

**IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL, CHENNAI**

Customs Appeal No.41073 of 2014

(Arising out of Order-in-Appeal C. Cus. No. 427/2014 dated 10.3.2014 passed by the Commissioner of Customs (Appeals), Chennai)

M/s. Carestream Health India Pvt. Ltd.

Appellant

Sunteck Centre, 1st Floor
Subhash Road, Vile Parle (East)
Mumbai – 400 057.

Vs.

Commissioner of Customs

Respondent

Chennai Import Commissionerate
Custom House
No. 60, Rajaji Salai
Chennai – 600001.

APPEARANCE:

Shri Ramamurthy, Advocate for the Appellant

Shri R. Rajaraman, Authorized Representative for the Respondent

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Hon'ble Shri P. Dinesha, Member (Judicial)

Hon'ble Shri M. Ajit Kumar, Member (Technical)

Final Order No. 41098/2024

Date of Hearing : 22.07.2024

Date of Decision: 21.08.2024

Per M. Ajit Kumar,

This appeal is filed against Order in Appeal C. Cus. No. 427/2014 dated 10.3.2014 passed by the Commissioner of Customs (Appeals), Chennai (impugned order).

2. Brief facts of the case are that the appellant imported goods described in the Bill of Entry dated 2.4.2013 as "Dryview 6850 Laser Imaging W/3D (Medical Equipment)" (also referred to as 'Laser Imager') and classified the goods under Customs Tariff Heading 90189019 as 'other diagnostic instruments and apparatus'. Based on

the literature pertaining to the imported item, the lower authority found it to be classifiable under Heading 9033 by application of Note 2(c) of Chapter 90 and ordered for re-assessment of the subject Bill of Entry. Aggrieved by reclassification, the appellant preferred an appeal before Commissioner of Customs (Appeals) who vide the impugned order upheld the classification adopted by the lower authority. Hence the appellant is before this Tribunal.

3. Shri Ramamurthy, Ld. Counsel appeared for the appellant and Shri R. Rajaraman, Ld. Authorized Representative appeared for the respondent.

3.1 The Ld. Counsel for the appellant submitted that the impugned order has failed to examine whether the imported goods are used as an accessory for equipment falling under CM 9018. The Laser Imager is principally used in practice with MRI equipment and it is not disputed by the department that the imported equipment is suitable for use solely or principally with MRI equipment. In the alternative, the imported equipment ought to be classified under CTH 9018 1300 "magnetic resonance imaging apparatus by application of chapter note 2(b) of chapter 90. Chapter Note 2(b) to Chapter 90 provides that 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 are to be classified with the machines, instruments or apparatus of that kind. He prayed that the appeal may be allowed.

3.2 The Ld. AR Shri R. Rajaraman stated that the imported item 'Laser Imager' is a medical printer it can print on Dryview laser imaging

film using Dry laser technology after receiving image data from any machine which has DICOM standard and from machines with non DICOM standard using PACS link medical image managers. The impugned goods are capable of interfacing with multiple modalities and are rightly classifiable under the heading 9033 by applying Note 2(c) of chapter 90. He stated that goods cannot be classified by applying note 2(a) as these goods are not included in any of the headings of chapters 84, 85 and 91. Further it cannot be classified under the heading 9018 or 9022 by applying the note 2(b) of chapter 90 since to be classified under this head the part or accessory must be solely or principally used with the goods of the same heading and not with different headings. He prayed that the appeal may be rejected.

4. We have gone through the appeal carefully and have also heard the rival parties.

5. We find that there is no dispute among the parties to the dispute that;

a) The Laser Imager, is a film printer using heat rather than chemicals to develop the image written onto the film.

b) It interfaces with a variety of digital machines like Magnetic Resonance Imaging (MRI) Computerised Tomography (CT), Full Field Digital Mammography (FFDM), Digital Radiology (DR) etc. All machines are classifiable under Chapter 90 of the Customs Tariff.

c) Laser Imager is not a medical equipment (although it was described so in the Bill of Entry), nor does it possess diagnostic functions.

d) The impugned goods are accessories of medical imaging machines.

6. The points of dispute and disagreement is as stated below.

A) Whether as per the appellant the Laser Imager is solely or principally used with Magnetic Resonance Imaging machines (MRI) (statedly classifiable under CTH 9018) or are also equally suitable for use with other machines like, Computerised Tomography (CT), Full Field Digital Mammography (FFDM), Digital Radiology (DR) etc (all statedly classifiable under CTH 9022) as per Revenue.

B) (i) As per the appellant, since the Laser Imager is solely or principally used with machines of CTH 9018 9019 and the impugned goods being accessories of the said machines they are also classifiable under CTH 9018 9019 only as per Note 2(b) of Chapter 90 of the Customs Tariff 1985. (ii) While it is Revenue's case that the impugned goods cannot be classified using Rule 2 (a) as the Laser Imagers are not specifically included in any of the headings of chapters 84, 85 or 91. Similarly their classification under Rule 2 (b) is ruled out since the impugned goods are equally usable with goods falling under the Heading 9018 and 9022. Being goods that are suitable for use with a host of machines falling under CTH 9018 and 9022 they have to be classified under the heading 9033 as per Note 2 (c) of Chapter 90.

C. The appellant has taken an alternate plea that the imported equipment ought to be classified under CTH 9018 1300 as 'Magnetic Resonance Imaging Apparatus', by application of Rule 2(b) of Chapter 90.

7. While deciding the classification of a product by its end use it would be useful to note that in **CCE v. Carrier Aircon** [(2006) 5 SCC 596], the Apex Court held:

“14... There are a number of factors which have to be taken into consideration for determining the classification of a product. For the purposes of classification, the relevant factors inter alia are statutory fiscal entry, the basic character, function and use of the goods. When a commodity falls within a tariff entry by virtue of the purpose for which it is put to (sic. produced), the end use to which the product is put to, cannot determine the classification of that product.”
(emphasis added)

In this case, the impugned goods are not covered by a specific heading. Further, there are certain tariff descriptions where the end use is statutorily relevant, being incorporated in the tariff/ chapter note as in the case of Chapter 90. In such cases it is essential to examine the Chapter note while deciding upon the classification of the disputed goods. Since both the parties have confined their arguments to Note 2 of Chapter 90, the issue is examined in the light of the same.

8. Chapter 90 falls in Section XVIII of the Customs Tariff. Note 2 to Chapter 90 is reproduced below for easy reference.

“2. 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 8485, 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 that kind;

(c) all other parts and accessories are to be classified in heading 9033.”

9. Note 2 deals with the classification of 'parts and accessories'. Both the parties accept that the impugned goods are not parts but are accessories of machines used for medical imaging. In the case of **Annapurna Carbon Industries Co. v. State of Andhra Pradesh** [1976 (37) STC - 378 (S.C.)], the scope of the term 'accessories' was elaborated by the Hon'ble Supreme Court in the following manner :-

"We find that the term accessories" is used in the schedule to describe goods which may have been manufactured for use as an aid or addition. A sense in which the word "accessory" is used is given in Webster's Third New International Dictionary as follows :

"an object or device that is not essential in itself but that adds to the beauty, convenience, or effectiveness of something else".

Other meanings given there are :

"supplementary or secondary to something of greater or primary important", "additional"; "any of several mechanical devices that assist in operating or controlling the tone resources of an organ"

"Accessories" are not necessarily confined to particular machines for which they may serve as aids. The same item may be an accessory of more than one kind of instrument."

(emphasis added)

Hence an accessory of one machine can be an accessory of more than one kind of machine.

10. The appellant, in further refining his argument, has stated that the order in original and the order in appeal have failed to note the different between 'capable for use' and 'suitable for use'. The effect of the impugned order is that it in effect substitutes 'suitability' with a 'meant for test' or 'exclusive purpose test' which is impermissible in law. It is their averment that if an accessory is suitable to be principally used with medical equipment classifiable under CTH 9018, by

application of chapter 2 (b) of chapter 90, it must be classified there under even though it may also be capable of being used with another equipment falling under a different heading in chapter 90. They have referred to the definition of 'suitable' as extracted from the following judgments;

- (i) **Cellulose Products of India Ltd v. CCE**, 1996 (82) E.L.T. 147
- (ii) **Secretary vs Maj. Gen. Manomoy Ganguly**, 2018 (9) SCC 65
- (iii) **Aswini Kumar Ray v. State of Orissa**, MANU/OR/0572/2008

They have stressed that the test of suitability of an article for a certain purpose is not whether it is commonly used therefore, but whether it possesses actual, practical, commercial fitness for that purpose.

11. We find from the product 'User Guide' given by the appellant, that the machine is described as under;

"1 Overview

6850 Laser Imager

The DRYVIEW 6850 Laser Imaging System is a continuous tone laser imager with an internal photothermographic film processor. Heat, rather than photo chemicals, is used to develop the film. The Laser Imager prints images on KODAK DRY VIEW Laser Imaging Film, which is packed in 125 sheet cartridges. Depending on the configuration of your imager, you can load up to three cartridges simultaneously.

Intended Use

The DRY VIEW 6850 Laser Imaging Systems (DRY VIEW 6850 Laser Imager) is intended to provide high-resolution hard copy images from digital imaging source output signals. The Device is intended for use with DRY VIEW media including DVM (DRY VIEW Mammography) films. The imager will interface with a variety of digital modalities including but not limited to CR (Computed Radiology) DR (Digital Radiology), CT (Computerized Topography), MRI (Magnetic Resonance Imaging) and FFDM (Full Field Digital

Mammography). Image resizing is used to preserve true geometric size images. The images are to be used for medical diagnosis and referral to physicians and their patients.”

(emphasis added)

12. We find that the intended use of the Laser Imager as per the Company's booklet, is that it will interface with a variety of digital modalities including but not limited to CR (Computed Radiology) DR (Digital Radiology), CT (Computerized Topography), MRI (Magnetic Resonance Imaging) and FFDM (Full Field Digital Mammography). It does not state that the accessory is more suited solely or principally for one machine as against the others either due to its make, technology used or capabilities etc. while the word “solely” means “only and not involving anyone or anything else”, the word “principally” means “primarily” or “of first importance”. Hence the ‘market test’ of the goods shows that it is a multi-compatible accessory for a variety of medical digital imaging sources and cannot be said to be suitable for use solely or principally with a particular kind of machine or instrument or apparatus, or with a number of machines, instruments or apparatus of the same heading. In such a situation it would be a travesty to limit its suitability or use only as an accessory to the MRI system or to medical equipment classifiable under CTH 9018 only. Hence while examining the judgement cited by the appellant above, we find that the word ‘suitable’, does not take forward the appellants case as the impugned accessory is suitable with a wide range of machines falling under different CTHs as mentioned earlier. Classifying a multi-compatible accessory by pairing it with the machine of choice of the importer runs the possibility of the same model of the Laser Imager

being classified under different heading each time an importer declares its suitability or use solely or principally with a machine covered by a different CTH. Classification of imported goods cannot be the subject matter of such vagaries. This being so classification of the impugned goods under CTH 9018 9019, by application of Note 2 (b) of chapter 90 would not be appropriate.

13. Both the parties have agreed that the impugned goods cannot be classified with the aid of Note 2 (a) of Chapter 90. That leaves the classification to be done as per Note 2 (c) of Chapter 90 in as much as all other parts and accessories are to be classified under heading 9033 0000.

14. As regard the alternate plea taken by the appellant that the imported equipment ought to be classified under CTH 9018 1300 as 'Magnetic Resonance Imaging Apparatus', by application of Rule 2(b) of Chapter 90 we find that there has been an absence of a serious effort to substantiate the said challenge. In any case we find that the impugned goods are known in the market as medical image printers and also marketed by its sellers as intended to provide high-resolution hard copy images from digital imaging sources i.e. as a printer. Its core function is printing using photothermographic film processor. Heat, rather than photo chemicals is used to develop the film. Imaging is done by the main machine of which it is an accessory. Hence this plea fails.

15. The appellant has referred to the Tribunals judgment in **Manipal Academy of Higher Education v. CC**, [2005 (190) E.L.T. 113 (Tri. - Bang.)], as upheld by the Supreme Court in 2006 (198) ELT A128

(Supreme Court), to state that 'Path speed work station' which was capable of use along with CT Ultra scan, X-ray systems was also held to be an accessory to the MRI system and was accordingly found eligible for exemption under notification no 20/99-Cus as an accessory. The facts of the present case are different. There is no challenge to the fact that the Laser Imager which is compatible for use with a variety of digital modalities including but not limited to MRI machines is an accessory of an MRI machine also. The question is whether the impugned good is solely or principally for use with an MRI machine, to be classified with the said machine. Hence the judgment is distinguished.

16. Based on the discussions above we find that the Lower Authority has taken a view which is reasonable, legal and proper and we find ourselves in agreement with the same. We hence uphold the impugned order and dismiss the appeal. The appeal is disposed of accordingly.

(Order pronounced in open court on 21.08.2024)

(M. AJIT KUMAR)
Member (Technical)

(P. DINESHA)
Member (Judicial)

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