty is legal and proper. The Learned AR prayed that the appeal may be dismissed.

4. Heard both sides.

5. The issue to be decided is whether the Sonalleve MR HIFU KIT are accessories to MRI machine and whether eligible for the exemption from duty as per Notification.

5.1 At the outset it has to be stated that the appellant has classified the goods under CTI 90181300. The said heading applies to Magnetic Resonance Imaging apparatus (MRI). The relevant Chapter Heading is reproduced as under.

Tariff item	Description of goods	Unit	Rate of duty	
			Stand ard	Pre fer ent ial Are as
9018	Instruments and appliances used in medical, surgical, dental or veterinary sciences, including scientigraphic apparatus, other electromedical apparatus and sight-testing instruments Electro-diagnostic apparatus (including apparatus for functional exploratory examination or for checking physiological parameters)			
9018 11 00	Electro-cardiographs	U	7.5%	
9018 12	Ultrasonic scanning apparatus			
9018 12 10	Linear ultrasound scanner	U	7.5 %	
9018 12 90	Other			
9018 13 00	Magnetic resonance imaging apparatus	U	7.5%	
9018 14 00	Scientigraphic apparatus	U	7.5 %	

Note 2 to Chapter 90 reads as under

Subject to Note 1 above, parts and accessories for machines, apparatus, instruments or articles of this Chapter are to be classified according to the following rules:

- (a) Parts and accessories which are goods included in any of the headings of this Chapter or of Chapter 84,85 or 91 (other than heading 8487, 8548 or 9033) are in all cases to be classified in their respective headings;
- (b) Other parts and accessories, if suitable for use solely or principally with a particular kind of machine, instrument or apparatus, or with a number of machines, instruments or apparatus of the same heading (including a machine, instrument or apparatus of heading 9010, 9013 or 9031) are to be classified with the machines, instruments or apparatus of the kind;
- (c) All other parts and accessories are to be classified in heading 9033.

5.2 As per Note 2 (b) other parts and accessories if suitable to use solely or principally with the particular kind of machine, instrument or apparatus of the same heading ought to be classified with the machine, instrument or apparatus of the kind. It is not disputed that the subject goods can be used only with MRI machine. To be more specific the appellant has claimed that these machines can be used only with Phillip MRI machine. The department has not rejected or disputed the classification adopted by the appellant as parts/accessories of MRI machines. In such circumstances the department cannot deny the benefit alleging that the goods are independent by itself and are not parts or accessories.

5.3 Be that as it may, the subject goods cannot function without MRI machine. The conclusion of the original authority that the subject goods are standalone equipment is factually incorrect. In the case of Manipal Academy of Higher Education Vs. Commr. of Cus. Chennai – 2005 (190) ELT 113 (Tri. – Bang) supra the issue considered was whether path speed work station which is a computer based system for storing and assessing images developed in MRI systems can be held to be an accessory of MRI machine. The facts of the case are that the appellants imported first shipment of MRI system vide Bill of Entry 259838 dated 11.02.2000. The description in the Bill of Entry as well as in the invoice was “partial shipment of GE Signa Profile MRI System”. In the second shipment also, the declaration was “partial shipment of GE Signa Profile MRI System”. Even though in the first shipment, the entire MRI System was imported, the appellants declared the second shipment also as MRI System. Actually, on examination, it was found to be ‘Path Speed Work Station’ which consists of a Computer system. In view of this clear cut misdeclaration, the longer period was invoked to the extent of ordering for confiscation and imposing penalties. The department argued that the goods are nothing but “Picture Archiving and Communication System” which enables the pictures taken in either MRI or X-ray or Ultra scan to be stored and later retrieved for various purpose. The argument of department was that the ‘Path Speed Work Station’ itself is standalone system and by no stretch of imagination can it be called as an accessory of MRI system. The Tribunal observed that though the goods could be used with other imaging system such as CT Scan, X-ray etc., does not take away its character of being an accessory. The decision

of the Tribunal was upheld by the Hon'ble Apex Court as reported in 2006 (198) ELT A 128 (S.C).

5.4 In the case of Commissioner of Customs, Chennai Vs. Indian Surgicals – 2009 (244) ELT 603 (Tri. Chennai), the question considered was whether cardiac stents can be considered as accessories of cardiac catheters so as to be eligible for exemption under Notification 17/2001 – Cus dated 01.03.2001. The Tribunal observed that stents are used in cardiac catheters and are mounted and placed after dilation of blood vessels. They are essential for cardiac catheter treatment through the process of angioplasty. Without implanting the stent with help of catheters, the treatment cannot be completed. The Tribunal held that the stent are accessories to cardiac catheters. After understanding the function of the impugned goods and following the decisions above we hold that the Sonalleve HIFU KIT classified under CTH 9018 13 00 is an accessory to MRI. The goods are eligible for benefit of Notification of 21/2002 – Cus at Sl.No.357B (ii) and benefit of Notification of 6/2006 – CE at Sl. No. 59 (i).

5.5 Moreover in present case, the allegation raised in the Show Cause Notice is that the appellant has wrongly availed benefit of Notification 21/2002 Cus at serial no. 357B (ii) in regard to BCD. There is no mention of wrong availment of CVD under Notification No.6/2006. However, the impugned order has denied the exemption of CVD available @ serial no. 59 (i) of Central Excise Notification No. 6/2006. The argument of the Learned Counsel that the impugned order has travelled beyond the scope of the Show Cause Notice is not without substance. The confirmation of the differential duty which has not been proposed in the Show Cause Notice cannot be sustained. For this reason also the demand of differential duty cannot sustain.

6. In the result, the impugned order set aside. The appeal is allowed with consequential relief. The Miscellaneous application is disposed.

(Pronounced in court on 26.02.2024)

(VASA SESHAGIRI RAO)
Member (Technical)

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

psd