

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
MUMBAI**

REGIONAL BENCH - COURT NO. I

Customs Appeal No. 85928 of 2023

(Arising out of Order-in-Appeal No. 365 (Gr.V/2023(JNCH)/Appeals dated 12.04.2023 passed by Commissioner of Customs (Appeals), Mumbai-II.)

Perfect Aerosol Valves Private Limited

.....Appellants

Plot No.61/2, Kachigam Road,
Ringanwaa, Daman & Diu
Daman – 306 210.

VERSUS

Commissioner of Customs (NS-V)

.....Respondent

Mumbai – II Jawaharlal Nehru Custom House (JNCH),
Nhava Sheva, Taluka Uran, District Raigad
Maharashtra-400 707.

Appearance:

Shri D.H. Nadkarni, Advocate for the Appellants

Shri D.S. Maan, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)

HON'BLE MR. M.M. PARTHIBAN, MEMBER (TECHNICAL)

FINAL ORDER NO. A/85500/2024

Date of Hearing: 21.12.2023

Date of Decision: 22.04.2024

PER : M.M. PARTHIBAN

This appeal has been filed by M/s Perfect Aerosol Valves Private Limited, Mumbai (herein after, referred to as 'the appellants'), assailing Order-in-Appeal No. 365 (Gr.V/2023(JNCH)/Appeals dated 12.04.2023 (herein after, referred to as 'impugned order') passed by Commissioner of Customs (Appeals), Mumbai-II Zone, Mumbai.

2. The brief facts of the case are that the appellants had imported 'Aerosol Valve components' by classifying it under Customs Tariff Item (CTI) 8481 8090 under Bill of Entry (B/E) No. 8442816 dated 11.08.2020 and self-assessed the same with applicable Basic Customs Duty (BCD) of 7.5% *advalorem*, in terms of Section 17(1) of the Customs Act, 1962. The proper

officer of Customs in the Appraising Group had objected to the classification of the imported goods and had raised query seeking reply from the appellants as to why the imported goods should not be classified under CTI 9616 1020 with applicable Basic Customs Duty (BCD) of 20% *ad valorem*. On examination of representative sample of the declared goods, the assessing officer of the Appraising Group-V had come to the conclusion that the imported goods having a cap with plastic pipe attached to it for the function of pumping the liquid in a container, when the pump or sprayer is pressed, is classifiable under the Customs Tariff Item (CTI) 9616 1020 of the First Schedule to the Customs Tariff Act, 1975 and not under the declared CTI 8481 8090. The original authority in passing the assessment order in terms of Section 17(5) of the Customs Act, 1962 had confirmed the classification of the imported goods under CTI 9616 1020 and rejected the classification claimed by the appellants importer vide Order-in-Original dated 27.08.2020. Feeling aggrieved with the above original order, the appellants had filed an appeal before the Commissioner of Customs (Appeals). In deciding the appeal, learned Commissioner of Customs (Appeals) vide impugned order had held that the imported goods under dispute viz. 'Aerosol Valve components' are rightly classifiable under CTI 9616 1020, by upholding the original order and in rejecting the appeal filed by the appellants. Being aggrieved with the above order, the appellants have filed this appeal before the Tribunal.

3.1. Learned Advocate for the appellants submits that 'aerosol valve' is a device that allow the controlled release of a product from an aerosol can. They are typically made of metal or plastic and consist of the valve stem, a dip tube, a dip tube seal, a valve body and an actuator. The aerosol valves are used in wide variety of products, including paints, deodorants, air fresheners and cleaning products to be sprayed or dispersed from the container. The valve operates as pressure reducing valves which are mounted on the top of containers for spraying the liquids under pressure, hence it's role is essential, in keeping the container air tight, clean and hygienic and for regulating the flow of the product during use. They are a convenient and effective way to dispense products that are in liquid or powder form. He further submitted that the product aerosol valve is a general spray purpose valve and applied at many such cases and not linked to specific products such as scent or toilet spray.

3.2 Learned Advocate submitted that the classification of imported goods declared by the appellants were duly supported by the Harmonized System of Nomenclature (HSN) which provides for coverage of the 'pressure spray can-lids for cans' to be filled with liquid or gaseous substances. Hence, he pleaded that the impugned order is not legally sustainable.

3.3 In support of their stand, learned Advocate had relied upon following decisions of the Tribunal in the respective cases mentioned below:

(i) *Commissioner of Customs, Bombay Vs. CIPLA Ltd.* – 1998 (102) E.L.T. 739 (Tribunal)

(ii) *Kumar Aerosols Pvt. Ltd. Vs. Collector of Customs, New Delhi* – 1997 (93) E.L.T. 201 (Tribunal)

4.1 Learned Authorised Representative (AR) reiterated the findings made by the Commissioner of Customs (Appeals) in the impugned order and submitted that issue of classification of impugned goods, has been examined in detail by the learned Commissioner of Customs (Appeals). He stated that the appellants have described the imported goods as 'aerosol valve components' but claimed the classification under CTI 8481 8090 which is meant for other appliances and not for parts, which is classifiable under CTI 8481 9090. From the sample photograph of the product, he submitted that the goods are made of plastic and these are pump mechanism to pass the liquid from the container by way of motivating force from the bulb pressure or piston action, and are rightly classifiable under CTI 9616 1020.

4.2 Learned AR also submitted that the learned Commissioner (Appeals) by relying on the General Rules of Interpretation (GRI) classified the goods CTI 9616 1020 as the description is more specific, in comparison to the general description of goods under CTI 8481 8090.

4.3 Thus, learned AR justified the action in the impugned order dated 12.04.2023, for re-classifying the goods under CTI 9616 1020 and thus pleaded for rejecting the appeals filed by the appellants.

4.4 In support of Revenue's stand, learned AR had relied upon following decision of the Tribunal in the respective cases mentioned below:

(i) *Commissioner of Customs, Mumbai Vs. Reckit & Colman of India Ltd.* – 2005 (190) E.L.T. 221 (Tri.- Mumbai)

(ii) *Commissioner of Customs, Mumbai Vs. Speciality Valves* – 2006 (202) E.L.T. 785 (Tri.- Mumbai.)

5. We have heard the learned Advocate appearing for the appellants and the learned Authorized Representative of the Department and perused the case records. Further, we have also considered the additional written submissions in the form of paper books given by both sides.

6.1 The issue involved herein is to decide the classification of imported goods by the appellants as to whether, the same merits classification under Customs Tariff Item (CTI) 8481 8090 as claimed by the appellants; or, is it classifiable under Customs Tariff Heading (CTI) 9616 1020 as determined by the learned Commissioner of Customs (Appeals), for deciding on the appropriate levy of customs duty. Further, it is also required to be decided whether the payment of differential duty under protest by the appellants consequent to re-assessment by customs officer is legally sustainable on the basis of the determination of the appropriate classification of impugned goods herein.

6.2 In order to address the above issue of classification of imported goods, we would like to refer the relevant legal provisions contained in Section 12 of the Customs Act, 1962; the Customs Tariff Act, 1975 and rules framed thereunder for consideration of proper and appropriate classification of the subject goods under dispute.

"Section 12. Dutiable goods. -

(1) Except as otherwise provided in this Act, or any other law for the time being in force, duties of customs shall be levied at such rates as may be specified under the Customs Tariff Act, 1975 (51 of 1975), or any other law for the time being in force, on goods imported into, or exported from, India.

(2) The provisions of sub-section (1) shall apply in respect of all goods belonging to Government as they apply in respect of goods not belonging to Government."

"Section 1. Short title, extent and commencement. -

(1) This Act may be called the Customs Tariff Act, 1975.

(2) It extends to the whole of India.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

Section 2. Duties specified in the Schedules to be levied. -

The rates at which duties of customs shall be levied under the Customs Act, 1962 (52 of 1962), are specified in the First and Second Schedules.

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THE FIRST SCHEDULE – IMPORT TARIFF

(Refer Section 2)

THE GENERAL RULES FOR THE INTERPRETATION OF IMPORT TARIFF

Classification of goods in this Schedule shall be governed by the following principles:

1. The titles of Sections, Chapters and sub-chapters are provided for ease of reference only; for legal purposes, classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes and, provided such headings or Notes do not otherwise require, according to the following provisions:

2. (a) Any reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, as presented, the incomplete or unfinished articles has the essential character of the complete or finished article. It shall also be taken to include a reference to that article complete or finished (or falling to be classified as complete or finished by virtue of this rule), presented unassembled or disassembled.

(b) Any reference in a heading to a material or substance shall be taken to include a reference to mixtures or combinations of that material or substance with other materials or substances. Any reference to goods of a given material or substance shall be taken to include a reference to goods consisting wholly or partly of such material or substance. The classification of goods consisting of more than one material or substance shall be according to the principles of rule 3.

3. When by application of rule 2(b) or for any other reason, goods are, prima facie, classifiable under two or more headings, classification shall be effected as follows:

(a) The heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods.

(b) Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for

retail sale, which cannot be classified by reference to (a), shall be classified as if they consisted of the material or component which gives them their essential character, in so far as this criterion is applicable.

(c) When goods cannot be classified by reference to (a) or (b), they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration.

4. Goods which cannot be classified in accordance with the above rules shall be classified under the heading appropriate to the goods to which they are most akin.

5. In addition to the foregoing provisions, the following rules shall apply in respect of the goods referred to therein:

(a) Camera cases, musical instrument cases, gun cases, drawing instrument cases, necklace cases and similar containers, specially shaped or fitted to contain a specific article or set of articles, suitable for long-term use and presented with the articles for which they are intended, shall be classified with such articles when of a kind normally sold therewith. This rule does not, however, apply to containers which give the whole its essential character;

(b) Subject to the provisions of (a) above, packing materials and packing containers presented with the goods therein shall be classified with the goods if they are of a kind normally used for packing such goods. However, this provisions does not apply when such packing materials or packing containers are clearly suitable for repetitive use.

6. For legal purposes, the classification of goods in the sub-headings of a heading shall be determined according to the terms of those sub headings and any related sub headings Notes and, mutatis mutandis, to the above rules, on the understanding that only sub headings at the same level are comparable. For the purposes of this rule the relative Section and Chapter Notes also apply, unless the context otherwise requires.

THE GENERAL EXPLANATORY NOTES TO IMPORT TARIFF

1. Where in column (2) of this Schedule, the description of an article or group of articles under a heading is preceded by "-", the said article or group of articles shall be taken to be a sub-classification of the article or group of articles covered by the said heading. Where, however, the description of an article or group of articles is preceded by "- -", the said article or group of articles shall be taken to be a sub-classification of the immediately preceding description of the

article or group of articles which has "-". where the description of an article or group of articles is preceded by "---" or "----", the said article or group of articles shall be taken to be a sub-classification of the immediately preceding description of the article or group of articles which has "-" or "--".

2. The abbreviation "%" in any column of this Schedule in relation to the rate of duty indicates that duty on the goods to which the entry relates shall be charged on the basis of the value of the goods as defined in section 14 of the Customs Act, 1962 (52 of 1962), the duty being equal to such percentage of the value as is indicated in that column.

3. In any entry, if no rate of duty is shown in column (5), the rate shown under column (4) shall be applicable.

ADDITIONAL NOTES

In this Schedule,—

(1)(a) "heading", in respect of goods, means a description in list of tariff provisions accompanied by a four-digit number and includes all sub-headings of tariff items the first four-digits of which correspond to that number;

(b) "sub-heading", in respect of goods, means a description in the list of tariff provisions accompanied by a six-digit number and includes all tariff items the first six-digits of which correspond to that number;

(c) "tariff item" means a description of goods in the list of tariff provisions accompanying eight digit number and the rate of customs duty;

(2) the list of tariff provisions is divided into Sections, Chapters and Sub-Chapters;

(3) in column (3), the standard unit of quantity is specified for each tariff item to facilitate the collection, comparison and analysis of trade statistics."

6.3 From plain reading of the above legal provisions, it transpires that in order to determine the appropriate duties of customs payable on any imported goods, one has to make an assessment of the imported goods for its correct classification under the First Schedule to Customs Tariff Act, 1975 in accordance with the provisions of the Customs Tariff Act by duly following the General Rules for Interpretation (GIR) and the General Explanatory notes (GEN) contained therein. The First Schedule to the Customs Tariff Act,

1975 specifies the various categories of imported goods in a systematic and well-considered manner, in accordance with an international scheme of classification of internationally traded goods, i.e., 'Harmonized Commodity Description and Coding System' (HS). Accordingly, goods are to be classified taking into consideration the scope of headings / sub-headings, related Section Notes, Chapter Notes and the General Rules for the Interpretation (GIR) of the First Schedule to the Customs Tariff Act, 1975. Rule 1 of the GIR provides that the classification of goods shall be determined according to the terms of the headings of the tariff and any relative Section notes or Chapter notes and thus, gives precedence to this while classifying a product. Rules 2 to 6 provide the general guidelines for classification of goods under the appropriate sub-heading. In the event of the goods cannot be classified solely on the basis of GIR 1, and if the headings and legal notes do not otherwise require, the remaining Rules 2 to 6 may then be applied in sequential order. Further, while classifying goods, the foremost consideration is the 'statutory definition', if any, provided in the Customs Tariff Act. In the absence of any statutory definition, or any guideline provided by HS explanatory notes, the trade parlance theory is to be adopted for ascertaining as to how the goods are known in the common trade parlance for the purpose of dealing between the parties.

7. In the case before us, the contending classification of imported goods discussed in the impugned order are either under CTI 8481 8090 or CTI 9616 1020 of the First Schedule to the Customs Tariff Act. Thus, it is clear that at the Chapter level itself, there is difference of opinion among the department and the appellants. The dispute in classification therefore lies in the narrow compass of analysis of the appropriate Headings under which the impugned goods are covered as per the Customs Tariff and then classifying the impugned product under the corresponding Sub-heading, Tariff Item. Now, we may closely examine the scope of the contending classification for determining correct classification of the imported goods. The relevant headings and their tariff entries in the First Schedule to the Customs Tariff Act, 1975 of contending Chapter headings 8481 and 9616 are extracted as below:

"SECTION XVI

**MACHINERY AND MECHANICAL APPLIANCES; ELECTRICAL
EQUIPMENT; PARTS THEREOF; SOUND RECORDERS AND
REPRODUCERS, TELEVISION IMAGE AND SOUND RECORDERS AND
REPRODUCERS, AND PARTS AND ACCESSORIES OF SUCH ARTICLES**

NOTES :

1. *This chapter does not cover:*

....

2. *Subject to Note 1 to this Section, Note 1 to Chapter 84 and to Note 1 to Chapter 85, parts of machines (not being parts of the articles of heading 8484, 8544, 8545, 8546 or 8547) are to be classified according to the following rules:*

(a) parts which are goods included in any of the headings of Chapter 84 or 85 (other than headings 8409, 8431, 8448, 8466, 8473, 8487, 8503, 8522, 8529, 8538 and 8548) are in all cases to be classified in their respective headings;

(b) other parts, if suitable for use solely or principally with a particular kind of machine, or with a number of machines of the same heading (including a machine of heading 8479 or 8543) are to be classified with the machines of that kind or in heading 8409, 8431, 8448, 8466, 8473, 8503, 8522, 8529 or 8538 as appropriate. However, parts which are equally suitable for use principally with the goods of headings 8517 and 8525 to 8528 are to be classified in heading 8517;

(c) all other parts are to be classified in heading 8409, 8431, 8448, 8466, 8473, 8503, 8522, 8529 or 8538 as appropriate or, failing that, in heading 8487 or 8548.

3. *Unless the context otherwise requires, composite machines consisting of two or more machines fitted together to form a whole and other machines designed for the purpose of performing two or more complementary or alternative functions are to be classified as if consisting only of that component or as being that machine which performs the principal function.*

4. *Where a machine (including a combination of machines) consists of individual components (whether separate or interconnected by piping, by transmission devices, by electric cables or by other devices) intended to contribute together to a clearly defined function covered by one of the headings in Chapter 84 or Chapter 85, then the whole falls to be classified in the heading appropriate to that function.*

5. *For the purposes of these Notes, the expression "machine" means any machine, machinery, plant, equipment, apparatus or appliance cited in the headings of Chapter 84 or 85.*

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CHAPTER 84

***Nuclear reactors, boilers, machinery and mechanical appliances;
parts thereof***

Tariff Item	Description of goods	Unit	Rate of Duty	
			Standard	Preferential Areas
(1)	(2)	(3)	(4)	(5)
8481	TAPS, COCKS, VALVES AND SIMILAR APPLIANCES FOR PIPES, BOILER SHELLS, TANKS, VATS OR THE LIKE, INCLUDING PRESSURE-REDUCING VALVES AND THERMOSTATICALLY CONTROLLED VALVES			
8481 10 00	- Pressure-reducing valves	Kg.	7.5%	-
8481 20 00	-Valves for oleohydraulic or pneumatic transmissions	Kg.	7.5%	-
8481 30 00	- Check (non-return) valves	Kg.	7.5%	-
8481 40 00	- Safety or relief valves	Kg.	7.5%	-
8481 80	- <i>Other appliances :</i>			
8481 80 10	--- Taps, cocks and similar appliances of iron or steel	Kg.	7.5%	-
8481 80 20	--- Taps, cocks and similar appliances of non-ferrous metal	Kg.	7.5%	-
8481 80 30	--- Industrial valves (excluding pressure-reducing valves, and thermostatically controlled valves)	Kg.	7.5%	-
	--- <i>Inner tube valves :</i>			
8481 80 41	---- For bicycles	Kg.	7.5%	-
8481 80 49	---- Other	Kg.	7.5%	-
8481 80 50	--- Expansion valves and solenoid valves refrigerating and air conditioning appliances and machinery	Kg.	7.5%	-
8481 80 90	--- Other	Kg.	7.5%	-
8481 90	- <i>Parts :</i>			
8481 90 10	--- Bicycles valves	Kg.	7.5%	-
8481 90 90	--- Other	Kg.	7.5%	-"

and

"CHAPTER 96

Miscellaneous manufactured articles

NOTES :

This Chapter does not cover :

- (a) pencils for cosmetic or toilet uses (Chapter 33);*
- (b) articles of Chapter 66 (for example, parts of umbrellas or walking-sticks);*
- (c) imitation Jewellery (heading 7117);*
- (d) parts of general use, as defined in Note 2 of Section XV, of base metal (Section XV), or similar goods of plastics (Chapter 39);*
- (e) cutlery or other articles of Chapter 82 with handles or other parts of carving or moulding materials; heading 9601 or 9602 applies, however, to separately presented handles or other parts of such articles;*
- (f) articles of Chapter 90, for example, spectacle frames (heading 9003), mathematical drawing pens (heading 9017), brushes of a kind specialised for use in dentistry or for medical, surgical or veterinary purposes (heading 9018);*
- (g) articles of Chapter 91 (for example, clock or watch cases);*
- (h) musical instruments or parts or accessories thereof (Chapter 92);*
- (ij) articles of Chapter 93 (arms and parts thereof);*

- (k) articles of Chapter 94 (for example, furniture, lamps and lighting fittings);
- (l) articles of Chapter 95 (toys, games, sports requisites);
- (m) works of art, collectors' pieces or antiques (Chapter 97).

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Tariff Item	Description of goods	Unit	Rate of Duty	
			Standard	Preferential Areas
(1)	(2)	(3)	(4)	(5)
9616	SCENT SPRAYS AND SIMILAR TOILET SPRAYS, AND MOUNTS AND HEADS THEREFOR; POWDER-PUFFS AND PADS FOR THE APPLICATION OF COSMETICS OR TOILET PREPARATIONS			
9616 10	- Scent sprays and similar toilet sprays, and mounts and heads therefor :			
9616 10 10	--- Scent sprays and similar toilet sprays	Kg.	20%	-
9616 10 20	--- Mounts and heads	Kg.	20%	-
9616 20 00	--- Powder-puffs and pads for the application of cosmetics or toilet preparations	Kg.	20%	-"

8.1 It could be seen that by applying the GIR 1, the position is made clear that Chapter Heading 8481 covers within its scope and ambit, mainly of five broad categories of goods:

- (i) first one i.e., "Taps, Cocks and similar appliances for pipes, boiler shells, tanks, vats or the like" covered under CTI 8481 80 10, if made of iron or steel and under CTI 8481 80 20, if made of non-ferrous metal;
- (ii) the second one i.e., "Valves for pipes, boiler shells, tanks, vats or the like, if used for pressure reducing then under CTI 8481 10 00/ if used for oleo hydraulic or pneumatic transmissions under CTI 8481 20 00/ if used as non-reducing valves then under CTI 8481 30 00/ if used as safety or relief valves then under CTI 8481 40 00/ if used as industrial valves then under CTI 8481 80 30";
- (iii) the third one i.e., "Inner tube valves, if used for bicycles under CTI 8481 80 41; Inner tube valves, if meant for other uses, then under CTI 8481 80 49; and Inner tube valves, used as expansion valves and solenoid valves for refrigerating and air-conditioning appliances and machinery, then under CTI 8481 80 50";
- (iv) the fourth one i.e., "Similar appliances for pipes, boiler shells, tanks, vats or the like not covered specifically under the above tariff items of 84 81, is grouped under CTI 8481 80 90"; and
- (v) the fifth one i.e., parts of any of the above appliances classifiable under heading 8481 is covered under CTI 8481 90 10, if this is of bicycle valves and all other parts are covered under CTI 8481 90 90.

8.2. Similarly, by applying same GIR 1, it could also be seen that Chapter Heading 9616 covers within its scope and ambit, mainly of three broad categories of goods:

(i) first one i.e., "Scent sprays and similar toilet sprays," covered under CTI 9616 1010;

(ii) the second one i.e., "mounts and heads for animal feeds for scent sprays and similar toilet sprays" covered under CTI 9616 1020; and

(iii) the third one i.e., "powder-puffs and pads for the application of cosmetics or toilet preparations" covered under CTI 9616 20 00.

8.3 Broadly, we find that the chapter heading 8481 deals with "various types of valves and other appliances, along with their respective parts", whereas chapter heading 9616 deals with products of "scent sprays and similar toilet preparations along with mounts, heads, powder-puffs and pads" as a part of miscellaneous manufactured articles. The scope of coverage of chapter heading 8481 is large enough to cover all types of valves and other similar appliances irrespective of its application in industrial or other use. Whereas the scope of coverage of goods under chapter heading 9616 is restrictive to scent sprays, toilet sprays which are of cosmetics in nature and those items such as mounts, heads, powder-puffs and pads which are essential for its application have alone been included along with such items.

8.4 The Original authority had come to the conclusion that the imported goods are classifiable under CTI 9616 1020 on the basis of following findings:

"11. I find that the importer M/s Perfect Aerosol Valves Private Limited has wrongly classified the goods 84818090 with applicable BCD of 7.5% of 8 items under Bill of Entry No.8442816/11.08.2020. However I find that on merit goods are classifiable under 96161020 with applicable BCD 20%.

12. I have gone through the chapter notes of CTH 8481 and 9616 and it is found out that the goods comprise of mechanism which is part of dispenser pumps and spray pumps."

8.5 Further, the learned Commissioner of Customs (Appeals) had also came to the conclusion that the imported goods are classifiable under CTI 9616 1020 on the following basis:

"2. I find that the appellant had imported goods "Aerosol Valve Components' vide Bill of Entry No. 8442816 dated 11.08.2020 and classified the same under CTH 84818090 with applicable BCD @7.5%. The Assessing Officer did not agree with the classification and re-classified under CTH 96161020. The appellant paid duty under protest and cleared the goods. The Order-in-Assessment No. S/26-Misc-1173 /2020-21/Gr.V/ JNCH dated 27.08.2020 was issued by the Original Authority under Section 17(5) of the Customs Act, 1962.

3. *I find that the Adjudicating Authority has seen the representative sample of the goods which are having a cap with a plastic pipe attached to it. The function of this item is to pass the liquid when the pump of dispenser of sprayer is pressed. Though the Appellant has submitted that the impugned goods are insecticide valves, butane valves, mould release valves and they are not scent sprays/toilet sprays, however, it is observed that the basic character of the goods is that it is used to pump liquids when one has to press the top button with a finger to push out the liquid. The Appellant has not disputed the fact that the impugned goods "Industrial aerosol valves" pumps out the liquid from inside the can/bottle. For the product to be pumped out, one has to push the actuator/top button with a finger. With each push, the liquid/product is pushed out. Hence the goods aerosol valve, which can be considered as mount or head of the container, need to be classified under CTH 96161020 which covers 'mounts and heads'. Hence the classification 84818090 claimed by the Appellant which covers 'Taps, Cocks, valves and similar appliances for pipes, boiler shells, tanks, vats or the like...' is inappropriate for the impugned goods.*

4. *Here, it is also imperative to refer to the General Rules of Interpretation of Import Tariff Rules, which inter alia, direct that "...where goods are, prima facie, classifiable under two or more headings, classification shall be effected as follows :*

(a) The heading which provides the most specific description shall be preferred to headings providing a more general description...." The above discussions abundantly make clear that the disputed items are basically having a cap with a plastic pipe attached to it. The function of this item is to pass the liquid when the pump of dispenser or sprayer is pressed. Hence the goods are appropriately classifiable as 'Mounts and heads' under CTH 96161020, hence find nothing wrong in the impugned order of the Adjudicating Authority holding the classification of impugned goods under the said Heading 96161020. The case laws cited by the Appellant relates to devices with 'metered doses' are not applicable to this case as the facts of the present case are different.

5. *In view of above discussions, I hold that the impugned goods viz; 'Aerosol Valve components' are rightly classifiable under CTI 96161020. Accordingly, Appeal filed by the Appellant against Order-in-Assessment No. S/26-Misc-1173/2020-21/Gr.V/JNCH dated 27.08.2020 passed by the Asst. Commissioner of Customs, Gr.V, JNCH is rejected."*

8.6 From the above, it is seen that the Revenue's contention is that in terms of GIR-3(a), the impugned goods shall be classifiable under CTH 9616 1020 as the description of the goods i.e., 'mounts and heads' under this heading is more specific, over the general heading under 8481 8090 as 'other' of 'other appliances'. From the careful reading of the GIRs, it could be seen that these are required to be followed sequentially; in other words when the classification of goods is not possible to be arrived under the first rule GIR-1 then one need to proceed further, one by one. Further, for invoking GIR-3(a), the preceding rules i.e., GIR 1 & GIR 2, is to be exhausted. As it could be seen that in the present case, when the

classification of goods can be arrived at by following GIR-1, by detailed analysis of the specific customs tariff items under the respective headings, then there is no case for invoking GIR-3(a) arbitrarily. Further, the learned Commissioner (Appeals) in the impugned order had not examined and discussed the terms of headings and the scope of contending tariff entries, before going ahead for adoption of GIR 3(a). Thus, it is not feasible to determine appropriate classification by application of GIR-3(a) alone, by ignoring the terms of headings which alone is sustainable inasmuch as the terms of heading solely determines appropriate classification for legal purposes.

8.7 Further, the Revenue's contention is that in terms of GIR-1 read with GIR-6, the impugned goods shall be classifiable under CTH 9616 as 'mount and head' as it provides specific description, has not been determined in terms of the GIR as explained below.

8.8 Further, in order to evaluate the proper classification of imported goods, in terms of GIR-1, one has to take the assistance of the relative Section or Chapter notes besides the description or terms of the headings. In terms of Section Notes 3, 4 and 5 to Section XVI containing Chapter 84, 85 deals with appliances or machines. In terms of Section Note 3 the principal function would determine the classification; Section Note 4 states that if individual components which clearly contribute performance of specific function, then the whole machine shall also be classified under the respective entry in Chapter 84 or 85. Further Section Note 5 provide that the expression 'machine' shall refer to any machine, machinery, plant, equipment, apparatus or appliance cited in the headings of Chapter 84 or 85. Therefore, the description of chapter heading 8481 covers various types of appliances used in containers like tanks, vats or other similar containers. Whereas there is no specific section note or chapter note covering the articles of chapter heading 9616.

8.9 We find that the two contending classification are i.e., one under CTI 8481 80 90 'Other' of 'Other appliances' as claimed by the appellants, and the other CTI 9616 10 20 'mounts and heads', have to be analysed at the level of 'terms of headings', to apply GIR-1 to come to the conclusion as to which of these two classification is more appropriate for classification of impugned goods. Therefore, we need to examine the specific customs tariff entries under the two contending headings, the scope of coverage of goods

under each of the specific tariff entries, in order to arrive at appropriate classification of imported goods.

9.1 In order to further examine the classification in terms of various customs tariff entries under the two contending sub-headings, we would like to examine the HS explanatory notes of the WCO, which describe in detail the scope and coverage of goods under Customs classification. The extract of HS classification in respect of relevant headings 8481 and 9616 are given below:

84.81 - Taps, cocks, valves and similar appliances for pipes, boiler shells, tanks, vats or the like, including pressure-reducing valves and thermostatically controlled valves.

8481.10 - Pressure-reducing valves

8481.20 - Valves for oleohydraulic or pneumatic transmissions

8481.30 - Check (nonreturn) valves

8481.40 - Safety or relief valves

8481.80 - Other appliances

8481.90 - Parts

This heading covers taps, cocks, valves and similar appliances, used on or in pipes, tanks, vats or the like to regulate the flow (for supply, discharge, etc.), of fluids (liquid, viscous or gaseous), or, in certain cases, of solids (e.g., sand). The heading includes such devices designed to regulate the pressure or the flow velocity of a liquid or a gas.

The appliances regulate the flow by opening or closing an aperture (e.g., gate, disc, ball, plug, needle or diaphragm). They may be operated by hand (by means of a key, wheel, press button, etc.), or by a motor, solenoid, clock movement, etc., or by an automatic device such as a spring, counterweight, float lever, thermostatic element or pressure capsule.

Taps, valves, etc., incorporating such mechanisms or devices remain classified in this heading. This applies, for example, to a valve equipped with a thermostatic element (double-leaf, capsule, bulb, etc.). The heading also covers valves, etc., connected to a thermostatic element by means of, for instance, a capillary tube.

Combinations consisting of a tap, valve, etc. and a thermostat, manostat or any other measuring, checking or automatically controlling instrument or apparatus of heading 90.26 or 90.32 remain in this heading if the instrument or apparatus is mounted or is designed to be mounted directly on the tap, valve, etc., and **provided** the combined apparatus has the essential character of an article of this heading. If **not** satisfying these conditions, they are classified in **heading 90.26** (e.g., liquid-type pressure gauge fitted with a drain cock) or in **heading 90.32**.

In the case of remote-control systems, only the tap, valve, etc., is classified in this heading.

In general, taps, valves, etc., are of base metal or plastics, but those of other materials (**other than** unhardened vulcanised rubber, ceramics or glass) are also covered by the heading.

Taps, valves, etc., remain classified here even if incorporating other accessory features (e.g., double walls for heating or cooling purposes; short lengths of tubing; short lengths of tube ending in a shower rose; small drinking fountain bowls; locking devices).

Taps, cocks, valves, etc., remain in this heading even if specialized for use on a particular machine or apparatus, or on a vehicle or aircraft. However, certain machinery parts which incorporate a complete valve, or which regulate the flow of a fluid inside a machine although not forming a complete valve in themselves, **are classified as parts of the relative machines**, for example, inlet or exhaust valves for internal combustion engines (**heading 84.09**), slide valves for steam engines (**heading 84.12**), suction or pressure valves for air or other gas compressors (**heading 84.14**), pulsators for milking machines (**heading 84.34**) and non-automatic greasing nipples (**heading 84.85**).

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The heading includes *inter alia* :

- (1) Pressure-reducing valves for reducing the pressure of gases and maintaining that reduced pressure at a fairly constant level by means of a plug or stopper which is generally controlled by a pressure device (diaphragm, bellows, capsule, etc.) damped by an adjustable tension spring. These appliances directly regulate the pressure of gases passing through them; they are mounted, for example, on compressed gas cylinders, on pressure containers, or on feed pipe systems of the appliances which they serve.

The heading also includes pressure-reducing valves (sometimes called pressure regulators, pressure reducers or pressure regulator-reducers), also mounted at the outlets of pressure containers, of boilers, on connecting feed pipe systems or near the appliances which they serve, to perform the same function on compressed air, steam, water, hydrocarbons or other fluids.

If combined with a pressure gauge, pressure-reducing valves fall either in this heading or in **heading 90.26** depending on whether or not the combined apparatus retains the essential character of a tap, valve, etc. (see the fourth paragraph of this Explanatory Note).

- (2) Valves for oleohydraulic or pneumatic transmissions. These valves, which may be of any type (pressure-reducing type, check type, etc.), are used specifically in the transmission of "fluid power" in a hydraulic or pneumatic system, where the energy source is supplied in the form of pressurised fluids (liquid or gas).
- (3) Nonreturn valves (e.g., swing check valves and ball valves).
- (4) Safety valves, relief valves, etc., whether or not incorporating a warning whistle.

Bursting discs (thin discs of plastics or metal) are used in certain cases as safety devices instead of valves; they are mounted by means of a special carrier on pipe systems or pressure vessels and burst at a specific pressure. They are classified according to the constituent material (**headings 39.26, 71.15, 73.26, 74.19, 75.08, 76.16**, etc.).

- (5) Manifold valves (e.g., three way valves and "Christmas tree" valves).
- (6) Control cocks, blow-off cocks and shut off valves, etc., for level gauges.
- (7) Radiator drainage taps.
- (8) Inner-tube valves.
- (9) Float controlled valves.
- (10) Steam traps in which the water of condensation from a steam conduit collects and which are automatically emptied (e.g., by the operation of a float). The heading also covers steam traps in which the plug or stopper is actuated by a thermostatic element (double-leaf or capsule) mounted inside the trap (thermostatically controlled steam traps).
- (11) Fire-hydrants (stand pipes), fire cocks, hosepipe nozzles and the like, fitted with cocks or with valves for forming a jet or a spray.
Mechanical sprinkler heads for anti-fire installations, mechanical garden sprinkler heads and the like are **excluded (heading 84.24)**.
- (12) Mixing taps and valves, with two or more inlets and a mixing chamber. The heading also covers thermostatically controlled mixing valves incorporating an adjustable tension thermostatic element, which actuates the plugs or stoppers regulating the admission of fluids at different temperatures into the mixing chamber.
- (13) Waste holes with plugs (**other than** simple waste holes with plugs to be inserted by hand, classified according to their constituent material).
- (14) Sea cocks and other underwater valves, cocks, etc., for ships.
- (15) Lubricating taps with flexible or telescopic tubes for lubricating shafts of steamships, etc.
- (16) Soda-water bottle valves.

- (17) Pressure spray-can lids for cans to be filled with liquid or gaseous insecticides, disinfectants, etc., under pressure, comprising a metal head fitted with a press-button displacing a needle which opens or closes the ejection orifice.
- (18) Taps and cocks for fitting in the bung holes of casks, barrels, etc.
- (19) Taps for bottle filling machines, designed to close automatically when the level of the liquid reaches the top of the bottle.
- (20) Gas operated beer dispensing units for bar counters, consisting essentially of one or more hand-operated cocks fed by the pressure of carbon dioxide piped into the casks of beer.

PARTS

Subject to the general provisions regarding the classification of parts (see the General Explanatory Note to Section XVI), parts of the appliances of this heading are also classified here.

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The heading also **excludes** :

- (a) Taps, cocks, valves and similar appliances made of unhardened vulcanised rubber (**heading 40.16**), ceramics (**heading 69.03 or 69.09**), or of glass (**heading 70.17 or 70.20**).
- (b) U-bends for waste water in sinks, lavatories, bathrooms or the like, and also flushing cisterns whether or not equipped with their mechanism, which are classified according to their constituent material (e.g., **heading 39.22, 69.10, 73.24**).
- (c) Centrifugal governors for steam engines (**heading 84.12**).
- (d) Steam injector or ejector pumps (**heading 84.13**).
- (e) Air spraying equipment, etc. (**heading 84.24**).
- (f) Pneumatic grease guns (**heading 84.67**).
- (g) Blowpipes for gas welding (**heading 84.68**).
- (h) Taps combined with a measuring-out device for dispensing ice cream, spirits, milk, etc. (**heading 84.79**).

9.2 In careful reading of the above HSN explanatory notes, it is understood that heading 8481 covers under its scope *inter alia*, pressure spray can lids comprising of metal head fitted with press button displacing a needle which opens or closes the ejection orifice. Further, we find that various types of appliances for different types of containers for dispersal or spraying of liquids or gaseous substances have been exhaustively covered under this heading 8481. The scope of coverage of goods under Note (17) above in the HSN which state that pressure spray-can lid which has a mechanism or appliance that by pressing the press button it displaces a needle which opens or closes the ejection orifice for dispersal of liquid. In terms of structure and functioning of the above appliance as described above, we find that the product under dispute before us is more akin to the above described goods covered under this Note (17) of HSN Explanatory Notes.

96.16 - Scent sprays and similar toilet sprays, and mounts and heads therefor; powder-puffs and pads for the application of cosmetics or toilet preparations.

9616.10 - Scent sprays and similar toilet sprays, and mounts and heads therefor

9616.20 - Powder-puffs and pads for the application of cosmetics or toilet preparations

This heading covers :

- (1) **Scent, brilliantine and similar toilet sprays**, whether of the table or pocket type, and whether for personal or professional use. They consist of a reservoir, generally in the form of a bottle (of glass, plastics, metal or other material), to which is fixed the mount; this mount incorporates the head (with its spray-forming mechanism) and a pneumatic pressure bulb (sometimes enclosed in a textile net) or a piston device.
- (2) **Mounts for toilet sprays.**
- (3) **Head-pieces for toilet sprays.**
- (4) **Powder-puffs and pads** for applying any kind of cosmetic or toilet preparation (face-powder, rouge, talcum-powder, etc.). They may be made of any material (swan's or eider-down, skin, animal hair, pile fabrics, foam rubber, etc.), and they remain in this heading whether or not they have handles or trimmings of ivory, tortoise-shell, bone, plastics, base metal, precious metal or metal clad with precious metal.

The heading **does not apply to** :

- (a) Reservoirs (bottles, flasks, etc.) for scent sprays, presented separately (classified according to constituent material).
- (b) Rubber bulbs (**heading 40.14**).
- (c) Dispersing or spraying appliances of **heading 84.24**.
- (d) Scent spraying machines of **heading 84.76**.

9.3 From the plain reading of HSN explanatory notes to heading 9606, it is understood that this heading covers under its scope, all preparations of a kind used in cosmetics and more specifically scent sprays, toilet sprays. Thus, these are essentially required for applying cosmetics like spray formation of the liquid that is used as scent or other similar perfume etc. This does not cover all types of mounts and heads, for dispersal or spray of liquids as the phrase 'therefor' appearing in HSN description of 9606.10 and in the CTI 9616 10 at the six digit level of the First Schedule to the Customs Tariff Act, 1975, is limited in its scope covering such mounts and heads for scent sprays and similar toilet sprays only. This position is also made clear from the scope of "---" covered under the " - " , in terms of General Explanatory Notes mean that the mounts and heads are sub-classification of goods mentioned at single dash level i.e., scent sprays and similar toilet sprays.

9.4 From the above discussion and analysis, we are of the *prima facie* view that the impugned goods are classifiable under 8481 8090, as the imported goods at the time of import remain as 'appliance used for spraying or dispersion of liquid' called as 'aerosol valves along with components'.

9.5 We also find that our such view on the aspect of classification of imported goods under heading 8481 has also been supported by the Note No.17 of the HSN explanatory notes to chapter heading 8481.

10. We further find that the learned Commissioner in arriving at the conclusion for classification of the imported goods under the heading 9616 1020 has relied upon the order of the Tribunal in the case of Commissioner of Customs, Mumbai Vs. Reckit & Colman of India Ltd. – 2005 (190) E.L.T. 221 (Tri._Mumbai). The reasoning adopted in the above case is that scope of coverage of goods under chapter heading 8424 is for industrial use, where as the classification under chapter heading 9616 is for consumer purposes. However, we find from the detailed discussion on the scope of coverage of goods under chapter heading 8481 as discussed in paragraphs 9.1 and 9.2 above, that this above view of restricting goods of 8481 only for industrial use is not supported by the facts. Further, in the case of Commissioner of Customs, Mumbai Vs. Speciality Valves – 2006 (202) E.L.T. 785 (Tri. Mumbai) the imported items were of spray pumps and the facts of those cases are not not similar to the facts of the case before us, in order to apply the ratio from such orders. Further, in respect of the issues regarding classification of goods, unless these are 'identical goods' or 'similar goods', which are same in all respects, including physical characteristics, quality etc., or performs the same functions and to be commercially interchangeable with the impugned goods, the ratio of such classification cannot be applied directly.

11. On careful examination of the order passed by the Tribunal in the case of *Commissioner of Customs, Mumbai Vs. CIPLA Limited* – 1998 (102) E.L.T. 749 (Tri. Mumbai) it is found that the Tribunal have held that aerosol valves containing medicament is a type of non-return valve and decided the classification of goods under chapter sub-heading 8481 *ibid*. Further, in the case of *Kumar Aerosols Pvt. Ltd. Vs. Collector of Customs. New Delhi* – 1997 (93) E.L.T. 201 (Tribunal) it was held that on account of clause (d) of Chapter Note 7 to Chapter 98, these products are excluded from classifying under CTH 9806.

12. In view of the foregoing discussions and analysis, and on the basis of the orders of the Tribunal as discussed above, we are of the considered view

that the impugned goods are classifiable under 8481 8090 of the First Schedule to the Customs Tariff Act, 1975. Accordingly, the impugned order dated 12.04.2023 classifying imported goods under heading 9616 1020 does not stand the scrutiny of law and therefore is not legally sustainable.

13. In the result, the appeal is allowed by setting aside the impugned order dated 12.04.2023.

(Order pronounced in open court on 22.04.2024)

(S.K. Mohanty)
Member (Judicial)

(M.M. Parthiban)
Member (Technical)

Sinha