CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

WEST ZONAL BENCH

CUSTOMS APPEAL NO: 85459 OF 2022

[Arising out of Order-in-Original No: 19/21-22/Commissioner/NS-V/CAC/JNCH dated 18th January 2022 passed by the Commissioner of Customs (NS-V), Mumbai – II.]

Akarui Solution LLP
D81 Kalpataru Towers Akurli Cross Road No 3
Near ESIS Hospital Kandivali East, Mumbai, -400101 … ***Appellant***

versus

Commissioner of Customs (NS-V)
Jawaharlal Nehru Customs House, Nhava Sheva,
Tal: Uran, Raigad, Maharashtra-400707 ***…Respondent***

WITH

CUSTOMS APPEAL NO: 86130 OF 2022

[Arising out of Order-in-Original No: 19/21-22/Commissioner/NS-V/CAC/JNCH dated 18th January 2022 passed by the Commissioner of Customs (NS-V), Mumbai – II.]

Commissioner of Customs (NS-V)
Mumbai –II
Jawaharlal Nehru Customs House, Nhava Sheva,
Tal: Uran, Raigad, Maharashtra-400707 … ***Appellant***

versus

Akarui Solution LLP
D81 Kalpataru Towers Akurli Cross Road No 3
Near ESIS Hospital Kandivali East, Mumbai, -400101 ***…Respondent***

APPEARANCE:

Shri N D George, Advocate for the assesse-appellant

Shri Ram Kumar, Assistant Commissioner (AR) for Revenue

CORAM:

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

FINAL ORDER NO: 85748-85749/2024

DATE OF HEARING: 13/02/2024
DATE OF DECISION: 05/08/2024

PER: C J MATHEW

The challenge in this appeal of M/s Akarui Solution LLP, assailing order[1] of Commissioner of Customs (NS-V), Jawaharlal Nehru Customs House, Nhava Sheva, is to the finding that 'medical grade monitor' is not separately enumerated for the purpose of 'rate of duty' under Customs Act, 1962 and that any monitor, irrespective of intended use or technical specification, is liable to be classified within heading 8529 of First Schedule to Customs Tariff Act, 1975. The claim of the importer is that amenability to use in the medical world permits the impugned goods to be classified against heading 9018 of First Schedule to Customs Tariff Act, 1975.

2. The impugned goods had been imported against 56 bills of entry filed between 2nd April 2016 and 9th January 2019 claiming the benefit of notification no. 50/2017-Cus dated 30th June 2017 (at serial no. 563A) to avail concessional rate of duty unconditionally extended to all goods under, *inter alia,* the declared heading. The availment was sought to be denied by show cause notice of 20th January 2021 proposing

[1] [order-in-original no. 19/21-22/Commissioner/NS-V/CAC/JNCH dated 18th January 2022]

recovery of differential duty of ₹ 71,02,168.17 on the limited ground that, in terms of rule 3(a) of General Rules for Interpretation of the Import Tariff appended to the Customs Tariff Act, 1975, the heading which provides the most specific description shall be preferred over the heading that provides a general description. The adjudicating authority held, in the face of claim of importers of these being for display of diagnostic images, that the imported goods are 'monitors' despite finding that

> *'11……the imported item is a monitor which displays diagnostic image from a medical equipment or instrument and it was claimed that it is only used to display clinical data and medical images. Medical displays are designed to have greater luminance stability and the reproducibility of images which is paramount to the radiologist in clinically evaluating a patient's condition. These display units are part of diagnostics systems where the radiologist views of different parts of the human body and the high resolution is important to clinical details which enables them in accurate do patient diagnosis.'*

but discounted applicability of the claimed heading on the ground that even if used exclusively for medical purpose, it could not be an 'instrument or appliance having medical functions' before going on to suggest that, in terms note 2(a) in chapter 90 to the First Schedule to Customs Tariff Act, 1975, parts and accessories which are classifiable under a specific heading did not merit classification with the articles to which it would be connected.

3. According to Learned Counsel for the appellant, the impugned goods, having been imported for supply to hospitals and medical establishments and deployed in conjunction with equipment to which patients would be connected for display of medical parameters, were not ordinary monitors. It was also submitted that recourse to a residuary heading even as the impugned goods were so obviously connected with medical diagnosis was not in accordance with the General Rules for Interpretation of the Import Tariff appended to Customs Tariff Act, 1975. Reliance was placed on decision of the Hon'ble Supreme Court in *Commissioner of Central Excise, Bhubaneswar-I v. Champdany Industries Ltd [2009 (241) ELT 481 (SC)* which, relying upon the decision in *Commissioner of Central Excise, Nagpur v. Simplex Mills Co Ltd [(2005) 3 SCC 51]*, held that section notes and chapter notes have relevance ahead of the rules which should be resorted on only upon upon no clear picture emerging therewith.

4. Reliance was also placed on the decision of the Hon'ble Supreme Court in *Commissioner of Central Excise, Delhi – III v. UNI Products India Ltd [2020 (372) ELT 465 (SC)]* holding that *Explanatory Notes* to the Harmonized System of Nomenclature (HSN) offers strong persuasive value that should not be normally be departed from. He also relied upon the decision in *Commissioner of Commercial Tax, UP v. A R Thermosets (Pvt) Ltd [2016 (339) ELT 500 (SC)]* holding that common parlance test is of relevance in a classification dispute and

upon the decision in *Commissioner of Central Excise v. Wockhardt Life Sciences Ltd [2012 (277) ELT 299 (SC)]* on the importance of common parlance and holding residual entry does not prevail until after specific descriptions are eliminated. Reliance was placed on the decision of the Tribunal in *Shivani Scientific Industries (P) Ltd v. Commissioner of Customs (Import), ACC, Mumbai [2019 (365) ELT 824 (Tri.-Mumbai)]* holding that multiple usage would not deny coverage of microscope as surgical instrument and of the decision in *Commissioner of Customs, Delhi – III v. Bausch and Lomb Eyecare India Pvt Ltd [2017 (355) ELT 556 (Tr.-Del.)]* that a medical device is one that is used by the medical fraternity.

5. Learned Authorized Representative submitted that 'monitor' of every kind is covered by heading 8528 of First Schedule to the Customs Tariff Act, 1975 and that, by no stretch, would such goods be classifiable with instruments and appliances of heading 9018 of First Schedule to the Customs Tariff Act, 1975.

6. On a careful consideration of the records, we find that the show cause notice proposed that the description corresponding to tariff item 8528 5900 of First Schedule to Customs Tariff Act, 1975 was more apt and to be adopted as mandated in terms of rule 3(a) of General Rules for Interpretation of the Import Tariff appended to Customs Tariff Act, 1975. Notwithstanding the limited scope of the notice, the adjudicating

authority has proceeded to classify the goods with reference to rule 1 of General Rules for Interpretation of the Import Tariff appended to Customs Tariff Act, 1975 besides touching upon rule 2 as well as rule 3A. This is contrary to settled law that circumscribes the show cause notice as the framework within which adjudication should proceed and is particularly relevant when section 114A of Customs Act, 1962 is sought to be fastened.

7. There can be no doubt that 'monitors' of every kind are covered under heading 8528 of First Schedule to Customs Tariff Act, 1975 and comprises four tariff lines of which two pertain to cathode-ray tube monitors while the other covers every other type of monitors including the impugned goods. It is not that the 'cathode-ray tube monitors' were further divided as that connecting to, and designed for use with, automatic data processing machines and others. With the lack of distinction between 'monitors' used with automated data processing machines and others being so palpable, it is not conceivable that the adopted heading was residual. Furthermore, the description corresponding to '-' below the impugned heading is not a heading or sub-heading but a sub-classification which the tariff employs for purposes other than as sub-heading or tariff. Hence, the decision cited by Learned Counsel on inapplicability of residual tariff line does not apply to facts of the case. It is not in dispute that the goods are 'monitors' but the claim of the appellant that the goods fall within the

ambit of medical equipment is. In the light of the comprehensiveness of the adopted heading to discredit, summarily enough, the claim of the appellant that residuary entry within a heading intended for instruments and appliances is more specific, we see no reason to disturb the classification proposed in the show cause notice and confirmed in the impugned order.

8. We, however, find that the impugned order has traversed beyond the show cause notice in attempting to classify the goods exclusively by resort to rule 1 of General Rules for Interpretation of the Import Tariff appended to Customs Tariff Act, 1975. Probably conscious of the sequence, the adjudicating authority did, nonetheless, go on to test the applicability of other rules which, in the light of the proposal in the show cause notice was unnecessary as the proceedings did not have to go beyond examining the validity of the proposal in the show cause notice. Implicit in the proposal in the show cause notice for resort to rule 3 of General Rules for Interpretation of the Import Tariff appended to Customs Tariff Act, 1975 is the enunciation that the heading claimed by the importer is not only not unacceptable as an apt, though not as much as the other, description of the impugned goods but also that concurrent proposal to invoke section 111 of Customs Act, 1962 would, for that very reason, not stand the test of law. The specific breach leading to confiscation under section 111(m) of Customs Act, 1962 could only be a misdeclaration. The affirmation of rule 3 of General

Rules for Interpretation of the Import Tariff appended to Customs Tariff Act, 1975 does not permit such a finding as the classification declared by the importer was not inapt but only loses out in comparison by the degree of specificity. In the light of such proposal in the show cause notice, it is moot if section 114A of Customs Act, 1962 could have been invoked. On perusal of the impugned order, we notice that there is no finding on the manner in which there has been a misdeclaration or willful misstatement with intention to evade payment of duty. It would, therefore, be appropriate for the original authority to apply its mind to a specific finding on a manner in which section 114A of Customs Act, 1962 could have been invoked for imposition of penalty in the light of the proposal in the show cause notice.

9. Thus, while upholding the classification confirmed in the impugned order, the dispute is remanded back to the original authority for this limited purpose.

(Order pronounced in the open court on 05/08/2024)

(AJAY SHARMA)
Member (Judicial)

(C J MATHEW)
Member (Technical)

**/as*