CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

WEST ZONAL BENCH - COURT NO. 1

CUSTOMS APPEAL NO. 86406 OF 2024

(Arising out of Order-in-Appeal No. 219 to 263 (Gr.5I)/2024(JNCH)/Appeals dated 23.02.2024 passed by Commissioner of Customs (Appeal), JNCH, Nhava Sheva, Mumbai-II)

Lifelong Online Retail Pvt. Ltd. **......Appellant**

E/4 Gala No. 1/2, F4 Gala No. 3/4/5,
Shree Rajlaxmi Logistics Park, Village Vadpe,
Bhiwandi Nasik Agra Road, Taluka Bhiwandi,
Thane, Maharashtra - 421302

VERSUS

Commissioner of Customs, (NS-V), **.....Respondent**

Jawaharlal Nehru Custom House,
Nhava Sheva, Taluka-Uran,
Raigad, Maharashtra-400707

WITH

C/86407/2024	**C/86408/2024**	**C/86409/2024**	**C/86410/2024**
C/86411/2024	**C/86412/2024**	**C/86413/2024**	**C/86414/2024**
C/86415/2024	**C/86416/2024**	**C/86417/2024**	**C/86418/2024**
C/86419/2024	**C/86420/2024**	**C/86421/2024**	**C/86422/2024**
C/86423/2024	**C/86424/2024**	**C/86425/2024**	**C/86426/2024**
C/86427/2024	**C/86428/2024**	**C/86429/2024**	**C/86430/2024**
C/86431/2024	**C/86433/2024**	**C/86435/2024**	**C/86436/2024**
C/86437/2024	**C/86438/2024**	**C/86439/2024**	**C/86440/2024**
C/86441/2024	**C/86442/2024**	**C/86443/2024**	**C/86444/2024**
C/86445/2024	**C/86446/2024**	**C/86447/2024**	**C/86448/2024**
AND	**C/86449/2024**		

APPEARANCE:

Shri T. Vishwanthan, Shri Akhilesh Kangsia, Ms. Madhura Khandekar and Shri Siddharth Sen, Advocates for the Appellant

Shri A.K. Shrivastava, Authorized Representative for the Department

CORAM: **HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT**
HON'BLE MR. C. J. MATHEW, MEMBER (TECHNICAL)

DATE OF HEARING: 25.10.2024
DATE OF DECISION: 07.11.2024

FINAL ORDER NO's. 86760-86801/2024

JUSTICE DILIP GUPTA:

Customs Appeal No. 86406 of 2024 and connected forty one Customs Appeal have been filed by Lifelong Online Retail Pvt. Ltd.[1] to assail the order dated 23.02.2024 passed by the Commissioner of Customs (Appeals), JNCH, Nhava Sheva, Mumbai-II[2]. The Commissioner (Appeals) has declined to interfere with the assessment orders in respect of forty two Bills of Entry.

2. It needs to be noted that the Additional Commissioner of Customs in respect of one Bill of Entry No. 9446523 dated 07.07.2022 passed a speaking order under section 17(5) of the Customs Act, 1962[3] re-assessing the Bill of Entry after declining to grant the benefit of concessional rate of customs duty under the notification no. 50/2017-Cus dated 30.06.2017[4]. The Additional Commissioner of Customs also confiscated the goods under section 111(o) of the Customs Act but since the goods were not prohibited, gave an option to the importer to redeem the same under section 125(1) of the Customs Act on payment of redemption fine of Rs. 1 lakh. The Additional Commissioner of Customs also imposed a penalty of Rs. 27,000/- on the importer under section 112(a) of the Customs Act. It needs to be noted that this Bill of Entry No. 9446523 dated 07.07.2022 is not involved in any of these forty two appeals and in fact is the subject matter of a customs appeal which has been decided by a separate order of date.

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1. the appellant
2. the Commissioner (Appeals)
3. the Customs Act
4. the notification

3. The Additional Commissioner of Customs did not pass any speaking order in respect of the forty two Bills of Entry involved in these forty two appeals.

4. The importer had filed forty two appeals before the Commissioner (Appeals) in respect of these forty two Bills of Entry alleging inter alia that no speaking order had been passed but the Commissioner (Appeals) declined to even remand the matter to the Additional Commissioner of Customs for passing a speaking order since the view of the Additional Commissioner of Customs on the issue was known in the speaking order passed by him in respect of one Bill of Entry No. 9446523 dated 07.07.2022.

5. The appellant is engaged in the business of importing and selling various types of massagers. The appellant classified the massagers under Customs Tariff Item[5] 9019 10 90 of the First Schedule to the Customs Tariff Act, 1975[6] and claimed benefit of concessional rate of customs duty under the notification on import of electric massagers through these forty two Bills of Entry.

6. The department, however, did not permit clearance of the imported goods as it believed that the appellant was not entitled to the concessional rate of customs duty under the notification.

7. The appellant, therefore, requested the Appraising Officer to grant warehousing permission to the imported goods in terms of section 49 of the Customs Act. This permission was granted to the appellant.

8. The appellant also requested for issuance of a speaking order in terms of section 17(5) of the Customs Act.

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5. CTI
6. the Tariff Act

9. The Additional Commissioner of Customs denied the benefit of concessional rate of customs duty under the notification on the ground that the massager was not meant for medical use.

10. It is against this order of the Additional Commissioner of Customs that the appellant filed appeals before the Commissioner (Appeals). As noticed above, even though no speaking order was passed by the Additional Commissioner of Customs in respect of these forty two Bills of Entry, the Commissioner (Appeals) did not consider it appropriate to even remand the matter to the Additional Commissioner of Customs for passing a speaking order as the view of the Additional Commissioner of Customs was already known from the speaking order dated 10.03.2023 passed in respect of Bill of Entry No. 9446523 dated 07.07.2022.

11. All these forty two appeals have been filed to assail the orders passed by the Commissioner (Appeals) in respect of these forty two appeals.

12. Shri T. Vishwanthan, learned counsel for the appellant assisted by Shri Akhilesh Kangsia, Ms. Madhura Khandekar and Shri Siddharth Sen, submitted that there is no dispute regarding the classification of the imported goods under CTI 9019 10 20 and the only dispute is as to whether the importer would be entitled to concessional rate of customs duty under the notification. Learned counsel pointed out that the appellant would be entitled to avail the concessional rate of customs duty under the notification. In this connection, learned counsel also placed reliance upon Serial No. 563 of the notification to contend that the appellant would only have to pay customs duty @ 5% instead of

10% since the description of goods does not provide that the goods are required **only** for medical use.

13. Shri A.K. Shrivastava, learned authorized representative of the department, however, contended that the view taken by the Additional Commissioner of Customs in the speaking order, which order was confirmed by the Commissioner (Appeals), calls for no interference in these appeals as the imported goods were not meant for medical use.

14. The submissions advanced by the learned counsel for the appellant and the learned authorized representative appearing for the department have been considered.

15. To appreciate the contentions, it would be appropriate to refer to the relevant tariff entry and the same is reproduced below:

Chapter 90	**Photographic, cinematographic, measuring & etc. instruments 1843**			
Tariff Item	**Description of goods**	**Unit**	**Rate of duty**	
			Standard	**Preferential**
(1)	**(2)**	**(3)**	**(4)**	**(5)**
9019	Mechano-therapy appliance; **massage apparatus;** psychological aptitude-testing apparatus; ozone therapy, oxygen therapy, aerosol therapy, artificial respiration or other therapeutic respiration apparatus			
9019 10	- Mechano-therapy appliance; massage apparatus; psychological aptitude-testing apparatus:			
9019 10 10	--- Mechano-therapy appliances	u	7.5%	-
9019 10 20	**--- Massage apparatus**	**u**	**10%**	**-**

16. It would be seen, amongst others, that the description of goods against Customs Tariff Heading[7] 9019 includes massage apparatus. The description of goods under **"-"** of Customs Tariff Sub-Heading 9019 10 are mechano-therapy appliance; massage apparatus; psychological

7. CTH

aptitude-testing apparatus. The description of goods under **"---"** of CTI 9019 10 20 is massage apparatus and the standard rate of duty prescribed is 10%.

17. The appellant claims concessional rate of customs duty @ 5%, instead of 10%, under the notification. The relevant portion of this notification is reproduced below:

> **16. EFFECTIVE RATES OF DUTY FOR GOODS OF VARIOUS CHAPTERS/HEADINGS**
>
> **GENERAL EXEMTION NO. 190**
>
> **Exemption and Effective rates of Customs Duty and IGST for specified goods of Chapters 1 to 98. – In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962) and sub-section (12) of section 3 of Customs Tariff Act, 1975 (51 of 1975),** and in suppression of the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 12/2012-Customs, dated the 17th March, 2012 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 185 (E) dated the 17th March, 2012, except as respects things done or omitted to be done before such supersession, **the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby exempts the goods of the description specified in column (3) of the Table below** or column (3) of the said Table read with the relevant List appended hereto, as the case may be, **and falling within the Chapter, heading, sub-heading or tariff item of the First Schedule to the said Customs Tariff Act, as are specified in the corresponding entry in column (2) of the said Table, when imported into India,-**
>
> (a) **from so much of the duty of customs leviable thereon under the said First Schedule as is in excess of the amount calculated at the standard rate specified in the corresponding entry in column (4) of the said Table; and**

(b) from so much of integrated tax leviable thereon under sub-section (7) of section 3 of said Customs Tariff Act, read with section 5 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017) as is in excess of the amount calculated at the rate specified in the corresponding entry in column (5) of the said Table,

subject to any of the conditions, specified in the Annexure to this notification, the condition number of which is mentioned in the corresponding entry in column (6) of the said Table:

S. No.	**Chapter or Heading or sub-heading or tariff item**	**Description of goods**	**Standard rate**	**Integrated Goods and Service Tax**	**Condition No.**
(1)	**(2)**	**(3)**	**(4)**	**(5)**	**(6)**
563.	**9019 10 20** 9022 90 10 or 9022 90 30	Goods required for medical, surgical, dental or veterinary use. **Explanation.**- For the purposes of this entry, the term "Goods" refers to medical instruments or appliances required for medical, surgical, dental or veterinary use **only** and do not refer to parts and spares thereof.	5%	-	-

(emphasis supplied)

18. CTI 9019 10 20 is included in column no. 2 against Serial No. 563 of the notification. The description of goods under CTI 9022 90 10 is **"**x-ray valves**"** and the description of goods under CTI 9022 90 30 is **"**radiation beam delivery units**"**.

19. The contention of learned counsel for the appellant is that the massagers imported by the appellant are deployed for medical use and in any event even if it is assumed that the massagers imported by the appellant are not meant for medical use then too the appellant would be entitled to concessional rate of customs duty under the notification

since the description of goods in column no. 3 of the notification does not use the terms **"**only**"**, **"**exclusively**"**, **"**wholly**"** or **"**entirely**"** before **"**for medical use**"**. To support this contention, learned counsel for the appellant placed reliance upon a decision of the Tribunal in **RPG Industrial Products P Ltd.** vs. **Additional Director General (Adjudication), DGGSTI, New Delhi**[8], which decision of the Tribunal placed reliance upon the judgment of the Supreme Court in **Union of India** vs. **Tata Iron and Steel Co. Ltd.**[9] and the decisions of the Tribunal in **M/s. JMK Energy** vs. **Commissioner of Customs, Delhi**[10]; **Indian Organic Chemicals** vs. **Collector of Central Excise, Madras**[11]; and **Aravali Ispat Ltd.** vs. **Collector of Central Excise, Jaipur**[12].

20. The contention of the learned authorized representative appearing for the department is that the appellant would be entitled to concessional rate of customs duty only if the massagers imported by the appellant are meant for medical use.

21. What weighed with the Additional Commissioner of Customs while examining the alternative submission advanced on behalf of the appellant in the speaking order dated 10.03.2023 passed in respect of one Bill of Entry No. 9446523 dated 07.07.2022 is that the word **"**only**"** or **"**exclusively**"** or **"**wholly**"** or **"**entirely**"** is not used before the words **"**for medical use**"**. The relevant portion of the order is reproduced below:

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8. Excise Appeal No. 50352 of 2021 decided on 25.09.2024
9. 1977 (1) E.L.T. J61 (S.C.)
10. 2023 (2) TMI 619 – CESTAT New Delhi
11. 1988 (35) E.L.T. 535 (Tribunal)
12. 1986 (26) E.L.T. 259 (Tribunal)

"13. The importer has, in their written submission dated 07.12.2022, submitted that:

(a) **The entry does not cast any restriction on usage other than medical use of the goods sought to be exempted therein. If the intention of the legislature was to extend the exemption only to the goods capable of medical use and no other use, the scope would have been qualified by usage of the term 'solely' and the entry would have read 'solely for medical use'. However, there is no such restriction or qualification in this regard in Sl. No. 563.** Therefore, reading any restriction in the entry would tantamount to imposing a non-existing condition for availment of exemption, and the same is forbidden by law.

(b) I have carefully gone through Explanation attached to Sl. No. 563 of the Notification No. 50/2017-Cus. Dated 30.06.2017. As per the said Explanation, **the terms "Goods" refers to medical instruments or appliances required for medical, surgical, dental or veterinary use <u>only</u>. Thus it is clear that the goods should be required for medical use only in order to be eligible for duty benefit under Sl. No. 563 of the said Notification.** The intention of the legislature was to exempt those goods which are required for medical use only and the scope has been qualified by the term 'only'. The language of the Explanation attached to Sl. No. 563 of the said Notification is clear and unambiguous and there is no scope for any interpretation. Putting it simply, if the goods are required for medical, surgical, dental or veterinary use only, the duty benefit under Sl. No. 563 is available; if they are not for medical, surgical, dental or veterinary use only, the said benefit is not available to them. Thus, the intention of the legislature was to exempt the goods which are required for medical use only. In the present case, the goods are not for medical use only as discussed in foregoing Para 11."

(emphasis supplied)

22. The finding recorded by the Additional Commissioner of Customs is based on the use of the word "only" in the Explanation at Serial No. 563 of the notification. The Explanation only provides that for the purpose of the entry at Serial No. 563, the term "goods" refers to the medical instrument or appliances **only** and does not refer to parts or spares thereof. The use of the word "only" in the Explanation is to emphasise that the "goods" refers to the instruments, or appliance and not to their parts. The word "only" cannot be read before the word "for medical use".

23. The Commissioner (Appeals) found no infirmity in the speaking order passed by the Additional Commissioner of Customs and, therefore, dismissed the appeal.

24. To examine the contention advanced by the learned counsel for the appellant that since the description of goods in the notification does not use the word "only" or "exclusively" or "wholly" or "entirely" before "for medical use", the appellant cannot be denied the benefit of the concessional rate of customs duty under the notification, it will be appropriate to refer to decisions of the Supreme Court and the Tribunal on this issue.

25. In **Tata Iron and Steel**, the notification of which benefit was claimed granted exemption to duty paid pig iron but duty paid pig iron was also mixed with other non duty paid materials. It is in this context that the Supreme Court held that if the intention of the government was to exclude exemption to duty paid pig iron when mixed with other materials, then the notification would have used the expression, "only" or "exclusively" or "entirely" in regard to duty paid pig iron but these expressions were not used. Thus, the benefit of the exemption could not

have been denied. The relevant portions of the judgment of the Supreme Court are reproduced below:

> "9. **The respondent based the claim for exemption on Notification No. 30/60, dated 1st March, 1960** issued by the Central Government in terms of Rule 8(1) of the Central Excise Rules, 1944 (hereinafter called the Rules) **exempting steel ingots in which duty-paid pig iron is used from so much of the duty leviable thereon as is in excess of Rs. 30/- per ton.** By Notification No. 120 of 1960, dated 1, October, 1960, Notification No. 30/60 was amended by substituting the figures and words "29.35 per metric ton" for the words and figures "30 per ton".
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> 10. By Notification No. 75/62, dated 24th April, 1962, the Central Government in exercise of powers conferred by rule 8(1) of the Rules exempted steel ingots falling under Item 26 of the First Schedule to the Act and specified in Column 2 of the Table appended to the notification from so much of the duty of excise leviable thereon as is in excess of duty specified in the corresponding entry in Column 2 of the said Table. In column 2 of the said notification the following description and duty appear:

S. No.	Descritption	Duty
1.	If produced out of scrap obtained from duty paid pig iron	Rs. 30 per M.T.
2.	If produced out of old iron or steel or scrap obtained from duty paid steel ingots or products (75/62)	Nil

> *****
>
> 12. **Duty was realised from the respondent on steel ingots in the making of which duty-paid pig iron of rejected ingot moulds and bottom stools were used along with non-duty paid materials. The respondent claimed exemption in respect of duty-paid pig iron on rejected moulds and bottom stools used in the making of steel ingots. The claim of the respondent for exemption in respect of duty paid pig iron was rejected by the Assistant Collector of Central Excise** by his order, dated 29th

August, 1965.

13. **The respondent filed appeals before the Collector of Central Excise who by order, dated 30th July, 1965 dismissed the respondent's appeals.**

14. **The respondent thereafter filed a revision petition before the Ministry of Finance under Section 36 of the Act. The Government by an order dated 7th July, 1967 rejected the revision petition of the respondent.** The Government held that the respondent was not entitled to any exemption under Notification No. 30/60, dated 1st March, 1960 because remelted scrap obtained from unserviceable casting moulds viz., ingot moulds and bottom stools were used in conjunction with other non-duty paid pig iron in the manufacture of steel ingots.

15. The respondent challenged the orders in the High Court. The High Court quashed the orders of the Revenue Authorities. **The High Court held that the Revenue Authorities fell into the error of interpreting Notification No. 30/60 by confining exemption to steel ingots in which "entirely, exclusively or only" duty paid pig iron is used. The High Court held that the words "entirely, exclusively or only" were not used in the notification. The notification exempted steel ingot in which duty-paid pig iron was used.** The High Court also held that the notification would have to be interpreted in a manner that the statute would not cast a burden twice over for payment of tax on the tax payer unless the language of this statute is so compellingly certain to that effect.

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23. **The High Court rightly held that the contention of the Revenue fails on two broad grounds.** First, there cannot be double taxation on the same article. Counsel for the Revenue gave the example of excise duty on motor car, in spite of the fact that there was duty on tyres and duty on metal sheets. The analogy is misplaced. In such cases the duty is on

the end product of motor cars as a whole. The duty on tyres and the duty on metal sheets do not enter the area of duty on motor car. **Second, Notification No. 30/60 grants exemption to duty-paid pig iron. The High Court rightly said that the Notification does not say that exemption is granted only when duty paid pig iron is used and that the exemption would not be available if duty-paid pig iron is mixed with other non-duty paid materials. If the intention of the Government were to exclude the exemption to duty paid pig iron when mixed with other materials then the notification would have used the expression "only" or "exclusively" or "entirely" in regard to duty-paid pig iron. The object of the notification was to grant relief by exempting duty-paid pig iron.**"

(emphasis supplied)

26. In **JMK Energy,** the Tribunal held:

"19. The next question is whether the classification of the imported goods under IGST. S. No. 234 of Schedule I of the IGST Notification 1/2017 covers solar power based devices is correct. We find that the notification does not place any restriction of the Customs Tariff Heading and it applies so long as such devices fall under Chapter 84 or 85 of the Customs Tariff. Evidently, the goods falling under 8507 would also be entitled to classification under Schedule I at S. No. 234 if they are solar power based. There can be no manner of doubt that they are solar power based. **The reason this classification was not accepted by the adjudicating authority is that they are not SOLELY based on solar power and other power can also be used charged the devices. In our considered view, the adjudicating authority has erred in coming to this conclusion because the Notification does not say —devices based solely on solar power but says —solar based devices. It does not in any way forbid the alternative sources of power to support them.** Simply because there are four other alternative means through which they can be charged, it does not mean that the imported goods are not solar power based devices. Therefore, the imported goods merit classification under 234 of Schedule I of Notification 1/2017. Consequently, the demand for IGST differential duty along with interest cannot be sustained."

(emphasis supplied)

27. In **Indian Organic Chemicals,** the Tribunal held:

"9. Shri Sachar has also ably argued that the decision of the Supreme Court in the case of Aluminium Corporation of India Limited v. Union of India & others (supra) and Union of India & Others v. Tata Iron & Steel Co. Ltd. (supra) was essentially based on the principle that where the raw material included duty-paid goods, the final product should not be required to pay duty again in respect of the duty-paid raw material content. But the fact remains that in the course of expression of its views, the Supreme Court had the occasion categorically to opine as to how notifications of the nature as before us should be interpreted and what is the meaning of the word "manufactured out of". **It has been said unequivocally that unless the relevant notification specifically provides for it, it is not correct to read such notifications as confining the exemptions to products made "entirely", "exclusively" or "only" from the specified material and that proportionate relief should be given even in those cases where material other than that specified is used.**

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14. In this connection we may note that in 1980 when Notification No. 44/80-C.E., dated 24-4-1980 was issued it read that in order to claim benefit of exemption under the notification the fibres and tops should have been manufactured exclusively out of wastes. **Therefore, the Government, whenever it felt inclined to confer the benefit of exemption on manufactures exclusively out of waste, took care to introduce this concept in issuing the**

> **notification itself. This would also give an indication that when no such word is to be found in the notification the intention was not to deny wholly the benefit if the manufacture was not exclusively out of the waste but to grant it pro rata.**"
>
> **(emphasis supplied)**

28. In **Aravali Ispat,** the Tribunal held:

> "4. **We have carefully considered the pleas on both sides. We find substantial force in the appellant's plea. Notification 208/83 dated 1.8.83 as it stood before 1.3.84 did not spell out that the iron castings falling under Tariff Item 25 (16) (i) should be manufactured exclusively out of raw materials stated in corresponding entry of col. 2 of the table of that notification.** Character of the admixture used for the manufacture of iron castings still remains the scrap of iron or pig iron falling under Tariff Item 25 (3) (i) or 25 (i). The circular of the Government quoted by the learned consultant supports his plea for availment of the said notification.
>
> Adjudicating authority's observation that the circular cannot override the provisions of the notification is no doubt correct but ignores the predominant character of the admixture used for the final product. **Notification 208/83 does not stipulate that the final product must be manufactured wholly or entirely or exclusively out of the raw materials mentioned in col. 2 of the corresponding entry of the table to the said notification. In the absence of these words finding of the adjudicating authority is not tenable in law. We are fortified in this view by Supreme Court's in the case of Union of India and others v. Tata Iron & Steel Company Ltd., Jamshedpur.**"
>
> **(emphasis supplied)**

29. The aforesaid decisions of the Tribunal in **JMK Energy, Indian Organic Chemicals** and **Aravali Ispat** emphasise that in a case where a notification does not stipulate that the final product must be manufactured **"**wholly**"** or **"**entirely**"** or **"**exclusively**"** from a particular raw material, the benefit of the notification should not be denied merely because a material other than that specified is also used in the manufacture of the final product.

30. The aforesaid judgment of the Supreme Court and the decisions of the Tribunal were considered at length by a Division Bench of this Tribunal in **RPG Industrial** and it was held:

> "32. It would, therefore, be more than apparent that the intention in the two Notifications could not have been to restrict the scope of the said Notifications to goods manufactured 'only' or 'exclusively' out of plastic scrap or plastic waste, when such words are not specified in the Notifications."

31. Learned authorized representative appearing for the department also placed reliance upon the judgments of the Supreme Court in **Commissioner of Customs (import), Mumbai** vs. **Dilip Kumar and Company and others**[13] and on **State of Gujarat** vs. **Arcelor Mittal Nippon Steel India**[14] to contend that grant of benefit of concessional rate of customs duty under the notification has to be strictly construed and when the text of the notification is plain and clear, no words can be added or deleted.

32. These two decisions of the Supreme Court in **Dilip Kumar** and **Arcelor Mittal** would not come to the aid of the department for the reason that words should not be added to the notification and the

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13. 2018 (361) E.L.T. 577 (S.C.)
14. (2022) 6 SCC 459

department would be justified in its belief only if the expressions "exclusively" or "solely" or "only" are added before "for medical use" in the notification.

33. In view of the aforesaid judgment of the Supreme Court in **Tata Iron and Steel** and the decisions of the Tribunal in **JMK Energy, Indian Organic Chemicals** and **Aravali Ispat** it has to be held that in the absence of the expressions "only" or "exclusively" or "wholly" or "entirely" before "for medical use", in the notification, the benefit of the concessional rate of customs duty under the notification could not have been denied to the appellant. The description of goods under CTI 9019 10 20 is "massage apparatus" and CTI 9019 10 20 is included at Serial No. 563 of the notification.

34. In this view of the matter, it would not be necessary to examine the contention advanced by the learned counsel for the appellant that the massagers imported by the appellant were meant for medical use.

35. It has, therefore, to be held that the massagers imported by the appellant would be entitled to concessional rate of customs duty under the notification.

36. It is also seen that a speaking order was passed by the Additional Commissioner of Customs only in respect of one Bill of Entry No. 9446523 dated 07.07.2022. Speaking orders were not passed by the Additional Commissioner of Customs in respect of the forty two Bills of Entry involved in these appeals. The appellant had also filed appeals against these forty two Bills of Entry inter alia contending that since speaking orders had not been passed under section 17(5) of the Customs Act the appeals should be allowed. This contention was rejected by the Commissioner (Appeals) only for the reason that the

view of the department was known from the speaking order passed in the Bill of Entry No. 9446523 dated 07.07.2022. It was necessary for the Additional Commissioner of Customs to pass speaking orders in respect of all the forty two Bills of Entry and the Commissioner (Appeals) could not have dismissed the appeal only for the reason that in respect of one Bill of Entry a speaking order had already been passed and so the view of the department was known. This contention has been noted only to emphasise that a speaking order is required to be passed under section 17(5) of the Customs Act in respect of each Bill of Entry.

37. The order dated 23.02.2024 passed by the Commissioner (Appeals) on the forty two appeals filed by the appellant is, therefore, set aside and it is held that the appellant is entitled to the benefit of concessional rate of customs duty under the notification. All the forty two appeals are, accordingly, allowed.

(Order Pronounced on **07.11.2024**)

(JUSTICE DILIP GUPTA)
PRESIDENT

(C.J. MATHEW)
MEMBER (TECHNICAL)

Shreya