

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

REGIONAL BENCH - COURT No. III

Customs Appeal No. 40006 of 2014

(Arising out of Order-in-Original No.20161/2013 dated 29.01.2013 passed by Commissioner of Customs, Custom House, No.60, Rajaji Salai, Chennai-600 001)

M/s. BSN Medical Pvt. Ltd.,
501-502, Sej Plaza, 5th Floor,
Near Nutan High School,
Marve Road, Malad (W),
Mumbai-400 064.

.... Appellant

VERSUS

The Commissioner of Customs
Adjudicating Unit (Seaport-Import)
No.60, Rajaji Salai, Custom House,
Chennai-600 001.

... Respondent

APPEARANCE :

Shri Rohan Muralidharan, Advocate for the Appellant
Shri M. Selvakumar, Authorized Representative for the Respondent

CORAM :

HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)
HON'BLE MR. M. AJIT KUMAR, MEMBER (TECHNICAL)

FINAL ORDER No. 40326/2025

DATE OF HEARING: 12.02.2025
DATE OF DECISION: 11.03.2025

Per: Mr. P. Dinesha

The importer who is the Appellant before us, is engaged
in the import and trading of various wound care and

orthopaedic products; the imported products included 'Synthetic Casting Tapes' under the brand name 'Articast'. Admittedly, the importer was claiming the classification of the imported goods under CTH 9021.

2. The DRI, Ahmedabad appears to have gathered information that the goods under dispute were appropriately classifiable under CTH 30059040 and that the classification adopted by the importer – Appellant was incorrect, which resulted in the issuance of a summons to the importer-Appellant. Thereafter, it appears that the statement of Shri Ramesh S. Ghodge, Managing Director of the Appellant was recorded and *vide* SCN dated 29.07.2010 it was proposed *inter alia* to re-classify the imported goods in question under CTH30059040, demand applicable duty along with interest and penalty. It appears that the importer had filed a detailed reply dated 18.10.2010 offering explanation thereby justifying classification of the imported goods; reliance has also placed on an order of Co-ordinate Mumbai Bench in **C. Natwarlal & Co. Vs. Commissioner of Customs; [2005 (186) E.L.T. 284]**, however, not satisfied with the same, the Original Authority *vide* Order-in-Original No.20161/2013 dated 29.01.2013 confirmed the proposed demands. It is against this Order-in-Original and the demands confirmed therein, that the present Appeal has been filed before us.

3. Heard Shri Rohan Muralidharan, Ld. Advocate for the Appellant and Shri M. Selvakumar, Ld. Asst. Commissioner for the Revenue; we have carefully considered the documents placed on record and also the judicial precedents relied upon during the course of arguments. Upon hearing both sides, the only issue to be decided by us is, "whether the demand as confirmed/upheld in the impugned order by re-classifying the goods in question, is justified"?

4. The undisputed facts are that the imports were made between September 2006 and November 2010 and the date of issue of summons is 11.07.2008. The imported goods are explained to be Orthopaedic products for mobilisation of injured parts and for the treatment of fractures for preventing or correcting deformities out of birth. It is the case of the importer that the said products could not be used for injuries with open wounds and bodily deformities, etc. and that only deformities arising or due to accidents or injuries related to fractured bones could be treated by this product. It is claimed that the period under dispute was clearly prior to the self-assessment regime. Ld. Advocate however, fairly admitted that in respect of similar imports, various Benches of CESTAT have confirmed the classification as proposed by the Revenue, as bandages. He would, however, submit that extended period of limitation under Section 28(4) of the Customs Act, 1962 was not invocable since there was no question of

collusion or wilful misstatement or suppression of any facts by the importer; that CTH9021 covering specialised equipment was only claimed under a bona fide belief. He would thus contend that suppression has been alleged to invoke larger period of limitation and thereby levy penalty under Section 112(a) *ibid.* He would thus pray for allowing the appeal and delete the penalty levied in the impugned order.

5. *Per contra*, Sri Selvakumar, Ld. Asst. Commissioner submitted that the imported goods were not appliances but were only goods in the nature of bandages similar to Dynacast, having identical application. Further, the importer had suppressed the facts and willfully misstated the description of the goods Articast as "Orthopaedic or fracture appliances" instead of cast bandages packed for retail sale for medical, surgical, dental or veterinary purposes to the customs authorities while filing their Bills of Entry, which attracted lesser import duty. The Group Company of the appellant had during an earlier period imported identical goods by describing the same as casting tapes by classifying them under CTH3005.

5.1 Shri M. Selvakumar also placed reliance on the following Orders in support:

(1) Johnson & Johnson vs. Collector of Customs, Bombay [1999 (105) E.L.T. 177 (Tribunal)],

(2) Dr. Sabharwal's Bulk Drugs Ltd. vs. Commissioner of Central Excise, Kanpur [2000 (119) E.L.T. 634 (Tribunal)]; &

(3) Medtek Asia Pvt. Ltd vs. Commissioner of Central Excise, Mysore [2018 (9) G.S.T.L. 288 (Tri. – Bang.)]

5.2 He would further contend that when the Bills of Entry were filed upon import, at least 2 orders of CESTAT Benches *[supra]* were available on the classification and hence, not following the same was a sufficient reason for the Revenue to invoke the extended period of limitation which has been done in the case of hand. He would thus request for upholding the impugned order in *Toto*.

6. After going through the Orders – *supra* of co-ordinate Benches, we find that the issue involved in the present appeal is no more *res-integra*. The relevant portion of the order in **Johnson & Johnson** *[supra]* reads as under:

“The above appeal arises out of the order of Collector of Customs (Appeals), Bombay upholding the Assistant Collector's order classifying “Deltalite Casting Tapes” imported by the appellants herein under sub-heading 3005.10 of the Schedule to the Customs Tariff Act, 1975, rejecting the importers' claim for classification under sub-heading 9021.19.

2. We have heard Shri J.R. Cama, learned Advocate and Shri R.S. Sangia, learned JDR.

3. The imported goods are a polyester cotton material coated with polyurethane resin, said to offer controlled rigidity which allows the doctor to provide greater strength where it is needed at the fracture site. The goods are akin to those covered by Heading 30.05 which covers “wadding gauges, bandages and

similar articles (e.g. dressings, adhesive plaster, poultices) impregnated or coated with pharmaceutical substances provided these are put up in forms of packings for retail sale for use of medical, surgical, dental or veterinary purposes". They are textile fabrics coated with polyurethane which specifically appears against Heading 5903.20. However, Section Note 1(e) of Section 11 under which Chapter 59 falls, excludes articles of 30.05 and 30.06. In other words, goods classifiable under Heading 30.05 are excluded from the scope of Chapter 59. The goods imported are similar to adhesives, plasters or bandages put up in packing for retail sale and also have adhesive layer and are hence correctly classifiable under sub-heading 3005.10 which covers adhesive dressings and other articles having adhesive layers. For the purpose of Heading 30.05 it is not an essential requirement that all bandages are to be covered/ coated with pharmaceutical substance since only those plastic coated fracture bandages which are in the form of packing which is not for retail sale, are excluded, according to the HSN Explanatory Notes to Heading 30.05 at page 439-440 of Vol. II and hence even though the goods in question have not been determined to be covered/coated with pharmaceutical substance, they would still remain under Heading 30.05. The claim of the importers that the goods are orthopaedic appliances/splint for fracture application and hence covered as fracture appliances under Heading 9021.19 is not tenable, since the goods are different from splints for orthosis and are different from the type of goods covered in terms of HSN Explanatory Notes to Heading 90.21 at page 1498 of Vol. IV, which states under the Heading "splints and other fracture appliances", that some articles designed for fitting on to the patient e.g. wire, zinc or wooden cradles for holding the limbs, plaster bandage splints, fracture appliances for ribs, etc., are considered as other fracture appliances. The goods in question are not in the nature of a device/instrument/appliance and hence cannot be considered as coming within the coverage of Heading 90.21.

4. In the light of the above discussion, we hold that the Deltalite Casting Tapes imported by the appellants herein fall for classification under sub-heading 3005.10 of the Customs Tariff Act, uphold the impugned order and reject the appeal."

7. We find that the above ratio has been followed by the other co-ordinate Benches and hence, we are satisfied that the issue in the present appeal has been laid to rest by the above orders. In that view of the matter, we do not find any reasons to interfere with the impugned order.

8. Insofar as the invoking of extended period of limitation is concerned, there is also no dispute that at least 2 of the orders of other Benches where the classification was decided, were available when the Bills of Entry came to be filed. The appellant had also relied upon an order of Mumbai Bench in **C. Natwarlal & Co.** [supra], reported in the year 2005 and, hence, the appellant cannot plead ignorance of the above orders which were reported much earlier, in the years 1999 & 2000. We have to therefore hold that the larger period has been correctly invoked and hence, the appellant has to suffer the consequence.

9. Accordingly, we do not find any merit in the appeal and hence, we dismiss the same.

(Order pronounced in open court on 11.03.2025)

sd/-

(M. AJIT KUMAR)
Member (Technical)

sd/-

(P.DINESHA)
Member (Judicial)