

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

REGIONAL BENCH – COURT NO. 1

Customs Appeal No. 75031 of 2020

(Arising out of Order-in-Appeal No. Kol/Cus(Port)/123/2019 dated 14.10.2019 passed by the Commissioner of Customs(Appeals)I3rd Floor, Customs House, 15/1, Strand Road, Kolkata-700 001)

M/s. Sanwar Agarwal Proprietor of Jindal Enterprises, : **Appellant**
13B, Mirza Galib Street
Kolkata-700016

VERSUS

Commissioner of Customs (Port) : **Respondent**
Customs House, 15/1, Strand Road, Kolkata-700 001

APPEARANCE:

Shri Shovendu Banerjee, Advocate for the Appellant

Shri S. Chakravorty, Authorized Representative for the Respondent

CORAM:

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

FINAL ORDER NO. 77012/2025

DATE OF HEARING / DECISION: 07.07.2025

Order: [PER SHRI K. ANPAZHAKAN]

M/s. Sanwar Agarwal Proprietor of Jindal Enterprises (herein after referred as the appellant) is an importer of medical equipment/instruments/accessories. In the instant case, the appellant imported A.V. Fistula Needle vide Bill of Entry No. 9310450 dated 21.05.2015. The appellant classified the said goods under the CTH 90189031, and claimed the benefit of exemption under Customs Notification No. 12/2012 [SI No. 474

(ii)) and Central Excise Notification No. 12/2012 [Sl. No. 309(i)).

1.1. The department has not accepted the classification declared by the appellant in the said bill of entry and proposed re-classification of the goods under the CTH 90183230. Accordingly, department issued Show cause notice bearing F. No. S60 Gr (VA&B)-81/2015A(Misc) dated 29.07.2015, wherein the appellant was asked to show cause as to why:-

- (i) The goods declared as "A.V. Fistula Needles are not classified under CTH 90183230 instead of CTH 90189031 as claimed
- (ii) The benefit of Customs Notification No. 12/2012 [SI No. 474 (ii)) and Central Excise Notification No. 12/2012 [SI No. 309(i)) is denied (ii)
- (iii) The goods having declared at Assessable Value of Rs. 28,96,082/ should not be confiscated under Section 111(m) & (o) of the Customs Act, 1962 for wrongly amplifying the description of the goods and wrongly claiming benefit of Customs Notification No. 12/2012 [SI No. 474 (ii)) and Central Excise Notification No. 12/2012 [Sl. No. 309(i)]
- (iv) Penalty under Section 112(a) of Customs Act should not be imposed for rendering the goods liable for confiscation under Section 111(m) & (o)

1.2. On adjudication, the Ld. adjudicating authority agreed with the classification declared by the appellant under the CTH 90189031 and dropped the proceedings vide Order-In-Original No.

KOL/CUS/JC/480/ADJN(PORT)/ 2015 dated 22.09.2015 read with Corrigendum dated 23.11.2015.

1.3. The department filed appeal against the said adjudicating order before the Commissioner (Appeals). The Ld. Commissioner (Appeals) passed the impugned Order-in-Appeal No. KOL/CUS(PORT)/123/2019 dated 14.10.2019, wherein he has set aside the adjudicating order and re-classified the subject goods under CTH 90183230.

1.4. Being aggrieved by the said order of the Commissioner (Appeals), the appellant has filed the instant appeal.

2. The appellant submits that the Ld. appellate authority has failed to appreciate that AV (arteriovenous) fistulas are recognized as the preferred access method for hemodialysis. To create a fistula, a vascular surgeon joins an artery and a vein together through anastomosis. Since this bypasses the capillaries, blood flows rapidly through the fistula. During treatment, two needles are inserted into the fistula, one to draw blood and one to return it. The orientation of the needles takes the normal flow of the blood into account. The "arterial" needle draws blood from the "upstream" location while the "venous" needle returns blood "downstream". Switching this order leads to partial recycling of the same blood through the dialysis machine leading to less effective treatment.

2.1. The imported goods, i.e. A.V. Needle can only be used in hemodialysis. Further, after it had been used, it has to be disposed of. The A.V. Needle has no other usage except for hemodialysis. Without A.V.

Needle it is impossible to carryout hemodialysis. A.V. Needle does not have any individual function. Thus, the appellant submits that it is an indispensable accessory for hemodialysis.

2.2. The appellant submits that the Ld. appellate authority failed to appreciate that CTH 90189031 classifies goods as "- - Renal dialysis equipment (artificial kidneys, kidney machines and dialysers)". From the plain reading of the said CTH, it is apparent and clear that the goods i.e. A.V. Needle cannot be classifiable elsewhere except under CTH 90189031, as the said goods falls under Renal dialysis equipment. Whereas, the CTH 90183230 speaks of goods which are Hilerio venus fistula needles. Hilerio venus fistula needles and A.V. Needle (goods under importation) are different and distinct items. Under no stretch of imagination it can be alleged that CTH 90183230 specifically covers "Hilerio venus fistula needles". Thus, the appellant submits that the Ld. appellate authority in paragraph 8 of the said order erred in holding that "Hileriovenus Fistula" or "Arteriovenour Fistula" as the said two goods are distinctively different and cannot be equated as same.

2.3. The appellate authority has misconstrued Sl. No. 1(A) of Part I of the HS General Explanatory to CTH 9018 and came to a finding that "A.V. Fistula Needles" cannot be considered as "accessories of medical goods" but are itself an instrument used in medical field having their individual functions in medical procedures. A.V. Needle can only be used in hemodialysis. It is an indispensable accessory for hemodialysis. In this regard, the appellant produced a Certificate issued by Doctor Lalit K. Agarwal from

the Department of Nephrology and another Certificate issued by the Central Drugs Standard Control Organisation, certifying that the impugned goods are accessories for hemodialysis equipment.

2.4. The appellant submits that the appellate authority has misconstrued the terms of Rule 3(a) of General Rules for Interpretation of Tariff. From Rule 3 (a), it would be evident that when the goods are covered by a specific heading, i.e. Heading 90189031, the same cannot be classified under any other Heading as has been done in the instant case. CTH 90183230 specifically covers "Hilerio venus fistula needles", which does not include Arteriovenour Fistula Needle. The department is trying to make out a case to the effect that Hilerio venus fistula needles and Arteriovenour Fistula Needle are same and identical goods. Hilerio venus fistula needles is Tubular metal needles and needles for sutures. Hilerio venus fistula needles has got no applicability or usage in hemodialysis. When the goods are covered by a specific heading, i.e. Heading 90189031, same cannot be classified under the residuary Heading No. 90183230. This is a very settled principal of law as held by the Hon'ble Supreme Court reported in *2006 (197) E.L.T. 324 (S.C.) (H.P.L. CHEMICALS LTD. -Vs.-COMMISSIONER OF C. EX., CHANDIGARH)*.

2.5. In view of the above submissions, the appellant prayed for setting aside the impugned order passed by the Ld. Commissioner (Appeals) and uphold the order in original passed by the original adjudicating authority.

3. The Ld. A.R. relied upon the findings of the appellate authority in the impugned order.

4. Heard both sides and perused the appeal documents.

5. We observe that the appellant has imported the goods with the description "A.V. Fistula Needles" and classified the same under the CTH. 90189031. The assessing officer has accepted the classification and allowed the benefit of Customs Notification No. 12/2012 [SI No. 474 (ii)] and Central Excise Notification No. 12/2012 [Sl. No. 309(i)]. However, the Ld. Commissioner (Appeals) disagreed with the assessing officer, as he was of the view that the said goods are covered under the CTH 90183230 which specifically covers the goods "Hilerio venus fistula needles".

5.1. It is the submission of the appellant that the A.V. Fistula Needles can only be used in hemodialysis. After it had been used, it has to be disposed of. The A.V. Needle has no other usage except for hemodialysis. Without A.V. Needle it is impossible to carryout hemodialysis. A.V. Needle does not have any individual function. Thus, the appellant submitted that it is an indispensable accessory for hemodialysis and hence the said goods are rightly classifiable under the CTH 90189031. In support of this claim, the appellant submitted a Certificate issued by Doctor Lalit K. Agarwal from the Department of Nephrology and another Certificate issued by the Central Drugs Standard Control Organisation. For ready reference, the said Certificates are reproduced below:-



Annexure 4

Dr. Lalit K. Agarwal
MD, (Medicine), DM, DNB (Nephrology)
Director, Nephrology Services
E-mail : drl@lkgarwal@gmail.com

115

DEPARTMENT OF NEPHROLOGY

Name:

Dated: 06/06/2015

Ref. No.:

Date:

TO WHOM IT MAY CONCERN

Description of AV Fistula for Hemodialysis:

Hemodialysis is an artificial cleaning of blood in patients with kidney failure.

During hemodialysis treatment, two needles are inserted into the veins (Fistula), one to draw blood and one to return it. The orientation of the needles takes the normal flow of the blood into account. The "arterial" needle draws blood from the "upstream" location while the "venous" needle returns blood "downstream".

Arterio Venous Fistula Needles are designed for Hemodialysis procedure and is not used for any other purpose.

Dr. Lalit Kr Agarwal

Consultant Nephrologist

PLEASE CARRY THIS PRESCRIPTION WITH YOU ON EVERY VISIT

For Appointments & Enquiry Contact : 98304 54955 (11A.M. to 6 P.M.)

For On duty Doctor, Contact : 98309 54955

Dialysis : 40337169 Chamber : 40337171 Emergency Doctor on duty : 40337050

8/5 Alipore Road Kolkata 700 027 | Phone : (033) 4033 7000 / 4033 7050 | Fax : 91 33 2456 7090 / 2456 7095

E-mail : care@woodlandshospital.in | Website : www.woodlandshospital.in



Name of the Product

S. No	Category	Device Details
1.	Disposable Perfusion set	A. Generic Name: Arterial Venous Fistula Set B. Brand Name: A. V. Fistula sets C. Model No.: GF-6115E/6115E, GF-6117E/6117E, GF-6118E, GF-6117E/6117E, GF-6115E/5315E, GF-6117E/5317E D. Components: Needle protector, AV Cannula, Wing, Tubing, Medi Connector, Locking E. Intended Use: It is indicated for use on the end stage renal disease patients undergoing haemodialysis. F. Shelf life: 3 years

ITEM(S) ONE ONLY



New Delhi

Date: 16 JAN 2014

LICENSING AUTHORITY

Seal/Stems

J. R. Edwards, Manager, 1000
By: Gregg Condit, 1000
By: Gregg Condit, 1000

5.2. A perusal of the Certificates given by the Experts in the field indicate that the A.V. Fistula Needles can only be used in hemodialysis and it does not have any other individual function. We do not find any reason to disagree with the expert opinion. Thus, as per the Expert's opinion reproduced above, we are of the view that the imported goods are accessory for hemodialysis and hence we agree that the said goods are rightly classifiable under the CTH 90189031. Accordingly, we set aside the impugned order passed by the the Ld. Commissioner (Appeals)

classifying the said goods under the CTH 90183230. We uphold the classification of the impugned goods under the CTH. 90189031 and allow the benefit of Customs Notification No. 12/2012 [SI No. 474 (ii)] and Central Excise Notification No. 12/2012 [SI. No. 309(i)], as claimed by the appellant

6. We further note that when the goods are covered by a specific heading, i.e. Heading 90189031, the goods cannot be classified under the residuary Heading No. 90183230. This is a very settled principal of law as held by the Hon'ble Supreme Court reported in 2006 (197) E.L.T. 324 (S.C.) (H.P.L. CHEMICALS LTD. -Vs.-COMMISSIONER OF C. EX., CHANDIGARH). The relevant part of the said decision is reproduced below:-

"32. It was submitted by the learned Senior Counsel appearing for the Revenue that the goods were classifiable under Heading No. 38.23 (now 38.24) as "residuary products of chemical or allied industries not elsewhere specified or included" which was the last item covered by Heading No. 38.23. The said Heading No. 38.23 is only a residuary heading covering residual product of chemical or allied industries "not elsewhere specified or included". In the present case since the goods were covered by a specific heading, i.e., Heading No. 25.01, the same cannot be classified under the residuary heading at all. This position is clearly laid down in Rule 3(a) of the Interpretative Rules set out above. As per the said Interpretative Rule 3(a), the heading which provides the most specific description shall be preferred to the heading providing a more general description. This position is also well settled by a number of

judgments of this Court. Reference may made to M/s. Bharat Forge and Press Industries (P) Ltd. v. Collector of Central Excise, Baroda, Gujarat - 1990 (1) SCC 532. It was observed in Para 4 inter alia as under :-

"4. The question before us is whether the Department is right in claiming that the items in question are dutiable under tariff entry 68. This, as mentioned already, is the residuary entry and only such goods as cannot be brought under the various specific entries in the tariff should be attempted to be brought under the residuary entry. In other words, unless the department can establish that the goods in question can by no conceivable process of reasoning be brought under any of the tariff items, resort cannot be had to the residuary item.

34. Looking from any angle it cannot be held that the subject product would fall under the sub-heading 38.34 (now 38.24). It would fall under the specific Heading 25.01 as has been claimed by the assessee/appellant in the classification list filed by it."

6.1. Thus, we hold that the said goods are rightly classifiable under the CTH 90189031. Accordingly, we set aside the impugned order passed by the Ld. Commissioner (Appeals) classifying the said goods under the CTH 90183230.

7. In view of the above findings, we set aside the classification of the impugned goods under the CTH 90183230 and uphold the classification of the said goods under the CTH. 90189031. Accordingly, we set aside the demand of differential customs duty confirmed in the impugned order and allow the

appeal filed by the appellant, with consequential relief, if any, as per law.

(Operative part of Order was pronounced in Open court)

(ASHOK JINDAL)
MEMBER (JUDICIAL)

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

rkp