

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI.**

PRINCIPAL BENCH,
COURT NO. I

CUSTOMS APPEAL NO. 51055 OF 2022

[Arising out of the Order-in-Original No. 13/2021/SJ/Principal Commissioner dated 28/09/2021 passed by The Principal Commissioner of Customs, Air Cargo Complex, New Delhi.]

M/s Rockwin Flowmeter India Pvt. Ltd., ...Appellant
D-1/34, Vasant Vihar,
New Delhi – 110 057.

Versus

Prncipal Commissioner of Respondent
Customs (Import),
New Customs House, Near I.G.I. Airport,
New Delhi

APPEARANCE:

Shri Bipin Garg, Advocate and Shri R. Krishnan, Consultant for the appellant.

Shri Shiv Shankar, Authorized Representative for the Department

CORAM:

HON'BLE JUSTICE MR. DILIP GUPTA, PRESIDENT
HON'BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)

FINAL ORDER NO. 50649/2026

DATE OF HEARING : 13.01.2026

DATE OF DECISION: 02.04.2026

P.V. SUBBA RAO

The Order dated 29.1.2025 passed by the Principal Commissioner¹ is assailed by M/s. Rockwin Flowmeter India Pvt. Ltd.² in which he decided the proposals made in the show cause notice dated 30.9.2020³ covering the Bills of Entry filed during the period 9.5.2015 to 13.7.2020 in this appeal. In the

-
- 1. impugned order**
 - 2. appellant**
 - 3. SCN**

impugned order, the Principal Commissioner confirmed demand of duty of Rs. 56,93,781/- invoking extended period of limitation under section 28(4) of the Customs Act, 1962⁴ along with interest under section 28AA of the Act and imposed an equal amount under section 114A of the Act.

2. The appellant imported goods declared as 'ROTARY GAS METER-FMR G025 (FLOW METER)' and classified them under **Customs Tariff Item⁵ 9026 10 10** as flow meters and claimed the benefit of Notification No. 24 of 2005-Cus dated 1.3.2.005 and paid zero Basic Customs Duty. Receiving intelligence that the appellant had mis-declared the meters as flow meters and misclassified them and they were actually 'Gas Meters' falling under **CTI 9028 10 00**, the Bills of Entry filed by the appellant and other details were examined along with the invoices uploaded on e-Sanchit of the Indian Customs EDI System⁶. The matter was investigated further, statements were recorded and finally the SCN was issued the proposals in which were decided in the impugned order.

Submissions of the appellant

3. Shri Bipin Garg, learned counsel for the appellant made the following submissions:

- (i) The appellant has been importing Gas Flow meters since 1988 and has been classifying them under **CTI**

4. Act

5. CTI

6. ICES

9026 10 10 claiming the benefit of exemption Notification No. 24/2005-Cus dated 1.3.2005 (S. No. 31).

- (ii) The customs officers have been clearing the goods after examination.
- (iii) The statement of Shri Rajeev Prakash, Director of the appellant firm was recorded on 22.5.2019.
- (iv) During investigation, the appellant also submitted letter dated 16.5.2019 and letters from its buyers M/s. Somany Ceramic Limited, M/s. Sukoi Engineers, Gurgaon and M/s. Indraprastha Gas Limited who asserted that the appellant had supplied them flow meters.
- (v) The department objected to the classification and issued the SCN covering only the period 9.5.2015 to 13.7.2020 and the appellant had been clearing the goods under the same **CTI** even before that date.
- (vi) The Commissioner passed the impugned order without giving any independent analysis for his findings without considering the submissions made by the appellant in the reply to the SCN.
- (vii) The flow meters imported by the appellants have several advanced features to check the flow of gas and they are not covered under **CTH 9028**.
- (viii) All industrial/ professional grade gas flowmeters are pre-calibrated.

- (ix) The adjudicating authority in the impugned order reproduced the heading 'Principle' in the catalogue of the product but ignored 'Introduction' part of the catalogue.
- (x) IGL floated a global tender for purchase of RPD flow meters and the purchase order issued by IGL and the minutes of the meeting between the IGL and the appellant specifies the item to be purchased as RPD Flowmeter.
- (xi) The Commissioner relied on the statements made during the investigation but not the statements made during cross-examination.
- (xii) The demand was barred by limitation inasmuch as the appellant has been importing the meters since 1988 and the department was aware of how they were classifying. Hence extended period of limitation has been wrongly invoked in this case.
- (xiii) The burden of proving classification rests on the department and the department has not discharged this burden in this case.
- (xiv) The impugned order may be set aside and the appeal may be allowed with consequential relief.

Submissions on behalf of the Revenue

4. Shri Shiv Shankar, learned authorized representative for the Revenue made the following submissions:

- (i) The appellant had imported goods declaring them in the Bills of Entry as 'Rotary Gas Meter- FMR G025 (Flow Meter) in the bills of entry and classified them under **CTI 9026 10 10** and claimed the benefit of Notification No. 24/2005-Cus dated 1.3.2005 (S. No. 31).
- (ii) As per the explanatory notes to the Harmonised System of Nomenclature⁷ for heading 9028, gas meters are designed to measure the volume of fluid passing through a conduit. These notes clarify that household meters, which include those measuring gas consumption fall within this classification.
- (iii) Conversely, the HSN notes for heading 9026 explain that they are tasked with assessing the flow rate rather than cumulative volume of gas delivered over a period which is the domain of supply meters categorized under heading 9028.
- (iv) The goods in question, identified as gas meters, are meant to measure the gas volume in cubic meters and are explicitly listed in **CTI 9028 20 00** as gas meters. The supplier's website also presents the product as a gas meter and not as a flow meter. The ability to measure flow rate is one of the many technical specifications of the meters.

(v) A similar case regarding the classification of the water meters supplied to Delhi Jal Board has been decided by a bench of this Tribunal in **Customs Appeals no 50851 of 2021 and 50852 of 2021 M/s. SPLM Infra Limited vs Principal Commissioner** in favour of the Revenue on 2.5.2025.

(vi) The appeal may be dismissed and the impugned order may be upheld.

Findings

5. We have considered the submissions advanced by both sides and perused the records.

6. Three issues which fall for consideration in this appeal are:

- a. Whether the imported meters are classifiable under **CTI 9026 10 10** (as claimed by the appellant) or under **CTI 9028 10 00** (as held in the impugned order)?
- b. Whether extended period of limitation to raise the demand under section 28(4) of the Act has been correctly invoked?
- c. Whether penalty under section 114A of the Act has been correctly imposed on the appellant?

7. The brochure of the product submitted by the learned counsel has been of particular help to us in understanding the

nature of the product. This brochure is not disputed by either side and is a matter of record. The product is described as 'ROTARY METER SERIES FMR'. The brochure was also referred to in the impugned order but the learned counsel submitted that the Commissioner only considered what was mentioned under the heading 'Principle' but ignored what is stated in the 'Introduction' part of the brochure. We proceed to examine both the headings of the brochure. The 'Introduction' states "The FMG series of rotary gas meters are designed to meet the highest demands of reliable and accurate measurement of gas flow...." Under the heading 'Principle', it is said 'The FMG rotary gas meter is a displacement type gas meter. The actual measurement is performed by two figure 8-shaped impellers (rotors) rotating within a measurement chamber.... The volume is displayed on a direct read counter type index....' Further, under the heading 'Applications' it is mentioned 'The FMR series of rotary meters is suitable for custody transfer gas measurement of all non-corrosive gases such as natural gas, propane, butane, air hydrogen, etc. Typical applications are:

- Gas distribution in low, medium and high pressure networks
- Industrial applications
- Master meters for test batches

8. The brochure makes it evident that the meters in dispute are meant for measuring the volume of gas transferred from the custody of one to another in gas distribution networks and

industries, etc. The customers of the appellant such as IGL are distribution networks. When a consumer consumes gas, IGL, as the supplier, needs to know how much was consumed and accordingly bill him. These are similar to the water meters installed by the municipal corporations or Jal boards or electricity meters installed by the power distribution companies. All these have one primary purpose. To check how much was consumed during a period and bill accordingly. The photographs of the measurements taken on the meters supplied by the appellant were provided to the customs during investigation by the IGL which is pasted in page 14 of the SCN (page 118 of the appeal). A sample of the reading of the seized sample of the meter is pasted at page 15 of the SCN (page 119 of the appeal). Both show the reading as m^3 or in other words, cubic meters of gas which is the volume of gas which passed through the meter. Of course, in any meter of this type, some other specifications are also required such as at what pressures the meter can operate, etc. but that does not become the function of the meter but it is intended to confirm that it is suitable to operate at the relevant pressures and rates of flow. It is similar to the operating voltage range indicated in an electric appliance.

9. After examining the brochure, the type of customers and the meter readings all of which are consistent with one another, we have no manner of doubt that the meters were meant to measure how much gas has flown through which has

been neatly put as 'custody transfers' in the brochure. Custody transfers could be from a supplier to the buyer or from one unit to another or from one part of the factory to another, etc. The purpose is certainly to know how much has been transferred.

10. This takes us to the next question of classification of the goods under the Customs tariff. The two competing entries are as follows:

9026 INSTRUMENTS AND APPARATUS FOR MEASURING OR CHECKING THE FLOW, LEVEL, PRESSURE OR OTHER VARIABLES OF LIQUIDS OR GASES (FOR EXAMPLE, FLOW METERS, LEVEL GAUGES, MANOMETERS, HEAT METERS), EXCLUDING INSTRUMENTS AND APPARATUS OF HEADING 9014, 9015, 9028 OR 9032

9026 10 - For measuring or checking the flow or level of liquids :

9026 10 10 ---Flow meters

9026 10 20 --- Level guages

9026 10 90 --- Other

9026 20 00 - For measuring or checking pressure

9026 80 - Other instruments or apparatus

9026 80 10 --- Heat meters

9026 80 90 --- Other

9026 90 00 – Parts and accessories

9028 GAS, LIQUID OR ELECTRICITY SUPPLY OR PRODUCTION METERS, INCLUDING CALIBRATING METERS THEREFOR

9028 10 00 – Gas meters

9028 20 00 – Liquid meters

9028 30 - Electricity meters

9028 30 10 ---For alternating current

9028 30 90 --- other

9028 90 - Parts and accessories:

9028 90 10 --- For electricity meters

9028 90 90 --- Other

11. The entries are quite clear; while **CTI 9026 20 00** covers instruments and apparatus for measuring or checking pressure **CTI 9028 10 00** covers gas meters for supply or production. When gas is transferred from the custody of one to another (say, the IGL to the consumer) or from one part of the plant to another what is measured is the quantity so transferred or supplied. This is the function of the meters in dispute as per the brochure. It is consistent with the type of buyers of the appellant such as IGL. This is also consistent with what is being displayed as readings on the meters viz., volume of gas in cubic meters.

12. Clearly, the meters are not meant to check the pressure or rate of flow. IGL will not bill its customers based on the rate of flow but will bill based on how much has flown to and used by the customer during the month or quarter.

13. After examining the records including the brochure submitted by the appellant, we have no manner of doubt that the meters are meant to measure how much total gas has flown and hence has been transferred. Such meters are covered under **CTI 9028 10 00** which is the correct classification of the meters in dispute.

14. It is undisputed that if the meters are classified under **CTI 9028 10 00** the appellant will not be entitled to the benefit of the exemption notification. The demand of duty, therefore, needs to be confirmed.

15. Next is the question of extended period of limitation. The reasons for invoking extended period of limitation indicated in the SCN are below:

“12. Whereas, the importer appear to have contravened the provisions of section 17 (1) of the Customs Act in as much as they did not assess their customs duty liability correctly in respect of the goods imported under the aforesaid Bills of Entry.

13. In view of the aforesaid, it appears that the importer had resorted to willful mis-statement and suppression of facts with regard to the nature and description of goods and wrong availment of notification as mentioned above in respect of the Bills of Entry for the above mentioned period and therefore, it appears that extended period of five years from the relevant date is applicable in the case of aforesaid Bills of Entry in terms of sub-section (4) of the section 28 of the Customs Act”.

16. The reasons for invoking extended period of limitation indicated in the impugned order are below:

“7. I find that the importer was well aware that the impugned goods measure only the volume of gas and not the flow of gas. The flow meter and gas meter are distinctly classified under different Tariff heading and it is evident that they have deliberately classified the impugned goods under CTH 9026 20 00 with the sole motive of availing the benefit of S. No. 31 of Notification No. 24/2005-Cus. dated 01.03.2005 thereby evading the appropriate payment of customs duty. For this act of misrepresentation of facts, I hold that the differential duty

amounting to Rs. 56,93,781/- (Rupees Fifty Six Lakh Ninety Three Thousand Seven Hundred Eighty One only) is liable to be recovered invoking the extended period of limitation under the provisions of section 28 (4) of the Customs Act”.

17. We find that extended period of limitation can be invoked only if the non-payment or short payment of duty is due to collusion or wilful misstatement or suppression of facts. What is evident from the case is that all documents were filed and the appellant claimed a wrong classification and an ineligible exemption notification. We do not find any reason to uphold invocation of extended period of limitation as there is no evidence of collusion or willful mis-statement or suppression of facts.

18. The last is the question of penalty under section 114A. The elements required to impose penalty under section 114A are the same as those for invoking extended period of limitation under section 28(4). Since we have held against invoking extended period of limitation, penalty under section 114A also needs to be set aside.

19. In view of the above, the appeal is partly allowed and the impugned order is partly modified setting aside the demand for extended period of limitation and penalty under section 114A. The classification of the imported meters and confirmation of demand within the normal period of limitation

are upheld. The appellant will be entitled to consequential relief.

(Order pronounced in open court on 02/04/2026.)

(JUSTICE DILIP GUPTA)
PRESIDENT

(P.V. SUBBA RAO)
MEMBER (TECHNICAL)

PK