CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

WEST ZONAL BENCH

CUSTOMS APPEAL NO: 85684 OF 2020

[Arising out of Order-in-Original No: CC-VA/13/2020-21 Adj.(I) ACC dated 3rd July 2020 passed by the Commissioner of Customs (Import) - III, Air Cargo Complex, Mumbai.]

Mindray Medical India Pvt Ltd
AN Gala 4-5-16 & 17
Shree Rajlaxmi Commercial Complex,
Bhivandi – 421 302 … ***Appellant***

versus

Commissioner of Customs – III (Import)
Air Cargo Complex, Sahar Andheri (E)
Mumbai - 400099 ***…Respondent***

APPEARANCE:

Shri B K Singh and Shri Pradipta Bagchi, Advocates for the appellant

Shri D S Maan, Deputy Commissioner (AR) for the respondent

CORAM:

HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)
HON'BLE MR AJAY SHARMA, MEMBER (JUDICIAL)

FINAL ORDER NO: A / 86025/2023

DATE OF HEARING: 25/04/2023
DATE OF DECISION: 25/04/2023

PER: C J MATHEW

This appeal of M/s Mindray Medical India Pvt Ltd pertains to the recovery of duties alleged to be short-paid on ‘diagnostic kits and reagents’, imported between July 2017 and June 2018 with declared assessable value of ₹ 7,88,48,120/-, on which basic customs duty as applicable to tariff item 3822 0090 of First Schedule to Customs Tariff Act, 1975 and ‘integrated goods and service tax (IGST)’ leviable under section 3(7) of Customs Tariff Act, 1975 at 12% in accordance with schedule II of notification no. 1/2017-(Integrated Tax Rate) dated 28th June 2017 (serial no. 80) had been discharged. Differential duty of ₹ 82,44,655/- was sought to be recovered under section 28 of Customs Act, 1962 as the said entry in the notification related only to ‘diagnostic goods and reagents’ while the classification for determination of duties of customs was claimed as tariff item 3822 00 90 for which there was no corresponding entry in any of the schedules of the said notification and, consequently, requiring discharge of tax liability @ 18% corresponding to residual entry in schedule III therein (serial no. 453). In addition, the adjudicating authority also held the goods liable to confiscation and imposed penalty of ₹ 5,00,000/- under section 112A of Customs Act, 1962. Aggrieved by the recovery and penalty, the appellant is before us.

2. Learned Counsel for appellant submits that they had, in fact, imported ‘diagnostic kits and reagents’ which erroneously had, for purpose of levy of customs duty, been sought for classification against tariff item 3822 0090 instead of tariff item 3822 0019 of First

Schedule to Customs Tariff Act, 1975. It was also contended that, erroneously once again, 'laboratory reagents' had been added to the description though not included in corresponding invoices.

3. Learned Counsel submitted that the dispute on jurisdiction, as well as the competence of the customs authorities to revise classification, was settled by the decision of the Tribunal in *Ortho Clinical Diagnostics India Pvt Ltd v. Commissioner of Customs (Import), Mumbai* by final order[1] disposing off appeal against order[2] of Commissioner of Customs-III (Import), Air Cargo Complex, Mumbai. It was also contended that the Tribunal, in *Sirthai Superware India Ltd v. Commissioner of Customs, Nhava Sheva-III [2020 (371) ELT 324 (Tri. - Mumbai)],* had ruled on the sufficiency of declaration of description and value to preclude invoking of section 111 of Customs Act, 1962.

4. We have Learned Authorised Representative.

5. It would appear that the issue of eligibility to rate of duty @ 12% on imported goods, whether they be in conformity with description erroneously entered or that of the actual descriptions in the bills of entry, has been clarified in circular[3] of the Department of Revenue, Government of India thus

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[1] [final order no. A/85710/2022 dated 12th August 2022 in customs appeal 85868 of 2020]
[2] [no. CC-VA/12/2020-2021 ADJ (I) ACC dated 2nd July 2020]
[3] no. 163/19/2021-GST dated 6th October 2021

> *'10. All laboratory reagents and other goods falling under heading 3822:*
>
> *10.1 Entry at S. No. 80 of Schedule II of notification No.1/2017- Integrated Tax (Rate) dated 28.6.2017 prescribes GST rate of 12% for "All diagnostic kits and reagents".*
>
> *10.2. Representations have been received whether the benefit of concessional rate of 12% would be available to laboratory agents and other goods falling under heading 3822.'*

6. Accordingly, nothing remains in this dispute except to set aside the impugned order and allow the appeal.

(Operative Part of the Order pronounced in the open court on 25th April 2023)

(AJAY SHARMA)
Member (Judicial)

(C J MATHEW)
Member (Technical)

**/as*