IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI
PRINCIPAL BENCH, COURT NO. III

Appeal No. C/ 54826/2014, C/54204/2015-Cu(DB)

[Arising out of the Orders-In-Appeal No.CC(A)/CUS/525/2014 dated 17.06.2014 and No.CC(A)/CUS/1161/2015 dated 04.08.2015 passed by Commissioner of Customs(Appeals) New Delhi]

C.C. New Delhi **…Appellant**

Vs.

L.G. Life Sciences India Pvt Ltd **…Respondent**

Appearance:
Sh. A. Jain, Ld. AR for the appellant
Sh. AS Hasija , Ld. Consultant for the respondent

CORAM:
Hon'ble Mr. S.K. Mohanty, Member (Judicial)
Hon'ble Mr. Ashok K. Arya, Member (Technical)

Date of Hearing.15.02.2017
Date of decision. 28.02.2017

Final Order No. 52052-52053 /2017

Per Ashok K. Arya

1. Revenue has filed these two appeals against Orders-in-Appeal number 525/2014 dated 17.06.2014 and number 1161/2015 dated 4.8.2015 passed by Commissioner of Customs (Appeals).

2. The brief facts are that the respondent namely M/s LG Life Sciences India Pvt Ltd, imported the goods declared as 'Toraymyxin

Single Unit Cartridge (Dialyser Blood Filter)' and claimed classification under Customs Tariff Heading 90189031. However, Dy Commisioner of Customs vide Order-in-Original number 22/SGS/DC/2014 dated 12.06.2014 held that goods deserve classification under CTH 84212900.

2.1 Against Dy Commissioner's Order-in-Original dated 12.06.2014, the respondent, M/s LG Life Sciences India Pvt Ltd filed the appeal before Commissioner of Customs(Appeals) who vide his Order-in-Appeal number 11161/2015 held that goods are classifiable under CTH 90189099. The Revenue has filed appeal against this order of Commissioner of Customs (Appeals).

2.2 There is another impugned Order-in-Appeal number 525/204 dated 17.06.2014 wherein it is held that original claim of the importer classifying the goods under CTH 90189031 will prevail and assessment contrary to the claim of the importer is void. The Revenue has also appealed against this order *inter alia* saying that the Commissioner (Appeals)' order based on the ground that Assessing Officer had not passed the Speaking Order within 15 days of the re-assessment as required under section 17(5) of the Customs Act, 1962, is factually incorrect.

3. The Revenue has been represented by Ld DR, Shri Amresh Jain and the respondent has been represented by the Consultant, Sh AS Hasija.

4. After careful consideration of the facts on record and the submissions of both the sides, it appears that the Order-in-Appeal number 525/2014 dated 16.06.2014 has become inconsequential as for the same goods there has been another Order-In-appeal dated 4.8.2015 passed on merits. Therefore, when there is another Order-In-Appeal No.1161/2015 dated 4.08.2015 passed on merits, this order dated 16.06.2014 is not sustainable and is hereby set-aside. Consequently, Revenue's Appeal No.C/54826/2014 is allowed.

5. Now we take-up the Revenue's appeal in case of Order-in-Appeal number 1161/2015 dated 4.08.2015, which has been passed on merits by the Commissioner (Appeals). The Revenue made the submission that the goods namely 'Toraxymin Single Unit Catridge Dialyser Blood Filter)' are a kind of purifying or filtering machine/apparatus for liquid (Blood); therefore, this item deserves classification under CTH 84212900 and not under CTH 90189031. However, after perusal of the literature produced by the respondent, it is clear that the item is used to medically treat sepsis. The item is also called *'endotoxin removal catridge* (Toraxymin)'. Commissioner (Appeals) in the Order- In- Appeal dated 4.8.2015 has discussed the properties and significance of the item in detail and has come to the conclusion that appropriate classification for the subject item is CTH 90189099. However, we find that the subject item is in the category of bloodfiltration or haemofiltration item/instrument. Therefore, within the same chapter heading, its right classification appears to be

90189033, which covers Haemofiltration instruments. For the above reasons and for the reasons given in the subject Order-In- Appeal, we hold that the item is to be classified under CHT 90189033.

6. In the light of above discussion, the Order-In-Original dated 12.06.2014 is set aside and the impugned Order- In- Appeal dated 4.08.2015 is modified to above effect and revenue's appeal No.C/54204/2015 is dismissed accordingly.

7. In the result Revenue's appeals No.C/54826/2014 is allowed and No.C/54204 /2015 is dismissd.

[Pronounced in open Court on 28.02.2017]

(S.K.Mohanty)
Member(Judicial)

(Ashok K. Arya)
Member (Technical)

PCS