CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL MUMBAI

REGIONAL BENCH - COURT NO. I

Customs Appeal No. 86090 of 2024

(Arising out of Order-in-Original No.CC-VA/14/2020-21Adj.(I)ACC dated 07.07.2020 passed by the Commissioner of Customs-III (Import), ACC Mumbai)

Merck Life Science Pvt. Ltd. **.... Appellant**
8th Floor, Godrej One, Pirojsha Nagar,
Eastern Express Highway,
Vikhroli (E), Mumbai – 400 079.

VERSUS

Commissioner of Customs (Import), **.... Respondent**
Air Cargo Mumbai
Air Cargo Complex Sahar, Andheri East,
Mumbai 400 099.

APPEARANCE:

Shri Dron Parmar Chartered Accountant for the appellant

Shri Ram Kumar, Authorized Representative for the Revenue

CORAM:

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

FINAL ORDER NO. A/85258/2025

Date of Hearing: 07.02.2025

Date of Decision: 07.02.2025

Per: S.K. MOHANTY

Heard both sides and examined the case records.

2. This appeal is directed against the impugned order dated 07.07.2020 passed by the Commissioner of Customs (Import), Mumbai. Vide the impugned order, the learned adjudicating authority has changed the classification of imported goods from CTH 38220019 to CTH 38220090 and also denied the exemption from payment of CVD, as claimed by the appellant. The impugned order has also denied the concessional rate of IGST claimed by the appellant at the rate of 12% in terms of S. No.80 of Schedule II of Notification No. 1/2017- dated 28.06.2017. Further, the impugned order has also confirmed the interest as well as penalty demand

proposed for recovery in the show cause notice. Appellant has preferred this appeal against the impugned order, only on the limited issue of denial of the concessional rate of IGST claimed by them under Notification No. 1/2017 dated 28.06.2017.

3. In support of denial of the benefit of the said notification dated 28.06.2017, the original authority has stated that S. No. 80 of Schedule II in the said notification covers only "diagnostic kits and diagnostic reagents". It was further held that laboratory reagents, certified reference materials, pharmaceutical reference standards etc., are not covered in the said Schedule and therefore, the benefit of IGST at the rate of 12% shall not be available to the appellant.

4. The issue with regard to grant of IGST benefit at the rate of 12% was the subject matter of dispute across the industries and accordingly, the matter was referred to the GST Council for their recommendation with regard to levy of appropriate duty/IGST on the disputed goods. Upon consideration of the issue with regard to the Notification dated 28.06.2017, the GST Council has clarified that the prescribed GST rate of 12% shall be available to all goods, whether diagnostic or laboratory reagents, falling under heading 3822. Pursuant to the classification furnished by the GST Council, the Tax Research Unit (TRU) in the Ministry of Finance, Department of Revenue had issued the Circular No. 163/19/2021-GST dated 06.10.2021, clarifying the recommendation furnished by the GST Council as under:

> *"10. **All laboratory reagents and other goods falling under heading 3822:***
>
> *10.1 Entry at S. No. 80 of Schedule II of notification No.1/2017-Integrated Tax (Rate) dated 28.6.2017 prescribes GST rate of 12% for "All diagnostic kits and reagents".*
>
> *10.2 Representations have been received whether the benefit of concessional rate of 12%, would be available to laboratory agents and other goods falling under heading 3822.*
>
> *10.3 Heading 3822 covers "Diagnostic or Laboratory Reagents, Certified Reference Materials etc."*
>
> *10.4 The issue was placed before the GST Council and on its recommendations, it is clarified that the intention of this entry was*

> *to prescribe GST rate of 12% to all goods, whether diagnostic or laboratory regents, falling under heading 3822.*
>
> *10.5 It is accordingly clarified that concessional GST rate of 12% is applicable on all goods falling under heading 3822, vide Entry at S. No. 80 of Schedule II of notification No.1/2017-Integrated Tax (Rate) dated 28.6.2017.*

5. In view of the fact that the issue with regard to availment of the concessional rate of IGST has already been clarified by the GST Council and such clarification has already been communicated by the TRU in the Ministry of Finance, Department of Revenue, we are of the view that the adjudged demands with regard to IGST, as confirmed vide para 16(iii) in the impugned order shall not be sustained for judicial scrutiny. Thus, the appeal filed by the appellant to such extent is allowed by setting aside the impugned order. The resultant interest liability and the quantum of penalty imposed in the impugned order, after giving relief to the extent allowed herein has to be calculated on the basis of the order that the appellant is entitled for the concessional rate of IGST in terms of Notification dated 28.06.2017. Since, the appellant has not specifically pleaded about the other demands confirmed in the impugned order, we are not expressing any opinion with regard to the confirmation of such demand by the adjudicating authority and thus, the department is at liberty to recover the said demands from the appellant.

6. The appeal is disposed of in above terms.

(Dictated and pronounced in open court)

(S.K. MOHANTY)
MEMBER (JUDICIAL)

(M.M. PARTHIBAN)
MEMBER (TECHNICAL)

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