CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

WEST ZONAL BENCH

CUSTOMS APPEAL NO. 87246 OF 2021

(Arising out of Order-in-Appeal No. MUM-CUSTM-AMP-APP-569 TO 678/2021-22 dated 18th August 2021 passed by the Commissioner of Customs (Appeals), Mumbai – II)

Ortho Clinical Diagnostics India Pvt. Ltd. .....**Appellant**
403, Leela Business Park, Andheri Kurla Road
Andheri (E), Mumbai – 400059

Versus

Commissioner of Customs (Air Cargo Import), Mumbai – III .....**Respondent**
Air Cargo Complex, Navpada, Sahar Village
Andheri (E), Mumbai – 400099

WITH

C/87248/2021	**C/87249/2021**	**C/87250/2021**	**C/87251/2021**
C/87252/2021	**C/87253/2021**	**C/87254/2021**	**C/87255/2021**
C/87256/2021	**C/87257/2021**	**C/87258/2021**	**C/87259/2021**
C/87260/2021	**C/87261/2021**	**C/87262/2021**	**C/87263/2021**
C/87264/2021	**C/87265/2021**	**C/87266/2021**	**C/87267/2021**
C/87268/2021	**C/87269/2021**	**C/87270/2021**	**C/87271/2021**
C/87272/2021	**C/87273/2021**	**C/87274/2021**	**C/87275/2021**
C/87276/2021	**C/87277/2021**	**C/87278/2021**	**C/87279/2021**
C/87280/2021	**C/87281/2021**	**C/87282/2021**	**C/87283/2021**
C/87284/2021	**C/87285/2021**	**C/87286/2021**	**C/87287/2021**
C/87288/2021	**C/87289/2021**	**C/87290/2021**	**C/87291/2021**
C/87292/2021	**C/87293/2021**	**C/87294/2021**	**C/87295/2021**
C/87296/2021	**C/87297/2021**	**C/87298/2021**	**C/87299/2021**
C/87300/2021	**C/87301/2021**	**C/87302/2021**	**C/87303/2021**
C/87304/2021	**C/87305/2021**	**C/87306/2021**	**C/87307/2021**
C/87308/2021	**C/87309/2021**	**C/87310/2021**	**C/87311/2021**
C/87312/2021	**C/87313/2021**	**C/87314/2021**	**C/87315/2021**
C/87316/2021	**C/87317/2021**	**C/87318/2021**	**C/87319/2021**
C/87320/2021	**C/87321/2021**	**C/87322/2021**	**C/87323/2021**
C/87324/2021	**C/87325/2021**	**C/87326/2021**	**C/87327/2021**
C/87328/2021	**C/87329/2021**	**C/87330/2021**	**C/87331/2021**
C/87332/2021	**C/87333/2021**	**C/87334/2021**	**C/87335/2021**
C/87336/2021	**C/87337/2021**	**C/87338/2021**	**C/87339/2021**
C/87340/2021	**C/87341/2021**	**C/87342/2021**	**C/87343/2021**
C/87344/2021	**C/87345/2021**	**C/87346/2021**	**C/87347/2021**
C/87348/2021	**C/87349/2021**	**C/87350/2021**	**C/87351/2021**
C/87352/2021	**C/87353/2021**	**C/87354/2021**	**C/87355/2021**
AND	**C/87356/2021**		

APPEARANCE:

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

Shri Piyush Badhe Barasu, Deputy Commissioner (AR) for the respondent

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: 28.11.2024

FINAL ORDER NO's: 86998-87107/2024

PER: C.J. MATHEW:

All these 110 appeals of M/s Ortho Clinical Diagnostics India Pvt. Ltd.[1] arise from order[2] of Commissioner of Customs (Appeals), Mumbai Zone -III that, on challenge to disposing off as many assessments in bills of entry, filed between 2nd December 2020 and 28th April 2021, for import of 'diagnostic reagents' on which liability to duties of customs was determined, under section 17 of Customs Act, 1962[3] at the rate corresponding to tariff item 3822 0019 of First Schedule to Customs Tariff Act, 1975[4], having effect of denial of benefit of notification no. 50/2017-Cus dated 30th June 2017, as also recourse to serial no. 453 of Schedule III of IGST notification no. 01/2017 (Integrated Tax Rate) dated 28th June 2017 for discharge of 'integrated tax' for the purpose of section 3(7) of the Customs Tariff Act affirmed the detriments to them. The appellant is before us disputing the finding on merit that their claim for assessment at rate of duty corresponding to tariff item 3822 0090 of First Schedule to the Customs Tariff Act has been wrongly denied and that observance of

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1. **the appellant**
2. **[order-in-appeal no. MUM-CUSTM-AMP-APP-569-678/2021-22 dated 18th August 2021]**
3. **the Customs Act**
4. **the Customs Tariff Act**

the essence of assessment, in accordance with section 17(5) of the Customs Act for disputed classification to warrant issue of 'speaking order' in its breach was not considered at all.

2. It is common ground that the 'proper officer' had not issued order contemplated by section 17(5) of the Customs Act even as it was conceded, in the impugned order, that

> "2. Brief facts of the case are that the appellant imported various types of "Diagnostic reagents" and classified the same under CTH 38220019 (with Basic Customs duty @10%), However, at the time of verification of the self-assessment the respondent department reassessed them under CTH 38220090 (with Basic Customs duty 30%) and appellant. paid the higher rate of duty under protest."

and, yet, the first appellate authority went on to determine the merit of the classification too. Besides, the issue of 'integrated tax' was, even though of consequence, disregarded thus

> "12. Now, I will take up the second issue for consideration, I find that the appellants have just mentioned in this appeal that "additionally, IGST is payable @ 12% under S.No.80 of Schedule-II of Notification No. 1/2017-EGST (Rate). I find that it has nothing to do with the present issue of classification and leviablity of Basic Customs duty. Further, the appellant themselves have stated that the case has been adjudicated by the Commissioner of Customs (Imports), ACC, Sahar, Mumbai and they have been issued with Order in Original No. CAO No.CC-VA/12/2020-21 Adj(I) ACC dated 2.7.2020 and that the appellants have preferred an appeal before the Hon'ble CESTAT, Mumbai and the same is pending for disposal. As the issue is pending before the CESTAT, I am not inclined to take up the arguments of the appellant in this regard and discuss and go into the merits and de-merits of the same."

in the impugned order.

3. Learned Counsel for the appellant submitted that, there being no justification for the revision in rate of duty applicable to the imported goods, the merit of their classification could not be displaced. It was further submitted that, in a parallel dispute over 'integrated tax' applicable to identical goods imported by them, the Tribunal, in **Ortho Clinical Diagnostics India Pvt. Ltd** vs. **Commissioner of Customs (Import), Mumbai**[5], had ruled in their favour.

4. Learned Counsel pointed out that a series of decisions of the Tribunal had placed emphasis on the inappropriateness of re-determination of assessment without taking such venture to the consummation legislated in section 17(5) of the Customs Act which, according to him, sufficed to set the revised classification to nought. He relied upon the orders in **Shiv Ganesh Exim Pvt. Ltd** vs. **Commissioner of Customs, Jodhpur**[6], in **Harman International India Pvt. Ltd** vs. **Commissioner of Customs (Import), Air Cargo Complex, Mumbai**[7], in **Carestream Health India Pvt. Ltd** vs. **Commissioner of Customs (Import), Air Cargo Complex, Mumbai**[8] and in **Balaji International** vs. **Commissioner of Customs (Mulund CFS & General), Mumbai**[9] in support thereof.

5. Learned Authorized Representative submitted that the decision on merit in the impugned order is unassailable on the facts of the import and that affirmation of the re-classification offers no scope for dispute.

6. All that was available before the first appellate authority were the several bills of entry and the grounds of appeal preferred by the importer

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5. 2022 (9) TMI 1109 – CESTAT MUMBAI
6. 2024-TIOL-854-CESTAT-DEL
7. Customs Appeal No's. 87345-87538 of 2022 decided on 12.10.2023
8. Customs Appeal No. 86064 of 2019 decided on 22.09.2021
9. 2024 (9) TMI 123 – CESTAT MUMBAI

despite which justification was offered in the impugned order on merit of the re-classification. We find it exceptionable that an appellate authority, despite prefacing the order with

> "5. I have carefully gone through the records of the case and the submissions of the appellants…"

and, thus, setting out the material on record did not find it inappropriate to hold that

> "11. I, therefore, find that the stand/assessments carried out by the Respondent …..is correct and just…"

even while blissfully oblivious, as we are, of the stand of the 'proper officer' in revising the classification. Even the legal nicety for exercise of 'original jurisdiction', so to speak, afforded by second proviso in section 128A of the Customs Act was not resorted to despite the patent breach of principles of natural justice by the original authority in placing the importer on notice of detriment being on record.

7. That the claim of the appellant herein for classification, with lower duty liability in consequence, had been preferred in the bill of entry is not in dispute; such are entered in the 'check list' which, upon discharge of duty liability, is transformed as assessed bill of entry for clearance from customs control under section 47 of the Customs Act. The revision occurred between filing of bill of entry and the conclusion of mandate under section 17 of the Customs Act and, all this while, except by foregoing release of goods, albeit temporarily, the importer is under the absolute power of 'proper officer' which appears to have caused them to acquiesce in the determination of higher duty burden. This is not in conformity with

> "(1) An importer entering any imported goods under

> section 46, or an exporter entering any export goods under section 50, shall, save as otherwise provided in section 85, self-assessment the duty, if any, leviable on such goods."

of section 17 of the Customs Act with option afforded to 'proper officer' in terms of

> "(4) Where it is found on verification, examination or testing of the goods or otherwise that the self-assessment is not done correctly, the proper officer may, without prejudice to any other action which may be taken under this Act, re-assess the duty leviable on such goods."

therein. Such misdirection of 'self-assessment' is inappropriate exercise of statutory authority and it is but proper for superior authorities to set right such travesty of law. A copy of this order may, therefore, be placed before Chairman, Central Board of Indirect Taxes & Customs (CBIC) for his attention.

8. The first appellate authority had been cognizant of the circumstances in which the appeal came to be filed and was aware that justification for revision, as required by

> "(5) Where any re-assessment done under sub-section (4) is contrary to the self-assessment done by the importer or exporter and in cases other than those where the importer or the exporter, as the case may be, confirms his acceptance of the said re-assessment in writing, the proper officer shall pass a speaking order on the re-assessment, within fifteen days from the date of re-assessment of the bill of entry or the shipping bill, as the case may be."

in section 17 of the Customs Act was not in existence. Affirmation of re-assessment without any material to go by invalidates it ab initio. The lack thereof should have prompted the first appellate authority to enforce compliance with consequence of revision. Not having done so invalidates the impugned order.

9. Accordingly, we set aside the impugned order and restore the bills of entry before the original authority for disposal in the manner set out in section 17 of the Customs Act. These appeals are allowed by way of remand.

(Order pronounced on **28.11.2024**)

(JUSTICE DILIP GUPTA)
PRESIDENT

(C J MATHEW)
MEMBER (TECHNICAL)

**/as*