CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI
REGIONAL BENCH
COURT No. 1

Customs Appeal No. 86681 of 2018
C/Cross/86268 of 2018

(Arising out of Order-in-Original No. 100/2017-18/Commr/NS-V/JNCH dated 24.01.2018 passed by the Commissioner of Customs (NS-V), JNCH, Nhava Sheva)

Commissioner of Customs, Nhava Sheva-V **Appellant**
JNPT, Custom House, Nhava Sheva, Raigad

Vs.

M/s. Nipro India Corporation Pvt. Ltd. **Respondent**
Plot No. E-1, MIDC, Kesurdi, Tal-Khandala,
Dist. Satara, Maharashtra 412 801.

<u>Appearance:</u>

Shri Sydney D'Silva, Additional Commissioner, Authorised Representative, for the Appellant
Ms. Padmavati Patil, Advocate, for the Respondent

<u>CORAM:</u>

HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR. C.J. MATHEW, MEMBER (TECHNICAL)

Date of Hearing: 04.08.2022
Date of Decision: 04.08.2022

FINAL ORDER NO. 86314/2022

PER: S.K. MOHANTY

Classification of "Dialysers" is the subject matter of dispute. In the show cause notice, the department had proposed to classify the said goods under Tariff Item 84212900, as against the assessment and clearance made by the importer under Tariff Item 90189031. The show cause notice dated 11.11.2016 was adjudicated by the learned Commissioner of Customs (NS-V), JNCH, Nhava Sheva, vide the impugned order dated 24.01.2018, in dropping the proposals made therein. Feeling aggrieved with the impugned order, Revenue has preferred this appeal before the Tribunal.

2. Heard both sides and examined the case records.

3. The disputed product "Dialysers" has been used by the respondent for the purpose of dialysis, i.e. purification of blood and not used for filtration or purification of any liquids or gases. The heading 9018 covers product viz., "Instruments and appliances used in medical, surgical, dental ….. and sight testing instruments". In Tariff Item 90189031, the product description has been specifically mentioned as "Dialysers". On the contrary, heading 8421 covers "Centrifuges, including centrifugal dryers, filtering or purifying machinery and apparatus for liquids and gases". Since specific tariff item has been assigned for the product in dispute, the general heading cannot be preferred over such specific tariff heading in terms of General Rules for the Interpretation of Import Tariff under the Customs Tariff Act, 1975. We find that the department has mainly proceeded against the respondent, seeking for recovery of the customs duty amount on the basis of Circular No. 19/2013 dated 09.05.2013 issued by the CBEC. We further find that while adjudicating the matter, the learned Commissioner of Customs has relied upon the single Judge order passed by the Hon'ble Calcutta High Court in the case of *Sanwar Agarwal vs. Commissioner of Customs (Port) [2016 (336) ELT 42 (Cal.)]*. The said order was also upheld by the Division Bench of the Hon'ble Calcutta High Court, reported in [2020 (372) ELT 686 (Cal.)]. Further, the judgment of the Hon'ble Kerala High Court in the case of *Additional Commissioner of Customs, Cochin vs. Terumpo Penpol Ltd. [2017 (350) ELT 74 (Ker.)]* was also referred to by the learned adjudicating authority for dropping the show cause proceedings initiated against the respondent. The ratio of the judgment relied upon by the learned adjudicating authority was to the effect that the instructions or circular issued by the CBEC cannot substitute for the procedure of amendment or alteration of rules that is delegated to the Central Government and that the instructions can pertain to interpretation to bring about uniformity in classification of goods; such instructions cannot be used to uproot a class of goods or any product from this chapter and plant it in another. Since the circular dated 09.05.2013 has been quashed by the authoritative judgments delivered by the Hon'ble Calcutta High Court and Hon'ble Kerala High Court, the instructions contained in the said circular cannot

be relied upon for taking a contrary view. Therefore, we do not find any infirmity in the impugned order passed by the learned Commissioner of Customs in dropping the show cause notice issued to the respondent.

4. In view of the above, the appeal filed by the Revenue is dismissed. The cross objection filed by the respondent is also disposed of accordingly.

(Operative part of the order pronounced in the open court)

(S.K. Mohanty)
Member (Judicial)

(C.J. Mathew)
Member (Technical)

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