

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

REGIONAL BENCH – COURT No. I

**Excise Appeal No. 40341 of 2021**

(Arising out of Order-in-Original No. 02/2020-Pr.Commr. dated 30.12.2020 passed by Commissioner of GST & Central Excise, No. 6/7, ATD Street, Race Course Road, Coimbatore - 641 018)

**M/s. Carenow Medical Private Limited**

No. 3/272-5, Neelambur Road,  
Muthugounden Pudhur,  
Coimbatore – 641 406.

**...Appellant**

***Versus***

**Commissioner of GST and Central Excise**

Coimbatore Commissionerate,  
No. 6/7, ATD Street, Race Course Road,  
Coimbatore – 641 018.

**...Respondent**

**APPEARANCE:**

For the Appellant : Shri S. Jaikumar, Advocate  
For the Respondent : Shri Anoop Singh, Authorised Representative

**CORAM:**

**HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)**

**HON'BLE MR. AJAYAN T.V., MEMBER (JUDICIAL)**

**FINAL ORDER No. 40333 / 2025**

DATE OF HEARING : 10.12.2024  
DATE OF DECISION : 12.03.2025

**Per Mr. VASA SESHAGIRI RAO**

Excise Appeal No. E/40341/2021 has been filed by  
M/s. Carenow Medical Private Limited (hereinafter referred  
to as 'Appellant') assailing the Order-in-Original No.  
02/2020-Pr.Commr. dated 30.12.2020 which had confirmed  
the demand of Rs.5,31,66,201/- under Section 11(10) of

the Central Excise Act, 1944 (ACT), along with applicable interest under Section 11AA and imposed penalty equal to the demand confirmed 11AC(c) of the ACT *ibid* respectively.

2.1 Brief facts are that the appellants are manufacturers of various products, *inter alia*, "Eco Bath Towelette", which are disinfectant bath wipes used primarily as a bathing substitute for in-patients at various medical facilities, and were classifying the products under Chapter Heading 3402 9091. The Department proposed to re-classify the product under CTH 3307 3090 as "Other Bath Preparations" and issued Show Cause Notice accordingly. After due process of adjudication, the demand in the Show Cause Notice along with interest and penalty were confirmed except the penalty under Rule 25 of the Central Excise Rules, 2002. The relevant Headings of disputed classifications are: -

**"3307-** *pre-shave, shaving or after-shave preparations, personal deodorants, bath preparations, depilatories and other perfumery, cosmetic or toilet preparations, not elsewhere specified or included, prepared room deodorisers, whether or not perfumed or having disinfectant properties.*

**3402-** *organic surface-active agents (other than soap), surface-active preparations, washing preparations (including auxiliary washing preparations) and cleaning*

*preparations, whether or not containing soap, other than those of heading 3401."*

A perusal of the above two Headings would reveal that, while Heading 3307 covers bath preparations, Heading 3402 covers cleaning preparations, having a basis of soap or other organic surface-active agents.

2.2 The term 'Organic surface-active agents" under Chapter Heading 3402 should be as per Chapter Note 3 of Chapter 34 which reads: -

*"3. For the purposes of heading 3402, "organic surface-active agents" are products which when mixed with water at a concentration of 0.5% at 20°C and left to stand for one hour at the same temperature:*

*give a transparent or translucent liquid or stable emulsion without separation of insoluble matter, and reduce the surface tension of water  $4.5 \times 10^{-2}$  N/m (45 dyne/Cm) or less."*

2.3 The main contention of the Department to reclassify the product from CTH 3402 to 3307 is that the impugned product is not having the basis of the organic surface-active agents (OSA), on the other hand, the contention of the

Appellant is to demonstrate that the products are based on OSA. Samples were drawn by the Department and tested, and the test results were challenged by the Appellant in the Hon'ble High Court of Madras, re-test was ordered, subsequent samples were drawn from similar products (as the original products were no more in production). Whereas the Department tested the samples at CRCL, parallel tests were also conducted by the Appellant in private accredited testing facilities Viz., PSG TECHS COE INDUTECH and IIT Madras to challenge the results. The Department discarded the test results done by the Appellants and proceeded to conclude that the products are not having the basis of OSA based on the strength of the CRCL test reports and thus classified under Heading 3307.

3.1 The Learned Counsel Shri S. Jaikumar appeared on behalf of the Appellant and urged that, even under CTH 3307, the classification sought by the Department, as per HSN, bath preparations are based out of organic surface-active agents. Thus, the Department has proceeded on its entire endeavour to substantiate that the impugned product does not have OSA but on the other hand has classified the product under a Chapter Heading which is having the basis of OSA. Referring to the General Rules of Interpretation

(GRI), they would submit that, assuming without admitting, as both Heading 3307 and 3402 are either bath preparations or cleaning preparations having the basis of OSA, on application of the Rule 3(c) of GRI the latter of the two *viz.*, CTH 3402 appears to be appropriate.

3.2 During the hearing before the Tribunal, apart from the classification, they would vehemently contend the invocation of larger period in the instant case by submitting the following: -

- i. The Show Cause Notice has invoked the extended period of limitation under Section 11A(4) of the Act and its consequential penalty under Sec. 11AC of the Act which was duly confirmed in the impugned order.
- ii. Section 11A(4) of the Act is a draconian provision and has to be exercised with utmost caution and diligence only in cases involving fraud, collusion, wilful misstatement, or suppression of facts with intent to evade duty.
- iii. It is evident that, the present case is primarily an issue on technical classification, even the Department has to depend on technical reports of various testing laboratories. In other words, by no stretch of

imagination, either the issue involved, or the consequential duty demand can be attributed to any of the ingredients that would warrant invocation of the above Section against the Appellant.

- iv. Further, as it could be seen from the records, there are test reports both in the favour of the Department as well as the Appellant, which is a testament of ambiguity in the instant case. Furthermore, in the Circular No. 52/26/2018-GST dated 09.08.2018 itself, it has been acknowledged by the Government that varied practices are being followed regarding the classification of baby wipes, facial tissues and other similar products, and references have been received requesting for correct classification of these products. As per the references, these products are currently being classified under different HS codes viz., 3307, 3401 and 5603 by the industry. Therefore, it is an interpretational issue and the intent to evade duty is absent, which is the essential element for invoking extended period. In this connection, they would place reliance in the case of *Siddhartha Tubes Ltd. [2006 (193) ELT 6 (SC)]* and *Jaiprakash Industries Ltd. [2002 (11) TMI 92-SUPREME COURT]*.
- v. Further, the description of the impugned product and classification has been duly mentioned in the returns since December 2014. The Department has not disputed

any of declarations in returns or invoices and have not unearthed any new facts which would trigger the elements to invoke larger period of limitation. In Para 50.6 of the Order-in-Original also clearly reveals that the classification is based on the chapter notes, chapter headings and their records like returns, product catalogue etc. Thus, when all the material facts were known to both the parties, extended period cannot be invoked. Reliance in this regard is placed on *Continental Foundation Joint Ventures Holding, Nathpa HP [2007 (8) TMI 11-SC]* wherein the Hon'ble Court affirmed that when the facts were known to both the parties, extended period cannot be invoked.

vi. Reliance is also placed on the following case laws wherein it was held that the extended period cannot be invoked in cases of interpretational disputes and the penalty was also set aside: -

- a. *Pushpam Pharmaceuticals Company [1995 (3) TMI 100-SC]*
- b. *Anand Nishikawa Company Ltd. [2005 (9) TMI 331-SC]*
- c. *International Merchandising Co., LLC [2022 (12) TMI 556]*
- d. *SCK.B. Autosys India Pvt. Ltd. [2024 (10) TMI 17-CESTAT CHENNAI]*

In light of all the above, the Ld. Counsel urged that, even if the classification is not in accordance with the stand of the Appellant, extended period cannot be invoked and

consequent penalty under Section 11 AC cannot be imposed.

4. The Ld. Authorised Representative Shri Anoop Singh for the Department would support the findings of the Ld. Adjudicating Authority in the Order-in-Original No. 02/2020-Pr.Commr. dated 30.12.2020. He has placed reliance on the decision of the Tribunal Mumbai in the case of *Tata Motors Ltd., Pune Vs. Commissioner of Central Excise, Pune [2014 (6) TMI 162-CESTAT MUMBAI]* to justify invocation of larger period.

5. We have carefully considered the submissions made by both sides and also evidences available on records.

6. The main issues involved in this appeal are :-

- i. Whether the classification of "Eco Bath Towelette" is under Chapter Heading 3402 9091 as classified by the Appellant or as "Other Bath Preparations" under Chapter Heading 3307 3090 as contended by the Department? and,

- ii. Whether any suppression is involved for invocation of extended period for the demand and imposition of penalty?

7. The facts as evidenced in this appeal indicate that the testing and retesting of the samples of the product viz., Eco Bath Towelette throws up contradictions as far as the classification is concerned. As per the directions of the Hon'ble High Court of Madras, retest was ordered, but, subsequent samples were drawn from different products as the original products were no more in production. Whereas the Department tested the sample at CRCL which has submitted its report dated 05.08.2019. On testing of "Eco Bath Towelettes Extra Large", the following test report is extracted as follows: -

*"Report: -*

*The sample is in the form of wipes (10 Nos.), having pleasant odour, received in original unit packing (Ecobath Towelette). It is made of Non-woven fabric, impregnated with an aqueous solution.*

*On the basis of Chemica, Chromatographic and Spectroscopic analysis, aqueous solution is containing Chlorehexidine, Polyethylene glycol & surfactants.*

*0.5% of aqueous solution at 20° C of the sample was left to stand for one hour at same temperature which did not reduce the surface tension of water to  $4.5 \times 10^{-2}$  N/m (45 dyne/Cm) or less (actual being 54.52 dune/Cm).*

***On the basis of above, sample does not satisfy the criteria as laid down in Notes 3, (b) of Chapter 34 relating to heading 34.02 of Central Excise Tariff."***

Whereas the appellant too have got tested their samples at PSGTECHS COE INDUTECH, Centre of Excellence for Industrial & Home Textiles and also by the Indian Institute of Technology Madras, where the test results indicated as follows: -



**PSGTECHS COE INDUTECH**  
**CENTER OF EXCELLENCE FOR INDUSTRIAL & HOME TEXTILES**  
 Promoted by Ministry of Textiles - Government of INDIA  
 Department of Textile Technology/Automobile Engineering- PSG College of Technology  
 Avinashi Road, Neelambur, Coimbatore-641 062  
 Tel: 0422 3933 250-252 Fax: 0422 2573833 E-mail: testing.int@gapps.psgtech.ac.in

### TEST REPORT

Report No: 781

Report Date: 22.12.2016

Name of the Customer: M/s.Carenow Medical Private Ltd

Description of the Sample: Liquid

Sample Received Detail: COE/12/16-17/781 DT: 22.12.2016

Type of test: Surface Tension

Test Results:

| S.No | Sample              | Surfcae Tension(mN/m) |
|------|---------------------|-----------------------|
| 1    | Batch E243 - Bottle | 30.66                 |
| 2    | Batch E243 - Wipes  | 33.49                 |
| 3    | Batch E175 - Wipes  | 30.56                 |

QA1

Tested by

\*This is computer generated report no need of signature

  
 Technical Manager

**PSGTECHS COE INDUTECH**  
**PSG Tech Campus,**  
**Neelambur,**  
**Coimbatore - 641062.**

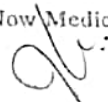
1 | Page

Important:

This Report is strictly **CONFIDENTIAL**. Its use for publicity, arbitration or as evidence in legal disputes is forbidden.  
 The results relate only to the sample supplied by the customer.



For CareNow Medical Pvt. Ltd



Director



Environmental and Water Resources Engineering Laboratory,  
Department of Civil Engineering,  
Indian Institute of Technology Madras

Telephone: +9144-2257429

Fax: +914422574250

E. mail: snagendra@iitm.ac.in

Prof. Shiva Nagendra S.M

Date: 26-11-2019

To,

Mr. H. Arun Kumar  
Quality Control Manager  
CareNow Medical Pvt. Ltd.  
Muthugoundenpudur,  
Coimbatore, TN, India – 641406.

#### TEST RESULTS

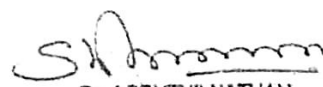
The surface tension and density CHG Bath Wipes sample, supplied by CareNow Medical Pvt. Ltd, was analyzed using KSV Sigma 701, digital Tensiometer and the results are given in Table - 1

Table 1: Test results of density and surface tension of CHG Bath Wipes sample

| Sl. No | Sample                   | Concentration    | Density     | Surface tension |
|--------|--------------------------|------------------|-------------|-----------------|
| 1      | Distilled Water          | -                | 0.9978 kg/L | 70.52 mN/m      |
| 2      | Eco Bath E450 Bath Wipes | 0.5% (v/v) soln. | 0.9934 kg/L | 33.55 mN/m      |

With regards

  
Dr. S. M. Shiv Nagendra

  
Dr. J. SENTHILNATHAN  
Technical Officer  
EWRE Division, Department of Civil Engineering  
Indian Institute of Technology Madras  
Chennai - 600036  
Ph: +91 44 22574307 Mob: +91 9444233609  
Email: jsn@iitm.ac.in



Dr. S.M. SHIVA NAGENDRA  
Professor  
Department of Civil Engineering  
Indian Institute of Technology Madras  
Chennai - 600 036, India  
Ph: +91-44-22574290

As the original products manufactured by the appellant were no more in vogue, subsequent samples got tested by both CRCL and PSGTECHS COE INDUTECH, Centre of Excellence for Industrial & Home Textiles and Indian Institute of Technology Madras have thrown up contradictory and not so categorical results. For classifying

the impugned product, the Chapter Note 3 of Chapter 34 is relevant which is reproduced as under: -

*"3. For the purposes of heading 3402, "organic surface-active agents" are products which when mixed with water at a concentration of 0.5% at 20°C and left to stand for one hour at the same temperature:*

*(a) give a transparent or translucent liquid or stable emulsion without separation of insoluble matter; and*

*(b) reduce the surface tension of water  $4.5 \times 10^{-2}$  N/m (45 dyne/Cm) or less."*

The Chapter Note 3 of Chapter 34 mandates that OSAs are when mixed, a transparent or translucent liquid or emulsion and reduction of surface tension of water to be reduced to specified conditions are to be satisfied.

8. The appellant has submitted that the impugned product is based on the organic surface-active agents whereas the Department's contention appears to be that the provisions of Chapter Note 3 are not complied with as per the test report of CRCL cited above. As such, though the appellant was all along contending that its products are also based on organic surface-active agents, but the CRCL report clearly indicate that provisions of Chapter Note 3 are not satisfied. As such, its classification under Chapter 34 is ruled out. Further, examination of the test reports by the

IIT, Madras and PSGTECHS could not throw any light as to the satisfaction of the conditions specified in Chapter Note 3 of Chapter 34. The CRCL report is very categorical that the product had not satisfied the conditions of Chapter Note 3 of Chapter 34. The product is to be classified under CETH 3307 in terms of the above test report. As such, there is nothing much left for us to dwell upon the classification dispute and accordingly, we uphold the classification of the impugned goods under CTH 3307 as proposed by the Department.

9. Now the only issue is to be decided is regarding the invocation of larger period of limitation to demand the duty and imposition of penalty under Section 11 AC of the Central Excise Act, 1944.

10. It is not in dispute that the classification of the impugned products is contentious and based on scientific and technical parameters. The Department has itself framed its allegations only after testing the product in CRCL for the presence of OSA as per Chapter Note 3 of Chapter 34.

11. On the other hand, the Appellant had also challenged the same with rival test reports from few private accredited testing institutions like PSG TECH and IIT Madras.

12. It is a well settled principle that invocation of larger period is not a rule but an exception, wherein, there should be ample justification to invoke the same. That too, while dealing with an indirect tax, it has to be exercised with utmost caution. In this context, we find the reliance of the case laws by the Appellant are relevant and are discussed below: -

- i. In the case of *Chemphar Drugs & Liniments [1989 (2) TMI 116-SC]*, the Apex Court held: -

*"8. Aggrieved thereby, the revenue has come up in appeal to this Court. In our opinion, the order of the Tribunal must be sustained. In order to make the demand for duty sustainable beyond a period of six months and up to a period of 5 years in view of the proviso to sub-section 11A of the Act, it has to be established that the duty of excise has not been levied or paid or short-levied or short-paid, or erroneously refunded by reasons of either fraud or collusion or wilful misstatement or suppression of facts or contravention of any provision of the Act or Rules made thereunder, with intent to evade payment of duty. Something positive other than mere inaction or failure on the part of the manufacturer or producer or conscious or deliberate withholding of information when the manufacturer knew otherwise, is required before it is saddled with any liability, before the period of six months. Whether in*

*a particular set of facts and circumstances there was any fraud or collusion or wilful misstatement or suppression or contravention of any provision of any Act, is a question of fact depending upon the facts and circumstances of a particular case. The Tribunal came to the conclusion that the facts referred to hereinbefore do not warrant any inference of fraud. The assessee declared the goods on the basis of their belief of the interpretation of the provisions of the law that the exempted goods were not required to be included and these did not include the value of the exempted goods which they manufactured at the relevant time. The Tribunal found that the explanation was plausible, and also noted that the Department had full knowledge of the facts about manufacture of all the goods manufactured by the respondent when the declaration was filed by the respondent. The respondent did not include the value of the product other than those falling under Tariff Item 14E manufactured by the respondent and this was in the knowledge, according to the Tribunal, of the authorities. These findings of the Tribunal have not been challenged before us or before the Tribunal itself as being based on no evidence."*

- ii. The Hon'ble Supreme Court in the case of *Pushpam Pharmaceuticals Company [1995 (3) TMI 100-SC]* held as follows: -

*"4. Section 11A empowers the Department to re-open proceedings if the levy has been short-levied or not levied within six months from the relevant date. But the proviso carves out an exception and permits the authority to exercise this power within five years from the relevant date in the circumstances mentioned in the proviso, one of it being suppression of facts. The meaning of the word both in law and even otherwise is well known. In normal understanding it*

*is not different that what is explained in various dictionaries unless of course the context in which it has been used indicates otherwise. A perusal of the proviso indicates that it has been used in company of such strong words as fraud, collusion or wilful default. In fact it is the mildest expression used in the proviso. Yet the surroundings in which it has been used it has to be construed strictly. It does not mean any omission. The act must be deliberate. In taxation, it can have only one meaning that the correct information was not disclosed deliberately to escape from payment of duty. Where facts are known to both the parties the omission by one to do what he might have done and not that he must have done, does not render it suppression."*

iii. In a recent decision of *Northern Operating Systems Pvt. Ltd.* [2022 (5) TMI 967-SC], the Apex Court has held as follows: -

**"62.** *The revenue's argument that the assessee had indulged in wilful suppression, in this court's considered view, is insubstantial. The view of a previous three judge ruling, in Cosmic Dye Chemical v. Collector of Central Excise (1995) 6 SCC 117 - in the context of Section 11A of the Central Excise Act, 1944, which is in identical terms with Section 73 of the Finance Act, 1994 was that:*

*"Now so far as fraud and collusion are concerned, it is evident that the requisite intent, i.e., intent to evade duty is built into these very words. So far as misstatement or suppression of facts are concerned, they are clearly qualified by the word "wilful" preceding the words "misstatement or suppression of facts" which means with intent to evade duty. The next set of words "contravention of any of the provisions of this Act or rules" are again qualified by the immediately following words "with intent to*

*evade payment of duty". It is, therefore, not correct to say that there can be a suppression or misstatement of fact, which is not wilful and yet constitute a permissible ground for the purpose of the proviso to Section 11-A. Misstatement or suppression of fact must be wilful."*

**63.** *This decision was followed in Uniworth Textiles v. Commissioner of Central Excise (2013) 9 SCC 753 where it was observed that "the conclusion that mere non-payment of duties is equivalent to collusion or willful misstatement or suppression of facts" is "untenable". This view was also followed in Escorts v. Commissioner of Central Excise (2015) 9 SCC 109, Commissioner of Customs v. Magus Metals (2017) 16 SCC 491 and other judgments."*

Further, it has been a well settled law, that in matters relating to technical interpretation and classifications, suppression of fact / wilful misstatement has to be used with utmost caution and justification.

iv. In the case of *K.B. Autosys India Pvt. Ltd. [2024 (10) TMI 17-CESTAT CHENNAI]*, it has been held: -

"18. ....

.....

.....

*We also find that the Hon'ble Supreme Court's decision in the case of Northern Plastic Ltd. Vs. Collector of Customs & Central Excise [1998 (101) ELT 549 (SC)] held that merely claiming the benefit of exemption or a particular classification under the Bill of Entry does not amount to mis-declaration under Section 111(m) of the Customs Act, 1962. The Hon'ble High Court of Bombay in the case of Commissioner of Customs Vs. Gaurav Enterprises*

*[2006 (193) ELT 532 (Bom.)] has also held that claiming the benefit of exemption in the Bills of Entry filed under the Act does not amount to suppression / mis-declaration. Further, it has been held in the case of Lewek Altair Shipping Pvt. Ltd. Vs. Commissioner of Customs [2019 (366) ELT 318 (Tri.-Hyd.)] which has been affirmed by the Hon'ble Supreme Court that claiming an incorrect classification or the benefit of an ineligible exemption Notification does not amount to making a false or incorrect statement as it is not an incorrect description of the goods or their value but only a claim made by the assessee. In the absence of any finding of positive suppression by the Appellant in the impugned order, we find that the allegation of wilful misclassification and intention to evade duty by the Respondent is not at all tenable and misclassification could not be equated with misdeclaration within the meaning of Section 28(4) of the Customs Act, 1962. Considering the above facts that the Respondent is a regular importer of the product which is used in the manufacture of Brake pads and also considering that they were adopting the above classification consistently, we are of the opinion that attributing any malafide intention or motive for adopting such classification or claiming exemption benefit of the Notification is not justified, considering the facts of this case. As such invocation of extended period for demand of duty in terms of provision of section 28(4) of Custom Act 1962 is not legal or justified. The issue of limitation is answered in favour of the Respondent importer."*

13. It is also on record that the Appellant has disclosed all relevant information in their packaging, marketing brochures etc. It is only upon a highly technical test result, despite rival claims from both sides, the re-classification has

been proposed and re-determined. The Appellant has also taken a legal opinion initially, a fact deposed before the investigation itself and taken due cognisance in the impugned order. Thus, in our view, the appellant has discharged the onus, if any, at their end and cannot be saddled with an allegation that they have suppressed any fact or wilfully mis-stated to attract invocation of proviso to Sec. 11A of the Act or the penalty under Sec. 11AC of the Act.

14. We have also taken note of the Circular No. 52/26/2018-GST dated 09.08.2018 given by the Department in the current GST regime with regard to the classification of bath wipes, where the Government has taken due cognisance of the varied classifications under CTHs 33 and 34, which reveals that there are still varied classifications between the competing CTHs 33 and 34 prevalent with regard to the products. In this connection the reliance placed in the case of *Siddhartha Tubes Ltd. [2006 (193) ELT 6 (S.C.)]* and *Jaiprakash Industries Ltd. [2002 (11) TMI 92-SUPREME COURT]* wherein the Hon'ble Supreme Court was of the view that, if the assessee has an arguable case or if divergent views are possible then the

penalty cannot be imposed and extended period cannot be invoked.

15. In view of the foregoing, we uphold the classification of the goods under CTH on 3307 and so ordered accordingly. For the reasons above, we also hold that there are no grounds for the Department to invoke larger period of limitation and hence, the demand shall be restricted to the normal period of limitation under Sec. 11A of the Act. Accordingly, all the penalties including the one imposed under Sec 11AC of the Act stands vacated.

16. Thus, the Appeal is partly allowed on above terms with consequential relief, if any, as per the law.

(Order pronounced in open court on 12.03.2025)

Sd/-  
**(AJAYAN T.V.)**  
MEMBER (JUDICIAL)

MK

Sd/-  
**(VASA SESHAGIRI RAO)**  
MEMBER (TECHNICAL)