

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

REGIONAL BENCH – COURT NO. 2

Customs Appeal No. 75727 of 2024

(Arising out of Order-in-Original No. KOL/CUS/A&A/Pr.COMMISSIONER/ADJN/10/2024 dated 13.03.2024 passed by the Commissioner of Customs (Airport & ACC), Custom House, 15/1, Strand Road, Kolkata – 700 001)

Shri Prakash Kumar Sethia, Managing Director, : **Appellant**
M/s. Pushpanjali Medi India Private Limited,
16, Ganesh Chandra Avenue, 5th Floor,
Kolkata – 700 013 (West Bengal)

VERSUS

Pr. Commissioner of Customs, Airport & Air Cargo : **Respondent**
Custom House, 15/1, Strand Road,
Kolkata – 700 001 (West Bengal)

AND

Customs Appeal No. 75729 of 2024

(Arising out of Order-in-Original No. KOL/CUS/A&A/Pr.COMMISSIONER/ADJN/10/2024 dated 13.03.2024 passed by the Commissioner of Customs (Airport & ACC), Custom House, 15/1, Strand Road, Kolkata – 700 001)

M/s. Pushpanjali Medi India Private Limited, : **Appellant**
16, Ganesh Chandra Avenue, 5th Floor,
Kolkata – 700 013 (West Bengal)

VERSUS

Pr. Commissioner of Customs, Airport & Air Cargo : **Respondent**
Custom House, 15/1, Strand Road,
Kolkata – 700 001 (West Bengal)

APPEARANCE:

Shri S.C. Ratho, Consultant, for the Appellant(s)

Shri Faiz Ahmed, Authorized Representative, for the Respondent

CORAM:

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

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

FINAL ORDER NOs. 77763-77764 / 2025

DATE OF HEARING: 19.11.2025

DATE OF DECISION: 24.11.2025

ORDER: [PER SHRI K. ANPAZHAKAN]

These appeals have been filed against the Order-in-Original No. KOL/CUS/A&A/Pr.COMMISSIONER/ADJN/10/2024 dated 13.03.2024 passed by the Commissioner of Customs (Airport & ACC), Custom House, 15/1, Strand Road, Kolkata – 700 001.

2. The facts of the case are that M/s. Pushpanjali Medi India Private Limited, 16, Ganesh Chandra Avenue, 5th Floor, Kolkata – 700 013 (West Bengal) [hereinafter referred to as the “appellant/company”] are importers of compression hosiery (stockings), support belts and raw materials for manufacture of artificial limbs, etc. The appellant has imported the impugned goods through Kolkata Airport, which were cleared vide 37 Bills of Entry and one courier consignment for the period from 18.10.2014 to 09.07.2019, by declaring them as “Orthopaedic / Fracture appliances” and classifying the same under CTH 90211000, by paying Customs duty at exempted rates by claiming the benefit as provided under Notification No. 12/2012-Cus. dated 17.03.2013 [Sl. No. 473 & 482(b)] and Notification No. 50/2017-Cus. dated 30.06.2017 [Sl. No. 563A and 578].

2.1. On the basis of intelligence, the officers of the Directorate of Revenue Intelligence (DRI), Kolkata Zonal Unit (KZU) conducted an investigation in respect of the goods imported by the appellant. The DRI officers alleged that the appellant-company has mis-declared the goods and mis-classified the same under CTH 90211000 of the Customs Tariff. It was alleged that the said items were compression hosiery (stockings), compressing garments, support belts and raw materials classifiable under CTHs 61151000, 61152990, 62121000, 63079090, 30059090, 68159990, 48119094 or 39219090, as the case may

be, as stated in the Chapter Heads and Chapter Notes to the relevant Chapters.

2.2. On completion of the investigation, a Show Cause Notice was issued by the DRI on 15.10.2019 by the Additional Director, DRI, KZU wherein it has been alleged that the impugned goods had been imported by the appellant vide the 37 Bills of Entry and one courier consignment in question by mis-declaring the same as "Orthopaedic / Fracture appliances", under CTH 90211000 and that undue benefit of the said exemption Notifications had been availed by resorting to deliberate mis-declaration. Accordingly, the said Notice proposed to demand differential duty of Customs amounting to Rs.1,28,49,089/-, along with interest, by invoking the extended period of limitation under Section 28(4) of the Customs Act, 1962. An amount of Rs.33,00,000/-, which had already been paid by the appellant during the course of investigation, was also proposed to be appropriated against the differential duty demanded. Penalties were also proposed under Sections 112(a), 112(b), 114A and 114AA of the Customs Act, 1962, on the appellant-company, namely, M/s. Pushpanjali Medi India Private Limited as well as Shri Prakash Kumar Sethia, Managing Director of the appellant-company.

2.3. The above Show Cause Notice was adjudicated by the Ld. Principal Commissioner of Customs (Airport & ACC), Custom House, 15/1, Strand Road, Kolkata – 700 001 vide the Order-in-Original No.KOL/CUS/A&A/Pr.COMMISSIONER/ADJN/10/2024 dated 13.03.2024 [hereinafter referred to as the "impugned order"] wherein the goods imported by the appellant-company have been re-classified under Chapters 61, 62, 63, 30, 68, 48 and 39 of the Customs Tariff and the benefit of the Notifications claimed by

the appellant was denied. Accordingly, the demand of differential Customs duty amounting to Rs.1,28,49,089/-, as demanded in the Notice, has been confirmed, along with interest. The amount of Rs.33,00,000/- already paid by the appellant-company during the course of investigation was ordered to be appropriated against the above confirmed differential duty liability. The Id. adjudicating authority has also imposed penalties on both M/s. Pushpanjali Medi India Private Limited and Shri Prakash Kumar Sethia under Sections 114A, 112(a)(ii) and 114AA of the Customs Act, 1962.

2.4. Aggrieved by the confirmation of the demand of differential duty, along with interest, and imposition of penalties, the appellants have filed these appeals.

3. The Ld. Consultant appearing on behalf of the appellant are regular importers of "Orthopaedic / Fracture appliances of various types; the goods were being imported from renowned overseas suppliers. He mentions that the items were being classified under the Tariff Heading 9021 as medical equipment considering the exclusive use of the item for medical purpose only as prescribed by different medical practitioners; that the description of each item was being reflected on the Bills of Entry as per the manufacturer's invoice and catalogue of the supplier, against whose invoice the Bills of Entry were being filed. It is further stated that during the course of assessment, the assessing officers had raised many queries, which were explained by the appellants as per the manufacturer's catalogue, leaflet; accordingly, the assessing officer has assessed the goods and Customs duty was paid for clearance of the goods since the year 2014. In this regard, he also submits that on many occasions, the goods were physically

checked by the Customs Officers and by the Assistant Commissioner/Deputy Commissioner concerned, but no such allegation had been brought at any stage, as have been raised when the Show Cause Notice dated 15.10.2019 was issued.

3.1. The Ld. Consultant for the appellant has also submitted that after the classification issue was pointed out by the Department, they agreed to the classification as advised and filed the Bills of Entry under the revised classification and cleared the goods accordingly. Thus, it is stated that they are presently not disputing the classification adopted by the Department; they are contesting the demand confirmed in the impugned order only on the ground of limitation. In this context, the appellant specifically points out that they have not suppressed any information from the Department and accordingly, it is their contention that the Show Cause Notice issued to them by invoking the extended period of limitation under Section 28(4) of the Customs Act, 1962, is not sustainable.

3.2. In support of the above contention, the appellant places reliance on the decisions rendered in the following cases: -

- *Dr. Rai Memorial Cancer Institute v. Commissioner of Customs, Chennai-VIII [2022 (381) E.L.T. 540 (Tri. – Chennai)]*
- *Northern Plastic Ltd. v. Commissioner of Customs and C.Ex. [1998 (101) E.L.T 549 (S.C.)]*
- *Komal Trading Company v. Commissioner of Customs (Import), Mumbai [2014 (301) E.L.T. 506 (Tri. – Mum.)]*

3.3. In view of the above submissions, the Ld. Consultant for the appellant contends that the demand confirmed by way of the impugned order, by invoking the extended period of limitation, is legally unsustainable as there is no wilful suppression of material facts with the intent to evade payment of duty on the part of the appellants existing in this case. Accordingly, for the same reasons, he also prayed for setting aside the penalties imposed on the appellants in the impugned order.

4. The Ld. Authorized Representative of the Revenue has reiterated the findings in the impugned order. He has also placed reliance on the following decisions: -

- *LML Ltd. v. Commissioner of Customs [2010 (258) E.L.T. 321 (S.C.)]*
- *Haryana Financial Corporation &anr. V. Jagdamba Oil Mills [2002 (1) TMI 1266 – Supreme Court]*

5. Heard both sides and perused the case records.

6. We find that the appellants have not disputed the classification of the goods in question. It is their contention that as they were regular importers of the said items and the classification had been adopted by them as per the manufacturer's invoice and catalogue available in respect of the said goods imported. On the ground that they have not suppressed any information from the Department, the appellant submits that invocation of the extended period of limitation under Section 28(4) of the Act, to demand differential Customs duty in this case, is not proper.

7. We take note of the fact that during the course of assessment, several queries had been raised by the assessing officers, which were explained by the appellants as per the manufacturer's catalogue, leaflet, etc. In such manner, the goods were being assessed to duty by the assessing officers and Customs duty was being paid for clearance of the goods since the year 2014. It is also pertinent to note that, as pointed out by the appellant, on many occasions, the goods were physically checked by the Customs Officers and by the Assistant Commissioner/Deputy Commissioner concerned, but no such allegation had been brought out at any stage, as have been raised when the Show Cause Notice dated 15.10.2019 was issued.

7.1. From the above, we find that the appellant had made the declaration in the Bills of Entry as available the manufacturer's invoice / catalogue and the goods had also been examined by the proper officer and thereafter assessed to duty. Therefore, we find that the allegation of suppression of facts with the intent to evade payment of Customs duty against the appellant is unsubstantiated. Hence, we observe that extended period of limitation cannot be invoked in this case to demand differential Customs duty.

7.2. In this connection, we refer to the decision rendered by in the case of *Dr. Rai Memorial Cancer Institute v. Commissioner of Customs, Chennai-VIII [2022 (381) E.L.T. 540 (Tri. - Chennai)]*, wherein, under similar circumstances, it has been held as under: -

"12. Ongoing through the above factual position in the case, we find that the argument of the department that this is a case of self-assessment is factually incorrect. We find that though the appellant-importer has filed the Bill of Entry in the

EDI system goods were subjected to open examination and the proper officer has examined the goods and forwarded it to the concerned group for assessment. Under such circumstances, it cannot be said that the Bills of Entry were subjected to self-assessment. This being the case, it is not open for the department to issue show cause notice invoking longer period and that too alleging suppression, mis-declaration etc. with intent to evade payment of duty."

7.3. Further, in the case of *Komal Trading Company v. Commissioner of Customs (Import), Mumbai [2014 (301) E.L.T. 506 (Tri. - Mum.)]*, the Tribunal at Mumbai has held that when the Department is very much aware of the facts of the case, the Show Cause Notice ought to be issued within the normal period. The relevant observations of the Tribunal in the aforesaid order are as under: -

"4.10 In spite of these clear instructions from the Board, we find that the demand notices have been issued invoking extended period of time, alleging suppression of facts on the part of the appellants. The importer may claim a wrong classification based on his understanding of the tariff. That per se would not amount to misdeclaration or suppression. Classification of goods, determination of correct rate of duty and valuation of goods are part of the assessment functions, the responsibility for which lies solely and wholly on the department. Merely because the appellants have claimed a wrong classification, that does not mean that the department need not ascertain/verify the claim of the appellant and can issue demand notices for short-levy alleging suppression, especially in view of the Board's circular dated 10-6-2002 cited supra which had alerted the departmental officers about the misdeclarations made by the importers of processed bentonite. Even for the period prior to 10-6-2002, the same principle would apply. We have also perused the description declared by the appellants in the various B/Es filed by them. The goods have been described in various ways such as bleaching earth, decolourising earth, processed clay/bentonite and sometimes by their brand names, mentioned in the Board's circular cited above. Nothing prevented the department from

calling for the detailed specifications of the product, drawing of samples and getting them tested, to ascertain whether the product imported is activated or not. Further these items are imported on a regular basis by various traders/actual users such as foundry industry, oil exploration industry, vegetable oil industry and so on. If that be the case, the department should have been well aware of the nature of the product and its classification. As could be seen from the records, in many cases, the department itself had assessed activated clay/Bentonite/bleaching, earth under CTH 3802 for the period prior to 1-2-2003 which shows that the department was well aware of the correct classification. Yet they failed to determine the correct classification in the present appeals and accepted the claim of the importers. If that be so, for the failure and lapses on the part of the assessing officers, extended period of time is not invocable for demand of short levy. Accordingly, we hold that in all the impugned appeals, wherever the demand has been raised beyond the normal period of limitation (other than where assessments were provisional), such demands are not sustainable in law. The Hon'ble Apex Court in the case of Northern Plastics Ltd. [[1998 \(101\) E.L.T. 549](#)] held that laying claim to some exemption, whether admissible or not, is a matter of belief of the assessee and does not amount to misdeclaration and consequently confiscation under Section 111 of the Customs Act and imposition of penalty are not warranted. A similar view was held by the Hon'ble Bombay High Court in the case of Gaurav Enterprises [[2006 \(193\) E.L.T. 532](#)] wherein it was held that an untenable claim for exemption of duty is not a misdeclaration. Following these decisions, we hold that wherever the demands have been made invoking the extended period of time (other than where provisional assessments are involved), the same are not sustainable and as a result, no penal consequences shall ensue. However, wherever the demands have been made within the normal period of time or where provisional assessments have been finalized by classifying the product under CTH 38.02 for the periods prior to 1-2-2003 and from 1-1-2007 onwards, the demands are sustainable and the appellants would be liable to pay differential duty along with interest thereon and we hold accordingly."

7.4. Thus, by relying on the ratio of the decisions cited supra, we hold that extended period of limitation cannot be invoked in this case to demand differential customs duty.

8. We also find that the Ld. Authorized Representative of the Revenue has drawn our attention to the decision in the case of *LML Ltd. v. Commissioner of Customs [2010 (258) E.L.T. 321 (S.C.)]*, which has also been relied upon by the Id. adjudicating authority in the impugned order. In the said case, it was held that for resolving any dispute relating to tariff classification, a safe guide is the internationally accepted nomenclature emerging from the Harmonized System of Nomenclature (HSN), which in the instant case, has not been disputed by the appellants. In the case on hand, we find that the classification pointed out by the investigation authorities has been duly accepted by the appellants and subsequent consignments were also cleared as per the proposed classification. Therefore, the facts and circumstances in the decision of the Hon'ble Supreme Court in *LML Ltd. (supra)* are different from that in the present case and hence, distinguishable.

8.1. Further, we have also gone through the *Haryana Financial Corporation & anr. V. Jagdamba Oil Mills [2002 (1) TMI 1266 – Supreme Court]* relied upon by the Revenue wherein it was held that placing reliance blindly on a judgement is not proper and factual situations between the decided case and the case at hand are required to be gone into. We find that the said decision is not applicable to the present case at all.

9. In view of the above, we find the ratio of the decisions cited by the appellant to be squarely applicable to the facts and circumstances of the present case. Accordingly, by applying the said ratio, we hold that the invocation of the extended period of limitation in the present case is not sustainable in law. Accordingly, we hold that the demand of differential duty of Customs as confirmed in the impugned order by invoking the extended period of limitation, is not sustainable and hence the same is set aside. However, the appellant shall be liable to pay duty for the normal period of limitation, if any, for the goods under import in this case.

9.1. We find that the appellant has furnished a Table pertaining to the 37 Bills of Entry and one courier consignment in question, stating that the Bills of Entry mentioned at Sl. Nos. 1 to 24 therein are hit by limitation, as the show cause notice in theses were issued beyond the normal period of limitation of one year. For ease of reference, the said table furnished by the appellant indicating the bills of entry where the Notice has been issued within the normal period applicable during the relevant period and the bills of entry for which the notice was issued beyond the normal period, is reproduced below: -

Sl. No.	B/E No. & Date	Assessable Value (Rs.)	Duty Payable (Rs.)
1.	7110304 Dated: 18.10.2014	52,15,354.21	14,06,758.00
2.	7324369 Dated: 10.11.2014	22,98,011.81	6,22,811.00
3.	7326377 Dated: 10.11.2014	1,46,891.00	39,445.00
4.	7790967 Dated: 23.12.2014	38,13,959.00	10,31,593.00
5.	7842100 Dated: 29.12.2014	35,55,215.00	9,25,081.00
6.	8200951 Dated: 04.02.2015	19,51,093.00	5,52,277.00
7.	8330209 Dated: 17.02.2015	21,40,149.00	5,74,878.00
8.	8712398 Dated: 25.03.2015	10,766.00	2345.00
9.	9066762	21,08,560.00	6,34,548.00

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	Dated: 28.04.2015		
10.	9139996 Dated: 06.05.2015	32,66,368.00	8,95,207.00
11.	9669182 Dated: 23.06.2015	21,23,024.00	5,84,965.00
12.	9754673 Dated: 01.07.2015	24,91,306.00	6,74,178.00
13.	2227715 Dated: 12.08.2015	26,99,482.00	7,67,339.00
14.	2298069 Dated: 19.08.2015	1,308.00	451.00
15.	2298076 Dated: 19.08.2015	34,79,082.00	9,84,028.00
16.	1356461 Dated: 24.08.2015	25,208.00	6,921.00
17.	2826702 Dated: 06.10.2015	83,75,048.00	22,91,981.00
18.	3422616 Dated: 30.11.2015	42,59,583.00	12,12,143.00
19.	3696013 Dated: 23.12.2015	68,84,470.00	19,12,985.00
20.	4752195 Dated: 30.03.2016	31,32,221.00	7,95,767.00
21.	4918327 Dated: 15.04.2016	37,183.00	8,099.00
22.	6335875 Dated: 11.08.2016	2,636.00	642.00
23.	8035332 Dated: 31.12.2016	8,928.00	2,202.00
24.	1645611 Dated: 29.07.2017	1,00,289.00	23,604.09
Demand beyond statutory period of 1 year up to 14.05.2016 and 2 years thereafter = Rs. 1,59,49,446/-			
25.	3757650 Dated: 26.10.2017	22,162.00	5,216.00
26.	4100400 Dated: 22.11.2017	1,95,465.00	57,648.00
27.	5750236 Dated: 27.03.2018	90,168.00	21,222.00
28.	6358110 Dated: 14.05.2018	1,18,266.00	36,155.00
29.	6837705 Dated: 18.06.2018	533.00	130.00
30.	7241627 Dated: 17.07.2018	16,415.00	3,926.00
31.	7794092 Dated: 27.08.2018	1,18,910.00	28,919.00
32.	8284066 Dated: 02.10.2018	49,346.00	12,001.00
33.	9535341 Dated: 05.01.2019	29,872.00	7,265.00
34.	2022472 Dated: 12.02.2019	2,35,681.00	57,318.00
35.	2822050 Dated: 12.04.2019	6,755.00	1,643.00
36.	3787566 Dated: 24.06.2019	26,277.00	8,140.00
37.	3989918 Dated: 09.07.2019	1,17,257.00	28,517.00
38.	DHL (In courier mode) Dated: 20.02.2019	54,576.00	15,090.00
Duty demand against 13 Bills of Entry and one courier consignment confirmed within statutory period = Rs. 2,83,190.00			
	Total Assessable value	5,92,07,547.36	Total Duty demand 1,62,29,792.00
	Duty paid at the time of assessment		33,80,703.00
	Differential Duty confirmed		1,28,49,089.00

9.2. From a perusal of the aforesaid table, we find that the demands in respect of the Bills of Entry as enumerated at Sl. Nos. 1 to 21 of the above table are beyond the time period of one year, which was in force during the relevant period by virtue of the Finance Act, 2011, w.e.f. 08.04.2011, and hence, the demands raised in respect of the same by invoking the extended period of limitation are not maintainable. Similarly, in respect of the Bills of Entry as enumerated at Sl. Nos. 22 to 23 therein, the demands raised are beyond the time-limit of two years, as was in force during the relevant period by virtue of the Finance Act, 2016 w.e.f. 14.05.2016. Therefore, we find that out of the total demand of duty amounting to Rs.1,62,29,792/- (out of which Rs.33,80,703/- already stands paid by the assessee), an amount of Rs. 1,59,49,446/- [pertaining to the Bills of Entry as mentioned in Sl. Nos. 1 to 24 of the above Table] is beyond the normal period of limitation available during the relevant period/s for issuing Show Cause Notices. Hence, we set aside the demands raised in respect of the aforementioned 24 Bills of Entry on the ground of limitation. In respect of the remaining 13 Bills of entry and one courier consignment mentioned at Sl. Nos. 25 to 38 in the table, the demand has been raised within the normal period of limitation applicable during the relevant period. Accordingly, we hold that the differential customs duty confirmed in respect of these 13 Bills of entry and one courier consignment are upheld. The appellant is liable to pay the differential customs duty in respect of these bills of entry along with interest.

10. As regards the order of confiscation of the goods in question and the consequent imposition of redemption fine in the impugned order, we find that the appellant has made the declaration and classified the goods as per their understanding. It has been pointed out by the counsel for the appellant that the said items were being classified under Tariff Heading 9021 as medical equipment considering the use of the item for medical purpose as prescribed by medical practitioners. Further, the description on the Bills of Entry were being reflected as per the manufacturer's invoice and catalogue of the suppliers. It is also a fact that the Bills of Entry were properly assessed by the assessing officer and cleared on payment of duty. Thus, there is no suppression of fact attributable to the appellant while filing the Bills of Entry. Since the goods have been cleared on payment of appropriate duties of Customs, as assessed by the proper officer, we hold that the same are not liable for confiscation under Section 111(m) of the Customs Act, 1962. Accordingly, the order of confiscation of the goods in question along with the imposition of redemption fine stands set aside.

11. Further, we observe that even if the classification is found to be wrong, the appellant cannot be faulted for classifying the goods under CTH 90211000. It is the duty of the assessing officer to find out and re-classify the same under the appropriate heading. In view of this and our findings in the preceding paragraphs of this order, we do not find any justification in the imposition of penalties on the appellant-company in the impugned order. Accordingly, the penalties imposed on the appellant, M/s. Pushpanjali Medi India Private Limited are set aside.

12. As regards the penalties imposed on Shri Prakash Kumar Sethia, Managing Director of the company, we observe that penalties have been imposed on him for his alleged role in the offence committed and for rendering the impugned goods liable for confiscation. In view of the reasons given in the preceding paragraphs and considering the fact that the Department has not established the role of Shri Prakash Kumar Sethia in the alleged offence by way of cogent, tangible or corroborative evidence, we hold that the imposition of penalties on him are not warranted. Accordingly, we set aside the penalties imposed on Shri Prakash Kumar Sethia in the impugned order.

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

(i) The demand confirmed in the impugned order pertaining to the Bills of Entry as mentioned in Sl. Nos. 1 to 24 of the Table at paragraph 9.1 (supra), which are beyond the normal period of limitation available during the relevant period, are set aside.

(ii) The differential duty demand confirmed in respect of the 13 Bills of entry and one courier consignment, mentioned at Sl. No. 25 to 38 of the Table at paragraph 9.1 (supra), where the demand has been raised within the normal period of limitation applicable during the relevant period, are upheld. The appellant is liable to pay this differential duty along with interest.

(iii) The penalties imposed on the appellant, M/s. Pushpanjali Medi India Private Limited are set aside.

(iv) The order of confiscation of the goods in question is set aside. Accordingly, the redemption fine imposed is also set aside.

(v) The penalties imposed on the appellant, Shri Prakash Kumar Sethia, in the impugned order are set aside.

14. The appeals filed by the appellants are disposed of in the above manner, with consequential relief, if any, as per law.

(Order pronounced in the open court on **24.11.2025**)

Sd/-

(R. MURALIDHAR)
MEMBER (JUDICIAL)

Sd/-

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

Sdd