

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
EASTERN ZONAL BENCH : KOLKATA**

REGIONAL BENCH – COURT NO. 2

Customs Appeal No. 75476 of 2024

(Arising out of Order-in-Appeal No. KOL/CUS(PORT)/KS/477/2023 dated 19.06.2023 passed by the Commissioner of Customs (Appeals), 3rd Floor, Custom House, 15/1, Strand Road, Kolkata – 700 001)

M/s. GVK Emergency Management Research Institute : Appellant

Door No.8-87, Devar Yamzal Village,
Medchal Road, Secunderabad – 500 078

VERSUS

Commissioner of Customs (Port)

: Respondent

15/1, Strand Road,
Kolkata – 700 001

APPEARANCE:

Shri K. Bindusaran, Consultant
For the Appellant

Shri Subrata Debnath, Authorized Representative
Shri Sameer Chitkara, Authorized Representative
For the Respondent

CORAM:

HON'BLE SHRI R. MURALIDHAR, MEMBER (JUDICIAL)

HON'BLE SHRI K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO. 77864 / 2024

DATE OF HEARING: 10.12.2024

DATE OF DECISION: 17.12.2024

ORDER: [PER SHRI K. ANPAZHAKAN]

The present appeal has been filed against the Order-in-Appeal No. KOL/CUS(PORT)/KS/477/2023 dated 19.06.2023 passed by the Ld. Commissioner of Customs (Appeals), 3rd Floor, Custom House, 15/1, Strand Road, Kolkata – 700 001 wherein the Ld. Commissioner (Appeals) has upheld the Order-in-Original No. KOL/CUS/JC/PORT/GR.IV/14/2021 dated 22.04.2021.

2. The facts of the case are that M/s. GVK Emergency Management Research Institute (hereinafter referred to as the “Appellant”) filed a home consumption Bill of Entry No. 7836092 dated 15.12.2016 for import of 3,100 numbers of empty cylinders along with valve and 500 numbers of cylinder accessories from China. The details of the goods imported are as follows: -

Sl.	Description	CTH declared	Qty. (pcs.)	Unit price (USD)	Total value (USD)	CTH By Dept.
1	2.5 kgs. Empty Cylinder (semi welded steel) with valve and accessories	90189099	2000	11.5	23000	73110030
2	10.2 Ltr. Empty Cylinder (semi welded steel) with valve and accessories	90189099	500	69	34500	73110030
3	3 Ltr. Empty Cylinder (Aluminium) with valve and accessories	90189099	600	69	41400	76130029
4	Medical Equipment 10.2 L cylinder and accessories	90189099	500	37	18500	73110030

The said Bill of Entry was RMS facilitated.

2.1. The above goods imported were to be used in 108 / 102 Ambulance services, under the Janani Shishu Suraksha Karyakram (JSSK) Scheme, for 24*7 free transportation of expecting mothers and sick infants (up to one year from birth) through toll-free centralized call centres.

2.2. While assessing the bill of entry, the Assessing Officer of the Kolkata Custom House raised the following objections: -

- i. Non-submission of BIS Certificate.
- ii. Non-submission of licence/authorization by the competent authority i.e., Controller of Explosives as required under the Gas Cylinder Rules, 2004 (hereinafter referred to as "GCR, 2004") as amended by the Gas Cylinder Rules, 2016 (hereinafter referred to as "GCR, 2016").
- iii. The Assessing Officer was of the opinion that the Appellant had wrongly classified the impugned goods under Customs Tariff Item No. 90189099 as "instruments" or "appliances" or "apparatus" used in medical, surgical, dental or veterinary sciences, chargeable to BCD @ of 3.5%, CVD @6%, Cess @3% and SAD @4%. The Assessing Officer was of the view that the goods are rightly classifiable under Customs Tariff Item No. 73110030 as "containers of any capacity used for transport or storage of compressed gas or liquefied gas" chargeable to BCD @ 10%, CVD@12.5%, Cess @3% and SAD @4%.

3. On the basis of the above allegations, a Show Cause Notice dated 02.02.2021 was issued to the Appellant *inter alia* demanding differential duty of Rs.8,83,149/-. The Show Cause Notice proposed re-classification of the goods under CTH 73110030. As the Appellant were not having the required certificate

and licence for importation of the said cylinders, it was proposed to confiscate the goods.

3.1. The said Notice was adjudicated by the Ld. Joint Commissioner of Customs, Kolkata vide Order-in-Original No.KOL/CUS/JC/PORT/GR.IV/14/2021 dated 22.04.2021 wherein the Ld. adjudicating authority has re-classified the goods under CTH 73110030 and confirmed the differential duty amounting to Rs.8,83,149/-. The empty cylinders and valves were absolutely confiscated and ordered for destruction at the cost of the importer. A penalty of Rs.1,00,000/- was also imposed under section 112(a) of the Customs Act, 1962.

3.2. On appeal, the Ld. Commissioner (Appeals), vide the impugned order, has upheld the above demands confirmed vide the Order-in-Original dated 22.04.2021. Aggrieved against the impugned Order-in-Appeal, the Appellant has filed this appeal.

3.3. During the pendency of the appeal, the Appellant had paid the differential duty of Rs.8,83,149/- on 10.02.2022, along with penalty of Rs.1,00,000/- and interest of Rs.6,83,412/- on 10.02.2022 and 23.08.2022 respectively.

4. The Appellant has submitted that the goods imported by them has been re-classified under the CTH 73110030 which reads as "containers of any capacity used for transport or storage of compressed gas or liquefied gas". Thus, it is clear that this CTH covers the cylinders or other containers used for storing "compressed gas" or "liquefied gas". In the present case, the cylinders imported are meant for storage of 'medical oxygen' to be fitted and used in

ambulances. Thus, the goods imported would not fall under the CTH 73110030.

4.1. The Appellant submitted that CTH 90189099 determined by the Appellant-importer is correct because: -

- a. The said oxygen cylinder, is a life-saving apparatus, used in medical, surgical, dental and veterinary sciences.
- b. The Customs Department has been allowing the import of the said goods, in the past, without any issues.
- c. Even, where the Customs Department, did initially rake up an issue, the goods were subsequently cleared without any issue, as in the case of ICD Tughlakabad.
- d. The impugned goods, whether it is 'Semi welded steel high pressure cylinders' or 'Semi welded aluminium high pressure cylinders' both are attached with valves for supply of oxygen to patients during transportation.

4.2. The Appellant contends that the GCR, 2004 and GCR, 2016 are not relevant to the instant case because the cylinders imported by them are meant to be fitted in ambulances, which are specialized rescue vehicles fitted with life support systems under the JSSK scheme. The appellant submits that Section 2 (xxi) of the GCR, 2004 defines Gas Cylinder or "Cylinder" to mean:

"any closed metal container having a volume exceeding 500 ml but not exceeding 1000 litres intended for the storage and transport of

compressed gas, including any liquefied petroleum gas (LPG) container/compressed natural gas (CNG) cylinder fitted to a motor vehicle as its fuel tank but not including any other such container fitted to a special transport or under-carriage and includes a composite cylinder....".

4.3. The above definition specifically excludes cylinders fitted in special carriage vehicles such as ambulances. Thus, the medical oxygen cylinders to be fitted in ambulances are excluded from the purview of GCR, 2004/GCR, 2016 or the jurisdiction of the Explosives Act, 1884 or licensing by the Chief Controller of Explosives. Thus, the appellant submits that GCR, 2004 are not relevant for the impugned goods. It is sufficient for the importer to possess an I.E code, as prescribed under the FTDR, 1992, which is possessed by the appellant viz. 0910023042

4.4. The Appellant further submits that the Show Cause Notice was not issued under Section 28 or Section 124 of the Customs Act, 1962; in this case, the Notice has been issued under Section 11 of the Customs Act considering the goods as prohibited goods for importation. It is their submission in this regard that under Section 28 of the Act, an importer is eligible for provisional assessment, which had not been accorded in the present case; under Section 124 of the Act, the Show Cause Notice should have been issued within six months from the date of seizure/detention or within the extended period of further six months in terms of Section 110(2) of the Customs Act, this having not been done, the goods should have been released to the importer; in this case, the Show Cause Notice was issued four years

after the importation of the goods. Accordingly, the Appellant contends that the Show Cause Notice issued is illegal and therefore, the detention is to be quashed. In support of this claim, the Appellant placed reliance on the following case-laws: -

(i) M/s. Transworld Shipping Services Vs. Government of India [Order of the Madras High court dated 01.01.2018 in W.P. No.33139 of 2004]:

The Hon'ble High Court quashed the SCN proceedings, due to a delay of more than 2 years, for issuing the SCN itself.

(ii) M/s. Ram Nath & Co. Pvt. Ltd. Vs. Addtl. Commissioner/Deputy Commissioner of Customs (Group 2), Chennai Customs House [Order of the Madras High Court vide W.P. no. 9614 of 2022 & W.M.P.No.9355 of 2022 dated 13.09.2023]

Delays in issuing the SCN or in adjudication, vitiating the proceedings were also re-iterated in this order of the Madras High Court dated 13.09.2023.

(iii) R. D. Dhanuka and S. M. Modak JJ [Writ Petition No. 1194 OF 2022, Writ Petition (L) No.1068 of 2021 dated 24.03.2022]

4.5. In their additional submissions, the Appellant has submitted that similar goods were imported through ICD, Tughlakabad, New Delhi wherein the goods imported were classified under CTH 90189099.

4.6. In view of the above submissions, the Appellant has prayed for classifying the goods under CTH 90189099 and release of the goods confiscated .

5. The Ld. Authorized Representative of the Revenue reiterates the findings in the impugned order.

6. Heard both sides and perused the appeal records.

7. We observe that the Appellant has imported 3,100 numbers of empty cylinders along with valves and 500 numbers of cylinder accessories from China. These cylinders are to be fitted in emergency 108 / 102 Ambulances operated by GVK EMRI, which is a non-profit organization operating in Public Partnership mode (PPP). The Ambulances are meant to provide Advanced Life Support (ALS)/ Basic Life Support (BLS), as required by the various State Governments / institutional customers. The BLS ambulances carry essential drugs and equipment like oxygen cylinder, delivery kits, wash basin. The ALS vehicle is fitted with a cardiac monitor and defibrillator for advanced cases. Both these types of ambulances are fitted with GPS navigation systems for real-time tracking and monitoring.

7.1. We find that the Appellant has classified the impugned goods under CTH 90189099 which deals with instruments or appliances or apparatus used in medical, surgical, dental or veterinary sciences. However, the Departmental Officers have classified the same under CTH 73110030 as "containers of any capacity used for transport or storage of compressed gas or liquefied gas". We observe that the impugned goods, namely, 'Semi welded steel high pressure cylinders' and 'Semi welded aluminium high pressure cylinders', both are attached with valves for supply of oxygen to patients during transportation.

7.2. We observe that the description of the containers or cylinders under CTH 73110030 are followed by the words "compressed gas or liquefied

gas". Thus, CTH 73110030 deals with containers for carrying compressed or liquefied gases. However, it is seen that the cylinders imported by the Appellant are meant for carrying medical grade oxygen for life supporting purposes. They are meant for carrying liquefied gases in general.

7.3. Chapter Heading 9018 deals with appliances or apparatus used for medical/surgical/dental/veterinary sciences. It is on record that the cylinders, after being filled with oxygen, are used in the ambulances for life saving purposes. It is immaterial whether the cylinders are made up of steel or aluminium. As long as they are fitted in ambulances and used to store and supply medical oxygen to patients during transportation, it is to be considered as a life supporting medical equipment. In the present case, it is not in dispute that the goods imported are to be fitted in 108 / 102 Ambulance services, under the Janani Shishu Suraksha Karyakram (JSSK) Scheme, for 24*7 free transportation of expecting mothers and sick infants (up to one year from birth) through toll-free centralized call centres.

8. In view of the above, we hold that the impugned goods imported by the Appellant are more appropriately classifiable under CTH 90189099, as claimed by them for the Bill of Entry No. 7836092 dated 15.12.2016.

9. We also observe that the Appellant has imported similar goods through ICD, Tughlakabad, wherein the same goods have been cleared under CTH 90189099. For the sake of ready reference, the said Bill of Entry filed by the Appellant at ICD, Tughlakabad

and cleared under the CTH 90189099, is extracted below: -

 INDIAN CUSTOMS PORT : ICD TUGHLAKABAD, NEW DELHI 110020 BILL OF ENTRY FOR HOME CONSUMPTION												Port Code INTKD6 BE No 7065064 BE Date 13/10/2016 BE Type H DEC/Br 0910023042/0 FIRST COPY GSTIN/TYPE AETPB0804JCH001 CB CODE TYPE INV ITEM 3 CONT 1 Nos 381 G.WT (KGS) 14002 BE0270220231618			
PART - I - BILL OF ENTRY SUMMARY															
A. STATUS	1.BE STATUS	2.MODE	3.DEF BE	4.KACHA	5.SEC 48	6.REIMP	7.ADV BE (Y/N/P)	8.ASSESS	9.EXAM	10.HSS	11.FIRST CHECK	12. PROV/ FINAL			
	FIRST COPY	Land	T	N	N	N	N	Y	Y	N	C	F			
	13.COUNTRY OF ORIGIN	CHINA						14.COUNTRY OF CONSIGNMENT CHINA							
B. DECLARANT	15.PORT OF LOADING Qingdao						16.PORT OF SHIPMENT Qingdao								
	1.IMPORTER NAME & ADDRESS GVK EMERGENCY MANAGEMENT AND RESEARCH INSTITUTE DOOR NO.8-87, DEVAR YAMZAL VILLAGE, MEDCHAL ROAD, SECUNDERABAD. AP. 500014						2.CB NAME S.BALASUBRAMANIYAN								
	AD CODE 0280808						3.AEO								
C. DUTY SUMMARY	1.BCD	2.ACD	3.SWS	4.NCCD	5.ADD	6.CVD	7.IGST	8.G.CESS	18.TOT.ASS VAL						
	147470.4	185812.5	0		0	185812.5			2949406.03						
	9.SG	10.SAED	11.GSIA	12.TTA	13.HEALTH	14.TOTAL DUTY	15.INT	16.PNLTY	17.FINE	19.TOT. AMOUNT					
D. MANIFEST DETAILS	1.IGM NO	2.IGM DATE	3.INW DATE	4.GIGMNO	5.GIGMDT	6.MAWB NO	7.DATE	8.HAWB NO	9.DATE	10.PKG	11.GW				
	2722295	04/10/2016	04/10/2016	2148110	01-OCT-16	TSTZS6256	10/09/2016	S00324904	10/09/2016	381	14002				
E. BOND DETAILS	1.BOND NO	2.PORT	3.BOND CD	4.DEBT AMT	5.BG AMT										
						1.SR NO	2.CHALLAN NO	3.PAID ON	4.AMOUNT(Rs.)						
						1	2016273195	18/10/2016	117976						
F. PAYMENT DETAILS						2	2043050720		357013						
G. WH	1.WBE NO	2.DATE	3.WBE SITE	4.WH CODE		1.S.NO	2.INVOICE NO	3.INV. AMT	4.CUR						
						1	RS-GVK201607001	42425	USD						
H. PROCESSING DETAILS	1.EVENT	2.DATE	3.TIME	EXCHANGE RATE											
	Submission	13-OCT-16	17:12	INR=NR											
	Assessment	27-FEB-23	16:18	1 USD=67.5INR											
I. CONTAINER DETAILS	1.SNO	2.LCL/ FCL	3.TRUCK	4.SEAL	5.CONTAINER NUMBER										
	1	F	NA	NA	MSKU3558521										
GLOSSARY															
A : DEF - Deferred Payment, REIMP - Reimport, ADV - Advance, P - Prior, HSS - High Sea Sale, B : CB - Customs Broker, AEO - Authorized Economic Operator, UCR - Unique Customs Reference, D : GIGM - Gateway IGM, G : WBE - Warehouse BE, I : OOC - Out of Charge, # Refer Part IV for full list of Invoices, J : * Refer Part IV for full list of Containers;															

Validity unknown

Validity unknown

Digitally signed by D. ?

OF INDIRECT TAX

Date: 2023.02.27

Reason: CUSTOM

Location: INDIA

TRIAL BOARD

OF CUSTOMS 05

IST

				Port Code	BE No	BE Date	BE Type	
INDIAN CUSTOMS				INTKD6	7065064	13/10/2016	H	
PORT : ICD TUGHLAKABAD, NEW DELHI 110020				EC/Br	0910023042/0 FIRST COPY			
BILL OF ENTRY FOR HOME CONSUMPTION				GSTIN/TYPE	AETPB0804JCH001			
				CB CODE	TYPE			
				INV	ITEM	CONT		
				Nos	1	3	1	
				PKG	381	G.WT (KGS)	14002	BE0270220231618
PART - II - INVOICE & VALUATION DETAILS (Invoice 1/1)								
A. INVOICE	1.S.NO	2.INVOICE NO. & DT.	3.PURCHASE ORDER NO & DT	4.LC NO & DATE		5.CONTRACT NO & DATE		
	1	RS-GVK201607001 21-AUG-16						
B. TRANSACTING PARTIES	1.BUYER'S NAME & ADDRESS				2.SELLER'S NAME & ADDRESS			
	GVK EMERGENCY MANAGEMENT AND RESEARCH INSTITUTE DOOR NO.8-87, DEVAR YAMZAL VILLAGE, MEDCHAL ROAD, SECUNDERABAD AP. 500014							
	3.SUPPLIER NAME & ADDRESS				4.THIRD PARTY NAME & ADDRESS			
	JIANGSHAN REDSAN FIREFIGHTING EQUIP ADD. NO.25, XINGGONG 2TH ROAD, JI ANGDONG DEVELOPMENT ZONE, JIANGSHA N, ZHEJIANG, CHINA							
	5.AEO				6. AD CODE 0280808			
C. VALUATION	1.INV VALUE	2.FREIGHT	3.INSURANCE	4.HSS	5.LOADING	6.COMMN	7.PAY TERMS	8.VALUATION METHOD
	42425	360	1.125%					OTH RULE 4 (TRANSACTION VALUE)
D. COST & SERVICES	14.Cur USD	USD						9.RELTD 10.SVB CH 11.SVB NO 12.DATE 13LOA
	15.Term FOB							No
	1.C&B	2.CoC	3.CoP	4.HND CHG	5.G&S	6.DOC CH		
	7.COQ	8.R & LF	9.OTH COST	10.LD / ULD	11.WS	12.OTC	13.MISC CHARGE	14.ASS. VALUE
								2949406 03
E. ITEM DETAILS	1.S NO.	2.CTH	3.DESCRPTION	4.UNIT PRICE	5.QUANTITY	6.UQC	7.AMOUNT	
	1	90189099	5KG EMPTY CYLINDER, WITH VALVE ACCESSORIES.(USE FOR HOSPITAL AMBULANCE)	11.500000	200.000000	PCS	2300.00	
	2	90189099	40L EMPTY CYLINDER, WITH VALVE ACCESSORIES.(USE FOR HOSPITAL AMBULANCE)	145.000000	255.000000	PCS	36975.00	
	3	90189099	MEDICAL EQUIPMENT-10.2L CYLINDER ACCESSORIES.(USE FOR HOSPITAL AMBULANCE)	21.000000	150.000000	PCS	3150.00	
GLOSSARY								
A : LC - Letter of Credit; B : AD - Authorized Dealer; C : HSS - High Sea Sale; D : C&B Commission & Brokerage; CoC - Cost of Container; CoP - Co of Packing; HND CHG - Handling Charges; G&S - Goods and Service input cost; DOC CH - Document Charges; CoQ - Country of Origin Certificate; R&LF - Royalty and Licence Fees; LD/ULD - Loading Unloading Charges; WS - Warranty Services; OTC - Other Costs; CTH - Customs Tariff Head; UQC - Unit Quantity Code								

[ref.: details of goods indicated under "E Item Details"]

10. Thus, we observe that similar goods imported by the appellant are cleared from other ports under the CTH 90189099. Following the classification adopted at other ports, we hold that the impugned goods imported by the appellant are appropriately classifiable under CTH 90189099.

10.1. Accordingly, we set aside the differential duty confirmed in the impugned order on account of re-classification of the impugned goods.

11. From the impugned order, we observe it has been alleged that the Appellant has contravened the provisions of GCR, 2004 and GCR, 2016. Section 2 (xxi) of the GCR, 2004 defines Gas Cylinder or "Cylinder" to mean:

"any closed metal container having a volume exceeding 500 ml but not exceeding 1000 litres intended for the storage and transport of compressed gas, including any liquefied petroleum gas (LPG) container/compressed natural gas (CNG) cylinder fitted to a motor vehicle as its fuel tank but not including any other such container fitted to a special transport or under-carriage and includes a composite cylinder....".

11.1. We observe that the above definition specifically excludes cylinders fitted in special carriage vehicles such as ambulances. Thus, we find that the medical oxygen cylinders to be fitted in ambulances are excluded from the purview of GCR, 2004/GCR, 2016 or the jurisdiction of the Explosives Act, 1884 or licensing by the Chief Controller of Explosives. Accordingly, we hold that GCR, 2004/GCR 2016 are not applicable for the impugned goods imported by the appellant, as the said Rules have specifically exempted imported gas cylinders which are to be fitted in ambulances/special transport. Thus, we hold

that confiscation of the impugned goods for violation of the provisions of GCR, 2004/GCR 2016, is not sustainable, accordingly, we set aside the same.

12. We also observe that the Appellant has imported the goods in the year 2016 whereas the Show Cause Notice came to be issued in the year 2021, after a period of four years from the date of import. The Appellant has cited the following decisions in support of their contention that the notice issued with an undue delay is liable to be quashed:

- i. *M/s. Transworld Shipping Services Vs. Government of India [Order of the Madras High court dated 01.01.2018 in W.P. No.33139 of 2004]:*
- ii. *M/s. Ram Nath & Co. Pvt. Ltd. Vs. Addtl. Commissioner/Deputy Commissioner of Customs (Group 2), Chennai Customs House [Order of the Madras High Court vide W.P. no. 9614 of 2022 & W.M.P No.9355 of 2022 dated 13.09.2023]*
- iii. *R. D. Dhanuka and S. M. Modak JJ [Writ Petition No. 1194 OF 2022, Writ Petition (L) No. 1068 of 2021 dated 24.03.2022]*

12.1. We find that the Appellant has not suppressed any information from the Department. In these circumstances, the Show Cause Notice issued beyond the normal period of limitation is liable to be set aside. Consequently, we hold that the Show Cause Notice issued after four years from the date of importation is legally unsustainable and accordingly, we hold that the demand confirmed in the impugned order by invoking the extended period of limitation is liable to be set aside.

12.2. Further, we observe that there is no mis-declaration or suppression with intention to evade duty established on the part of the Appellant. Accordingly, we hold that no penalty is imposable on the Appellant.

13. In view of the above discussion, we pass the following order: -

- (1) The impugned goods imported by the Appellant vide Bill of Entry No. 7836092 dated 15.12.2016 are rightly classifiable under CTH 90189099. The demand of differential duty confirmed in the impugned order on account of re-classification is not sustainable and thus, we set aside the same.
- (2) We hold that the impugned goods imported by the appellant to be fitted in ambulances are excluded from the purview of GCR, 2004/GCR, 2016 or the jurisdiction of the Explosives Act, 1884 or licensing by the Chief Controller of Explosives. Also, there is no violation of BIS certification. Thus, the impugned goods are not liable for confiscation and accordingly, we set aside the confiscation of the impugned goods.
- (3) We also set aside the demand confirmed in the impugned order on the ground of limitation.
- (4) The penalties imposed on the Appellant are set aside.

14. In view of the above, we set aside the impugned order and allow the appeal filed by the Appellant, with consequential relief, if any, as per law.

(Order pronounced in the open court on **17.12.2024**)

Sd/-

(R. MURALIDHAR)
MEMBER (JUDICIAL)

Sd/-

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)