

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

REGIONAL BENCH - COURT NO. I

Customs Appeal No. 85796 of 2024

(Arising out of Order-in-Original No. 236/2023-24/Commr/NS-V/CAC/JNCH dated 21.02.2024 passed by the Commissioner of Customs (NS-V), Jawaharlal Nehru Custom House (JNCH), Mumbai-II Zone, Nhava Sheva, District Raigad, Maharashtra.)

SLMG Beverages Private Limited

Plot No. 6/1 Kursi Industrial area,
District Barabanki, Uttar Pradesh-225 302.

.... Appellants

Versus

Commissioner of Customs (Import)

Jawaharlal Nehru Custom House (JNCH), Nhava Sheva
Taluk Uran, District Raigad, Maharashtra-400 707.

.... Respondent

WITH

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Vivek Ladhani

Plot No. 6/1 Kursi Industrial area,
District Barabanki, Uttar Pradesh – 225 302.

.... Appellants

Versus

Commissioner of Customs (NS-V)

Jawaharlal Nehru Custom House (JNCH), Nhava Sheva
Taluk Uran, District Raigad, Maharashtra-400 707.

.... Respondent

APPEARANCE:

Ms. Nisha Bineesh a/w Shri Vineet K. Singh, Advocates for the Appellant
Shri D. S. Mann, 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/86851-86852/2024

Date of Hearing: 28.08.2024

Date of Decision: 13.11.2024

Per: M.M. PARTHIBAN

These two appeals have been filed M/s SLMG Beverages Private Limited, Uttar Pradesh and its Director Shri Vivek Ladhani (herein after, referred together as 'the appellants') assailing the Order-in-Original No.

236/2023-24/Commr/NS-V/CAC/JNCH dated 21.02.2024 (herein after referred to as 'the impugned order') passed by the Commissioner of Customs (NS-V), Jawaharlal Nehru Custom House (JNCH), Mumbai-II Zone, Nhava Sheva, District Raigad, Maharashtra.

2.1 The facts of the case, leading to this appeal, are summarized herein below:

2.2 The appellants herein, had imported "Innopet Plasmax System 20Q" and its parts through Jawaharlal Nehru Customs House (JNCH) and for this purpose have filed Bill of Entry (B/E) No. 8836615 dated 13.11.2018, classifying the "Innopet Plasmax System 20Q" machinery under Customs Tariff Item (CTI) 8422 3000, its parts under CTI 8422 9090 and self-assessed the customs duty payable thereon by availing duty concession for basic customs duty at 5% adv. under Notification No.50/2017-Customs dated 30.06.2017. The said B/E was assessed by the proper officer of customs and the imported goods were cleared out of Customs control. Directorate of Revenue Intelligence, Lucknow Zonal Unit (DRI) had developed an intelligence to the effect that the appellants had imported the said machinery which performs coating function of PET bottles and therefore it is correctly classifiable as machinery having individual functions under CTI 8479 8999 and its parts under CTI 8479 9090 both attracting BCD of 7.5%. Accordingly, DRI had initiated investigation proceedings and upon completion of the same have issued Show Cause Notice (SCN) dated 23.12.2020, for revising the classification and demanding differential duty of customs in respect of the subject B/E, under Section 28(4) the Customs Act, 1962 along with interest, and proposing for confiscation of impugned goods and for imposition of penalties on the appellants under provisions the Customs Act, 1962. The said SCN was adjudicated by the learned Commissioner of Customs in the impugned order by confirming the proposals made in the SCN. Feeling aggrieved with the impugned order, the appellants have filed these appeals before the Tribunal.

3.1 Learned Advocate appearing for the appellants, stated that the appellants is an aerated water bottling manufacturer for M/s Coca-Cola India Private Limited and are engaged in manufacturing of beverages of Coca-Cola brand and for this purpose they are registered with the GST authorities. In order to set up a new plant of the above nature at Kursi

industrial area, Barabanki, the appellants have placed a purchase order dated 20.03.2018 with M/s KHS GmbH, Germany for supply of complete modernized aerating beverages plant. He further stated that due to the huge size of the complete plant & machinery, these were imported in CKD condition in various consignments for which totally five B/Es were filed. The total machinery imported in terms of final quotation/supply order included the following namely, (i) Stretch blow moulding machine viz., 'Innopet Blomax 24SBL', including blower periphery, machine chiller (ii) PET bottle coating machine viz., 'Innopet Plasmax System 20Q', including periphery and auxiliaries (iii) bottle filling and closing machine viz., 'Innofill DRV-VF', including foam cleaning system, Cap conveyor Gassner (iv) Filler management system (v) mixer with Auto Brix & CO₂ control viz., 'Innopro CMX 12' (vi) Europool HW blow-off system (vii) Cold-glue labeller (viii) Shrink packer (ix) automatic palletizer PBN, including pallet magazine (x) pallet stretch wrapper (xi) bottle, pack and pallet conveyor system. The disputed machine 'Innopet PlasmaxSystem20Q' is a part of the composite & complete bottling plant viz., ASSP PET CSD Line imported by the appellants and installed by the overseas suppliers at their factory in Barabanki.

3.2 Learned Advocate further submitted that the said coating machine has been added as a new technology in aerated water bottling process with Plasma Impulse Chemical Vapour Deposition (PICVD) coating, which creates a barrier against the passage of gas i.e., oxygen can no longer get in, and released carbon dioxide cannot get out. Consequently, the aerated water have a longer shelf life with no effect on their taste. Therefore, he submitted that advancement of technology as additional feature in the bottling line of machinery cannot change the classification of entire bottling line machinery. In view of the above, he submitted that the said coating machine cannot be categorized as a machine having independent function, and it is only a part of aerated water bottling machinery. Therefore, he claimed that the classification of the goods adopted by them under CTI 8422 3000 is correct and does not require any change. In support of their classification, they have cited the Section Notes 3, 4 & 5 of Section XVI of the Customs Tariff Act, 1975 and Rule 3(a) of General Rules of Interpretation.

3.3 In support of their stand, the appellants had relied upon the following judicial pronouncements:

(i) Moorco (India) Ltd., Vs. Collector of Customs, Madras – 1994 (74) E.L.T. 5 (S. C.)

(ii) Madras Rubber Factory Vs. Union of India - 1983 (13) E.L.T. 1566 (S.C.)

(iii) Plasmac Machine Mfg. Co. Pvt. Ltd. Vs. C.C.R., 1991 (51) E.L.T. 161 (S.C.)

(iv) Novopan India Ltd. Vs. Collector of Central Excise & Customs, Hyderabad – 1994 (73) E.L.T. 769 (S.C.)

4. Learned Authroised Representative appearing for the Revenue reiterated the findings recorded by the learned Commissioner in the impugned order and stated that coating machine 'Innopet PlasmaxSystem20Q' is rightly classifiable under CTI8479 8999, as against appellants' claim under CTI8422 3000. To support the claim of Revenue with regard to classification of product, he has relied upon tariff heading for sub-heading 8422 where the function of 'coating' has not been mentioned and on the other hand as per HSN explanatory notes to sub-heading 8479 include coating machines of different kinds. Further, learned AR by relying upon the case of Associated Cement Companies Ltd. Vs. Commissioner of Customs, Kolkata – 2001 (136) E.L.T. 936 (Tri. Kolkata) had submitted that the Co-ordinate Bench in the referred case had decided the classification of coating machine under 8479.89. Therefore, he prayed that the appeals preferred by the appellants is liable to be set aside.

5. Heard both sides and perused the records of the case. We have also considered the additional written submissions given in the form of paper book by learned Advocates for the appellants as well as Authorised Representative for the Revenue, and the arguments advanced during the hearings of this case.

6. The issue for consideration before us is the classification of imported goods by the appellants as to whether, it merits classification under Customs Tariff Item(CTI)8422 3000as claimed by the appellants; or, is it classifiable under CTI 8479 8999as contended by the Department, for deciding on the appropriate levy of customs duty, and

whether the adjudged demands including penalty imposed in the impugned order is sustainable or not?

7. 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.

xxx xxx xxx xxx

THE FIRST SCHEDULE – IMPORT TARIFF
(Refer Section 2)

THE GENERAL RULES FOR THE INTERPRETATION OF IMPORT TARIFF (GIR)

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 (GEN) 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."

8.1 From the 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 by 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.

8.2 In context with the case in hand, we note that the following are some of the important rules to be followed in the scheme of determining correct classification of imported goods:

- (i) classification of goods shall be determined according to the terms of the headings and any relative Section or Chapter Notes; (GIR 1)
- (ii) if the goods are found to be classifiable under two or more headings, then the classification shall be effected as per the rules provided under 3(a), 3(b) and 3(c) [GIR 3]

(iii) Goods which cannot be classified in accordance with the aforesaid rules, then the same shall be classified under the heading appropriate to the goods to which they are more akin. (GIR 4)

(iv) For legal purposes, the classification of goods in the sub-headings shall be determined according to the terms of those sub-headings and any related sub-heading Notes (GIR 6)

(v) When the description of the goods under a heading is preceded by 'single dash' i.e., "-", the said goods shall be taken to be a sub-classification of the article or group of articles covered by the said heading. (GEN1)

(vi) Where, however, the description of goods is preceded by "- -", the said goods shall be taken to be a sub-classification of the immediately preceding description of the goods or article or group of articles which has "-" single dash. (GEN1)

(vii) Where the description of goods is preceded by "----" or "----", the said goods shall be taken to be a sub-classification of the immediately preceding description of the goods or article or group of articles which has "-" or "--". (GEN1)

9.1 In the case before us, the contending classification of imported goods discussed in the impugned order is either under customs tariff item 842230 00 or customs tariff item 847989 99 of the First Schedule to the Customs Tariff Act. The relevant tariff entries in the First Schedule to the Customs Tariff Act, 1975 are extracted as below:

Tariff Item	Description of goods
(1)	(2)
8422	DISH WASHING MACHINES; MACHINERY FOR CLEANING OR DRYING BOTTLES OR OTHER CONTAINERS; MACHINERY FOR FILLING, CLOSING, SEALING OR LABELLING BOTTLES, CANS, BOXES, BAGS OR OTHER CONTAINERS; MACHINERY FOR CAPSULING BOTTLES, JARS, TUBES AND SIMILAR CONTAINERS; OTHER PACKING OR WRAPPING MACHINERY (INCLUDING HEAT-SHRINK WRAPPING MACHINERY); MACHINERY FOR AERATING BEVERAGES
	- Dish washing machines:
8422 11 00	-- Of the household type
842219 00	-- Other
842220 00	- Machinery for cleaning or drying bottles or other containers
8422 30 00	- Machinery for filling, closing, sealing or labelling bottles, cans, boxes, bags or other containers; machinery for capsuling bottles, jars, tubes and similar containers; machinery for aerating beverages
8422 4000	- Other packing or wrapping machinery (including heat-shrink wrapping machinery)

Tariff Item	Description of goods
(1)	(2)
8422 90	- Parts:
8422 90 10	--- Of machinery for cleaning or drying bottles or other containers
8422 9020	--- Of dish washing machines of household type
8422 90 90	--- Of other machinery
8479	MACHINES AND MECHANICAL APPLIANCES HAVING INDIVIDUAL FUNCTIONS, NOT SPECIFIED OR INCLUDED ELSEWHERE IN THIS CHAPTER
8479 10 00	- Machinery for public works, building or the like
8479 20	- <i>Machinery for the extraction or preparation of animal or fixed vegetable fats or oils</i>
...	...
8479 30 00	- presses for the manufacture of particle board or fibre building board of wood or other ligneous materials and other machinery for treating wood or cork
8479 40 00	- Rope or cable-making machines
8479 50 00	- Industrial robots, not elsewhere specified or included
8479 60 00	- Evaporative air coolers
8479 71 00	- <i>Passenger boarding bridges:</i> -- Of a kind used in airports
8479 71 90	-- Other
	- Other machines and mechanical appliances:
8479 81 00	-- For treating metal, including electric wire coil-winders
8479 82 00	-- Mixing, kneading, crushing, grinding, screening, sifting, homogenizing, emulsifying or stirring machines
8479 89	-- Other:
...	...
8479 89 70	--- Machinery for the manufacture of chemical and pharmaceuticals goods
	--- Other:
8479 89 92	---- Briquetting plant and machinery intended for manufacture of briquettes from agricultural and municipal waste
8479 89 99	---- Other
8479 90	- Parts:
...	...
8479 90 90	--- Other

Thus, it is clear that at the Chapter level i.e., Chapter 84, there is no difference of opinion in classification of goods among the appellants and the department. The dispute in classification lies in the narrow

compass of the two Sub-headings i.e., 842230 or 8479 89 and the respective Tariff Items i.e., 842230 00 or 8479 89 99 falling there under, in which the impugned goods are correctly classifiable. Now, we may closely examine the scope of the contending Sub-headings and Tariff Items thereof for determining correct classification of the imported goods.

9.2 It could be seen that by applying the GIR 1 - rule at (i) above, the position is made clear that Heading 8422 covers within its scope and ambit, mainly of two broad categories of goods for ascertaining proper classification:

(A) first one having specific three sub-groups of machines are i.e., (i) Dish washing machines (ii) machinery for cleaning or drying bottles/containers (iii) machinery for filling, closing, sealing or labelling, packing/wrapping, capsuling bottles, cans and similar containers;

(B) the other broad category, in second one i.e., "machines for aerating beverages'.

On careful perusal of the functions of the impugned goods and the scope of coverage of goods under the above category of machines, it transpires that these do not belong to the group of first two category of machines (i) and (ii) above under (A), as these do not have function of dish washing or for cleaning or drying bottles/containers. On the other hand, some of the machines imported being a part of complete bottling plant assembly line are for the function of bottle filling, bottle closing, labelling, packing, wrapping which find specific mention under the category of machines mentioned at (iii) above under (A). Other machines such as blow moulding machine, PET bottle coating machine, pallet conveyor system though does not find specific mention at (iii) above, being part of the aerated water bottling plant assembly line, are covered under the category of machines under (B) above.

9.3 Hence, in simple words, it can be put that the distinction between these two categories of goods of sub-heading is that the first one is 'machines performing the specific functions such as cleaning, drying, filling, closing, sealing, labelling, capsuling, packing, wrapping bottles/containers specified therein and are individually identifiable by such specific function, and second one is 'other machinery contributing to the general function of aerating beverages'. In the present case, the appellants had filed the five Bills of Entry (B/Es), by describing the imported goods in terms of specific description based on their function

such as blow moulding machine, coating machine, filling machine, labelling machine, bottle dryer machine, shrink packing machine, which form a part of filling up of aerated water. Further, on perusal of the goods covered under each of the sub-heading '-' single dash, it would follow that dish washing machines of house hold type and other types are specifically covered under sub-heading 842210, in terms of specific tariff entry at 8422 1100 and 8422 1900, respectively. Further, machinery for cleaning or drying bottles/containers are covered under sub-heading 8422 20/tariff entry 8422 2000, with no further sub-classification. Machines having specific function mentioned therein and machinery used for aerating the beverages or aerated water are covered under sub-heading 8422 30/tariff entry 8422 3000, with no further sub-classification. Machinery used for packing or wrapping are covered under sub-heading 8422 40/tariff entry 8422 4000, with no further sub-classification. The parts of these machinery are grouped under residual entry at sub-heading 8422 90, with specific tariff entry for the machines of category corresponding with the above-mentioned sub-heading.

9.4 In respect of goods covered under the scope of heading 8479, as the heading entry makes it clear, those machines and mechanical appliances which have individual functions, and not specifically included or covered elsewhere in Chapter 84, are alone covered here. Accordingly, the scope of coverage of goods under this heading could be considered as residuary in nature, for covering machines and appliances not elsewhere specified under Chapter 84. Further, on perusal broad categories of machines covered therein, it is found that different types of machines of varied nature such as the following are covered under this under heading 8479. These are: (i) machinery for public works, building etc., (ii) machinery for the extraction or preparation of animal or fixed vegetable fats or oils, (iii) presses for the manufacture of particle board or fibre building board of wood, (iv) rope or cable-making machines, (v) industrial robots (vi) evaporative air coolers (vii) passenger boarding bridges (viii) other types of machines and mechanical appliances. Further, the residual type machinery is covered under the 'other category' in sub-heading 847989; even amongst the various specific group of other categories of machines ranging from soap cutting/moulding machine, car washing machine and machines for

manufacture of chemical and pharmaceutical goods etc., these are specifically covered under various tariff entries of 8479 8910 to 8479 8970 of sub-heading 847989. The last residual category of 'other goods' under 'other machinery' of sub-heading 847989, are again grouped under tariff entry 8479 89 92 covering specifically briquetting plant and machinery for manufacture of briquettes from agricultural and municipal waste; and the tariff entry 8479 89 99 for covering 'other residual goods' which are not covered under any of the above-mentioned goods under sub-heading 8479 89. Parts of such residual goods are covered under tariff entry 8479 9090. Revenue's contention is that the imported goods are rightly classifiable under tariff item 8479 89 99, under the category of 'machines having individual function' on the basis of its functionality. Though there is no specific mention of coating function in these group of machines at the six-digit sub-heading level or eight-digit tariff item level in the Customs Tariff, learned Commissioner had come to the conclusion that coating machine, function independently of the blow moulding machine and the filling machine, as detailed in paragraphs 30.1 to 30.2 of the impugned order, for justifying the classification adopted by the department. As the sub-heading 8422 30 specifically cover "machines for aerating beverages", and the entry in heading 8479 makes it clear that it covers only those machines which are not specifically included or covered elsewhere in Chapter 84, the aforesaid conclusion arrived at the impugned order is contrary to the legal position contained in the Customs Tariff Act, 1975.

9.5 On the basis of above analysis about the scope of coverage of goods under contending sub-headings 842230 or 8479 89, in terms of GIR-1, it can be concluded that appropriate classification of the impugned goods as per the 'terms of headings', is sub-heading 8422 30 inasmuch as it specifically refers the impugned machines by their functions and the industry of aerated beverages; and not sub-heading 8479 89, which is a residuary category, with no specific mention of the function or industry where the impugned goods are used.

9.6 In addition to the above, in deciding the issue of classification within the Chapter Heading 84, whether the imported goods fall under the category as 'machinery for aerating water' as claimed by the appellants or under the category 'other machinery having individual function' claimed by Revenue, one needs to look further into relative

Section or Chapter notes. In this regard, we find that Section Note 1 to Section XVI covering Chapters 84 and 85, provide for the list of goods that do not get covered under the said Chapters. Besides, Section Note 2 providing for classification of 'parts' of machines or articles, are not relevant here for classifying the impugned machine. Thus, we find that Section Notes 3 to 5 to Section XVI generally guide classification of goods under Chapter 84 and 85. The relevant Section Notes 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 Section does not cover :*
2. *Subject to Note 1 to this Section, Note 1 Chapter 84 and to Note 1 to Chapter 85, parts of machines....*
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."*

9.7 The above Section Notes 3 and 4 specify that the principal function of the machine or apparatus would be the guiding factor for determination of the appropriate classification of the goods and combination of machines have to be classified as a whole machine, by the specific function it performs as a combination of machines. Though 'machinery for aerating beverages/aerated water' is generally understood to be a composite group of machines by which PET bottle is firstly produced, cleaned, dried, coated and the aerated water of pre-determined quantity along with CO₂ gas is filled, cap fixed, PET bottle is labelled and packed in shrink wrapping for final clearance, each of the machinery performing the aforesaid individual functions are connected

to main function of filling up of aerated water/beverages for clearance as final product. As such, each machine cannot be treated as individual machine having separate function but as a part of whole machinery for aerating beverages/aerated water which is also signify the principal function of such composite machines. Therefore, in terms of Section Note 3 and 4, the classification of impugned goods under CTI 8422 3000 would be appropriate.

9.8 Thus, upon detailed analysis of the scope of coverage of goods under contending sub-headings in paragraphs 9.1 to 9.5 as above, and on the basis of the Section Notes 3, 4 of Section XVI covering goods of chapter 84, we are of considered opinion that the imported machinery 'Innopet Plasmax System 20Q' used for coating of PET bottles for aerating of beverages/ aerated waters are appropriately classifiable under CTI 8422 3000 and its parts thereof under CTI 8422 9090 of the First Schedule to the Customs Tariff Act, 1975.

10. In order to further examine the classification in terms of HS explanatory notes of the WCO, which describe in detail the scope and coverage of the goods under the Customs classification, the extract of HS classification in respect of heading 8422 is given below:

"Harmonized Commodity

Description and Coding System

Explanatory Notes

84.22 - Dish washing machines; machinery for cleaning or drying bottles or other containers; machinery for filling, closing, sealing or labelling bottles, cans, boxes, bags or other containers; machinery for capsuling bottles, jars, tubes and similar containers; other packing or wrapping machinery (including heat-shrink wrapping machinery); machinery for aerating beverages (+).

This heading covers dish washing machines (for plates, glasses, spoons, forks, etc.), whether or not incorporating provision for drying, including electrically-operated types, whether or not domestic. The heading also covers machines of different types designed for cleaning or drying bottles or other containers, for filling or closing such containers (including machines for aerating beverages) and, generally, for packing (including heat-shrink wrapping) goods for sale, transport or storage. These include :

- (1) Machines (whether or not steam-operated) for cleaning, washing, rinsing or drying bottles, jars, cans, boxes, casks, milk churns, cream separator bowls or other containers. These machines sometimes incorporate provision for disinfection or sterilisation.
- (2) Machines for filling containers (e.g., casks, barrels, cans, bottles, jars, tubes, ampoules, boxes, packets or bags), frequently equipped with subsidiary automatic volume or weight control and with devices for closing the containers.
- (3) Bottle or jar closing, corking or capping machines; can closers and sealers (including those closing by soldering).

- (4) Wrapping or cartoning machines, including those with provision for forming, printing, tying, stapling, taping, glueing, closing or otherwise finishing the packing. The heading includes machines for packing filled cans or bottles into external containers (crates, boxes, etc.).
- (5) Labelling machines, including those which also print, cut and gum the labels.
- (6) Machines for aerating beverages. These are, in effect, bottle filling and closing machines with provision for supplying carbon dioxide gas simultaneously with the liquid.
- (7) Baling or banding machines, including hand-operated portable appliances, provided with plates or similar devices enabling them to be rested, while in use, on the bales, cases or other packages to be strapped.

Machines of this heading frequently perform several of the foregoing functions. They may also incorporate provision for filling or sealing *in vacuo* or under other controlled atmospheric conditions.

Machines which in addition to packing, wrapping, etc., also perform other operations remain classified in the heading provided the additional operations are incidental to the packing, etc. Thus machines which pack or wrap goods into the forms or presentations in which they are normally distributed and sold in commerce, are classified in this heading, whether or not the machines also contain devices for weighing or measuring. Similarly the heading includes machines incorporating devices which, as a secondary function, cut, mould or press previously prepared products into purely presentational forms without affecting their essential character (e.g., machines for moulding butter or margarine into blocks, etc., and wrapping them). The heading **does not**, however, cover machines whose primary function is not to pack, wrap, etc., but to manufacture raw or semi-finished materials into finished products (e.g., combined cigarette making and packaging machines).

PARTS

Subject to the general provisions regarding the classification of parts (see the General Explanatory Note to Section XVI), the heading also covers parts of the above-mentioned machinery. It should be noted, however, that in the case of composite machines, parts of any component machine which would not on its own fall in this heading, are classified in their own appropriate headings, e.g., parts of weighing machines (**heading 84.23**), of carton or paper bag making machines (**heading 84.41**) or of printing machines (**heading 84.43**).

*

84.79 - Machines and mechanical appliances having individual functions, not specified or included elsewhere in this Chapter.

- 8479.10 - Machinery for public works, building or the like
- 8479.20 - Machinery for the extraction or preparation of animal or fixed vegetable fats or oils
- 8479.30 - Presses for the manufacture of particle board or fibre building board of wood or other ligneous materials and other machinery for treating wood or cork
- 8479.40 - Rope or cable-making machines
- 8479.50 - Industrial robots, not elsewhere specified or included
- 8479.60 - Evaporative air coolers
- Other machines and mechanical appliances :
- 8479.81 - - For treating metal, including electric wire coil-winders
- 8479.82 - - Mixing, kneading, crushing, grinding, screening, sifting, homogenising, emulsifying or stirring machines
- 8479.89 - - Other
- 8479.90 - Parts

This heading is **restricted to** machinery having individual functions, which :

(a) Is not excluded from this Chapter by the operation of any Section or Chapter Note.

and (b) Is not covered more specifically by a heading in any other Chapter of the Nomenclature.

and (c) Cannot be classified in any other particular heading of this Chapter since :

(i) No other heading covers it by reference to its method of functioning, description or type.

and (ii) No other heading covers it by reference to its use or to the industry in which it is employed.

or (iii) It could fall equally well into two (or more) other such headings (general purpose machines).

The machinery of this heading is distinguished from the parts of machinery, etc., that fall to be classified in accordance with the general provisions concerning parts, by the fact that it has individual functions.

For this purpose the following are to be regarded as having “individual functions”:

- (A) Mechanical devices, with or without motors or other driving force, whose function can be performed distinctly from and independently of any other machine or appliance.

Example: Air humidification and dehumidification are individual functions because they can be performed by appliances operating independently of any other machine or appliance.

A separately presented air dehumidifier, even if designed to be mounted on an ozone generator falls, therefore, to be classified in this heading as having an individual function.

- (B) Mechanical devices which cannot perform their function unless they are mounted on another machine or appliance, or are incorporated in a more complex entity, **provided** that this function:

- (i) is distinct from that which is performed by the machine or appliance whereon they are to be mounted, or by the entity wherein they are to be incorporated, and
- (ii) does not play an integral and inseparable part in the operation of such machine, appliance or entity.

Example: A chain cutter is a device which is mounted on an industrial sewing machine and which automatically cuts the thread so that the machine can run without interruption. This device performs an individual function because it plays no part in the “sewing” function of the machine; as there is no other more specific heading, the chain cutter falls to be classified here.

On the other hand, the function of a carburettor for an internal combustion engine is distinct from that of the engine but it is not an “individual function” as defined above because the operation of the carburettor is inseparable from that of the engine. Separately presented carburettors are therefore to be classified as parts of engines in **heading 84.09**.

Similarly, mechanical or hydraulic shock absorbers form an integral part of the machine or appliance in which they are to be incorporated. Separately presented shock absorbers therefore fall to be classified as parts of the machines or appliances on which they are to be mounted. (Shock absorbers for vehicles or aircraft fall in **Section XVII**).

The many and varied machines covered by this heading include *inter alia*:

(I) MACHINERY OF GENERAL USE

This group includes, for example:

- (1) Vats or other receptacles (e.g., vats or tanks for electrolysis), fitted with mechanical devices (agitators, etc.), and which are not identifiable as being for any particular industry and are not heating, cooking, etc., apparatus of **heading 84.19**. Vats or other receptacles simply fitted with taps, level or pressure gauges or the like are classified according to their constituent material.
- (2) Presses, crushers, grinders, mixers, etc., not designed for particular goods or industries.
- (3) Volumetric distributing apparatus (e.g., mechanical hopper feeds) and mechanical distributors for continuous presentation of work pieces in the same alignment ready for the working operation, not specialised for any particular industry.

.....

(III) MISCELLANEOUS MACHINERY

This group includes :

- (1) Air humidifiers or dehumidifiers, **other than** the appliances of heading 84.15, 84.24 or 85.09.
- (2) Engine starters (mechanical, hydraulic, compressed air, etc.) **but not** electrical equipment of heading 85.11.
- (3) Hydraulic accumulators, for keeping in reserve an amount of liquid under pressure in order to give an even rate of flow or feed pressure to hydraulic machinery. Normally, these accumulators consist of a vertical pump-fed cylinder enclosing a weighted piston which is adjusted to a certain pressure.
- (4) Pump-type automatic machine greasers.
- (5) Match-dipping machines
- (6) Machinery for cask tarring or coating **other than** spraying appliances of heading 84.24.
- (7) Machines for coating welding electrodes.
- (8) Machines for cleaning off or re-covering gelatin inking rollers.
- (9) Machines for coating photosensitive emulsions on to a backing **other than** those machines of heading 84.86.
- (10) Machines for frosting glass by the acid process.
- (11) Bolting or unbolting machines and metal core extractors, **other than** hand tools of Chapter 82 and small tools for working in the hand, pneumatic, hydraulic or with self-contained electric or non-electric motor (heading 84.67).
- (12) Machines for the maintenance of pipelines or other non-flexible pipes (e.g., small self-propelled machines used on oil pipelines to clean the pipe, coat it with asphalt or other protective covering; machines, carried through the pipes by the flow of the fluid itself, used for cleaning the inside of pipelines).

The detailed scope of coverage of goods provided under the HS as above, covers machines for coating of welding electrodes, coating of photo sensitive emulsion on to a backing machine, and this donot cover coating machines for PET bottle, as the case before us. Hence, even as per HS explanatory notes we find that the impugned goods are not covered under sub-heading 8479 89. On the otherhand, HSN explanatory notes for heading 8422 covers under its scope various types of machines which are used in bottling of aerated beverages water including machines for forming PET bottle, filling up the contents with beverages/aerated water and packing, wrapping of such bottles, and other additional operations incidental or secondary to packing etc. till they are completed in the manner that the aerated water/beverages are used for distribution and sale in the market. Thus, we find that machinery used for coating of PET bottles with improved technology i.e., Plasma Impulse Chemical Vapour Deposition (PICVD) coating, which creates a barrier against the passage of gas i.e., oxygen can no longer get in, and released carbon dioxide cannot get out, thereby, the aerated water/beverages have a longer shelf life with no effect on their taste, is covered by the above stated HS explanatory notes for classification under heading 8422.

11.1 We have also examined factual matrix of the case, by careful perusal of documents on record, including purchase order dated 20.03.2018 placed by the appellants on foreign manufacturer M/s KHS GmbH, Germany for supply of 'complete bottling plant – ASSP CSD line', operational manual, and actual pictures of the individual machines forming part of aerated water bottling plant of the appellants factory, as produced by learned Advocate for the appellants. For ease of reference, the sample pictures of the imported machinery are given below:







11.2 The purchase order dated 20.03.2018, commercial invoice No.89406834 dated 08.10.2018 and packing list, indicate that the impugned goods viz., coating machine 'Innopet PlasmaxSystem20Q' is a part of complete bottling ASSP PET CSD line for aerated beverages/ aerated water. From the above pictures, operational work flow as per operating instructions of the manual, it could be seen the entire machinery in the aerated water bottling plant of the appellants have been placed together in such manner that these work as a continuous

process, each machine depending on one another. The first two pictures at Page 19 indicate that the triblock consisting of Blomax for moulding of PET bottle, Plasmax for coating of such PET bottle and Filler for filling aerated beverages/ aerated water work in tandem, both by the process and the capacity for handling the aerated beverages/water. Further, the individual machines of KHS filler at page 19, Blomax, Plasmax machines at page 20 and labeler machine and shrink pack machine at page 21 indicate that these machines are interconnected by transmission devices like conveyors, interconnected by electric cables and computers to provide an automatic assembly line of filling aerated beverages/aerated waters. Thus, once the manufacturing process starts after initial setting up of these machinery, a predetermined number of product i.e., 766 PET bottles of 250ml per minute (BPM) or about 46,000 containers per hour of 250ml bottles are produced in such continuous processing, starting from blow moulding of PET bottles, coating of such PET bottles, aerated beverages/aerated water filling, labelling, shrink packing in order to finally make the aerated beverages/ aerated water contained in PET bottles made available at the end of such assembly line, for clearance out of the factory.

11.3 Besides the above, the data-sheet of the above operating instructions also clearly provide that Blow moulding machine, InnoPET plasmax coating machine and Filling machine are designed to be physically and electronically interconnected, in order to ensure that there is seamless transfer and processing of each PET bottle/container. The InnoPET plasmax coating machine, in the beginning when it is being set-up is operated in solo mode and once such setting up is completed, then it works along with blow moulding and filler machine under block mode. Such operational requirement of setting up the machine, does not enable it to be an independent function or machine having individual function, as claimed by Revenue.

11.4 Even if the Revenue's argument that the classification of InnoPET plasmax coating machine is disputable under two contending CTIs 84223000 or 8479 89 99, then in terms of GIR 3, classification shall be preferred under the heading which provides the most specific description to the heading rather than the one providing a more general description. Inasmuch as the tariff item 8422 3000 covering "machinery for aerating beverages" under a single '-' entry is more specific than the

contending tariff item 8479 89 99 covering “other” under four ‘----’ entry, which is a sub-classification of “other” under triple ‘---’ entry, which is again a sub-classification of “other” under double ‘--’ entry, under a single ‘-’ entry of “other machines and mechanical appliances”. In other words, the GIR 3 mandates that the entry which is specific as to the usage and function of the coating machine under CTI 8422 30 00 shall be preferred than residual entry under CTI 8479 89 99. Thus, we are of the opinion that the classification under tariff item 8422 30 00 is appropriate as per GIR 3. Hence, in our considered view, the appropriate classification of the imported goods would be under Customs Tariff Item 8422 30 00.

12.1 We also find that the Co-ordinate Bench of the Tribunal have examined the issue of classification of similar machinery used in aerated water manufacturing industry in the case of Hindustan Coca Cola Beverages Pvt. Ltd. Vs. C.C. (Import), ACC, Mumbai - 2017 (355) E.L.T. 574 (Tri. - Mumbai) and have held that the machines are classifiable under sub-heading 842230. The relevant paragraphs of the said order is extracted and given below:

"3. *Appellants imported consignment of empty bottle Inspector Morella number Lynott Tronic 735M2 (hereinafter referred to as machine) and claimed classification under CTH 8422. Revenue authorities are of the view that this machine would merit classification under CTH 9031. Adjudicating authority after following the due process of law held that machines are classifiable under CTH 9031; concluded that there was misdeclaration of the classification, accordingly confiscation of imported machine was ordered with an option to redeem the same on payment of redemption fine and also imposed penalties.*

...
7. *Revenue is seeking classification of the machine under CTH 9031 while it is a case of the appellant that the said machine merits classification under CTH 8422 claiming benefit of Notification No. 21/2002-Cus. serial number 537.*

8. *In order to address the dispute, the rival tariff entries are reproduced.*

"8422 30 00	-	Machinery for filling, closing, sealing or labelling bottles, cans, boxes, bags or other containers, machinery for capsuling bottles, jars, tubes and similar containers; machinery for aerating beverages.
9031		Measuring or checking instruments, appliances and machines, not specified or included elsewhere in this chapter, profile projects.
9031 20 00	-	Test benches"

9. *We notice from the records that the manufacturer and exporter has given a certificate stating that they are manufacturers of bottling line for bottled drinks industry and pioneers in PET bottle inspection unit.*

10. *The use of the machines in the factory of the appellant is not in dispute. The manufacturing activity, as explained before us as well as before the adjudicating authority, is PET bottles are formed, inspected and filled with aerated water sealed, packed and cleared. The use of the machine which are imported, as explained by the learned Counsel, is just after the forming of the PET bottle. If that be so, we find that the explanatory notes to the HSN clearly support the case of the appellant. We reproduce the explanatory note of HSN to Chapter 84....*

...

12. *From the above reproduced explanatory notes, it can be seen that the machines imported by the appellant being used in conjunction with form, fill and seal machine, merits classification under CTH 8422 30 00 and eligible for benefit of Notification No. 21/2002.*

13. *Similar view was expressed by the bench in the case of Aries Components Manufacturing Co. Ltd. v. Commissioner of Central Excise, Mumbai-II - [2004 \(174\) E.L.T. 238](#) (Tri.-Mumbai), wherein Revenue had sought classification of an inspection machine as an independent and stand-alone machine, findings negated by the Tribunal in paragraph No. 4 which is reproduced.*

"4. It is also found -

(a) *Considering the functions as submitted, even if the machine at Sr. Nos. 1 to 5 are standalone operating machines, they perform, admittedly, functions prior to and subsequent to the filling of Gelatine Capsules. They are then to be classified under Heading 8422 and not under 8479.00 since the purpose of inspection of Gelatine Capsules or there polishing after filling are functions to be performed in Tandem, with filling of Gelatine Capsules. Merely because they are standalone machines, they cannot be said to have independent complete functions.*

(b) *As regards parts and the classification, since they are admittedly despatched and to be used solely or principally with the machines for which they are to be classified under 8422.90 and not under 8431.00 as arrived by the Id. Commissioner when the Section XVI Note 2(b) is applied.*

(c) *As regards Sr. No. 8 of the above, the same is admittedly not manufactured. Therefore, no finding is arrived on the classification of that part."*

14. *In view of the foregoing, in the facts and circumstances of this case, we hold that the impugned order is unsustainable and liable to be set aside and we do so. The machines are correctly classifiable under CTH 8422 30 00 and eligible for benefit of Notification No. 21/2002-Cus., as applicable. The impugned order is set aside and appeal is allowed as indicated hereinabove."*

12.2 We further find that the Co-ordinate Bench of the Tribunal in the case of *KHS Machinery Pvt. Ltd. Vs. Commissioner of Customs ACC, Mumbai - 2018 (363) E.L.T. 358* (Tri. - Mumbai) have held that parts of the machine connected with the function of filling of bottles are classifiable under CTI 8422 9090. The relevant paragraphs of the said order are extracted and given below:

"NCM filling valves were imported by appellant under Bill of Entry No. 769284, dated 22-9-2006 classifying that under CTH 8422 90 90. But such classification was denied by Revenue and brought that under CTH

8481 80 90. The machinery manufactured by appellant was falling under CTH 8422 30 00. The valve imported was to serve the purpose of the machinery so manufactured by the appellant. The aforesaid goods mentioned in Bill of Entry was an essential part of the above machinery. Therefore appellant sought classification of the imported goods under CTH 8422 90 90. He explains that the coverage of CTH 8422 deals with the goods connected with filling of bottles. Revenue denies the classification sought by appellant on the ground that the goods will fall under CTH 8481 80 90 without assigning any reason.

...

4. It does not appeal to common sense to appreciate how the goods imported was not connected to the machinery manufactured by the appellant. When Revenue had no finding that appellant was a trader of the imported goods without that being used in the manufacture of goods falling under CTH 8422 30 00, there cannot be denial of classification of the goods under CTH 8422 90 90."

It is significant to note that Revenue had classified the machines for filling of bottles under CTI 8422 30 00 and therefore, the Tribunal had orders for classification of its parts under CTI 8422 90 90. We also find that the order of the Tribunal in the case of Associated Cement Companies Ltd. (supra) relied upon by the learned AR, is not relevant as in that referred case it relates to coating done on the material by imparting optical and electrical properties to the material for making it wear and tear resistant, which is entirely different from the factual matrix of the present case.

12.3 We also find that on the issue of classification of goods under residuary heading, the Hon'ble Supreme Court in the case of Dunlop India Ltd. & Madras Rubber Factory Ltd. Vs. Union of India and others – 1983 (13) E.L.T. 1566 (S.C.) have held that it is not justifiable to classify the goods under residuary heading in order to charge higher rate of duty. The relevant paragraphs of the said judgement are extracted and given below:

"37.....When an article has, by all standards, a reasonable claim to be classified under an enumerated item in the Tariff Schedule, it will be against the very principle of classification to deny it the parentage and consign it to an orphanage of the residuary clause. The question of competition between two rival classifications will, however, stand on a different footing.

38. It is not for the Court to determine for itself under Article 136 of the Constitution under which item a particular article falls. It is best left to the authorities entrusted with the subject. But where the very basis of the reason for including the article under a residuary head in order to charge higher duty is foreign to a proper determination of this kind, this Court will be loath to say that it will not interfere."

13. In view of the foregoing discussions and analysis, and on the basis of judgements of judicial forum referred above, we are of the considered view that the goods under consideration i.e., "Coating machine - Innopet Plasmax System 20Q" would be appropriately classifiable under Customs Tariff Item (CTI) 8422 30 00 and not under CTI 8479 89 99, as claimed by Revenue. Further, parts of such coating machine, therefore is appropriately classifiable under CTI 8422 90 90.

14. Therefore, we are of the considered view that the impugned order passed by the learned Commissioner of Customs cannot stand the legal scrutiny. Accordingly, the impugned order is set aside and the appeals are allowed in favour of the appellants.

(Order pronounced in the open court on 13.11.2024)

(S.K. Mohanty)
Member (Judicial)

(M.M. Parthiban)
Member (Technical)