CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI

REGIONAL BENCH - COURT NO. I

Customs Appeal No. 87155 of 2023

(Arising out of Order-in-Original No. CC-GSS/05/2023-24 Adj. (I) ACC dated 30.05.2023 passed by the Commissioner of Customs (Import), Air Cargo Complex (ACC), Mumbai)

Glenmark Pharmaceuticals Limited .... **Appellants**
B/2, Mahalaxmi Chambers,
22, Bhulabhai Desai Road,
Mumbai - 400 026.

Versus

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

Appearance:

Shri T. Viswanathan a/w Shri Akhilesh Kangsia, Ms. Madhura Khandekar, Advocates for the Appellant

Shri Ram Kumar, 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/85262/2025

Date of Hearing: 26.08.2024

Date of Decision: 25.02.2025

PER: M.M. PARTHIBAN

This appeal has been filed by M/s Glenmark Pharmaceuticals Limited, Mumbai (herein after, referred to as 'the appellants'), assailing Order-in-Original No. CC-GSS/05/2023-24 Adj. (I) ACC dated 30.05.2023 (herein after, referred to as 'the impugned order') passed by the Commissioner of Customs (Import), Air Cargo Complex (ACC), Mumbai.

2. The brief facts of the case are that the appellants had imported 'Crimp Pumps' of various types and configurations by classifying it under Customs Tariff Item (CTI) 8413 5010, 8413 5090, and CTI 3926 9090 for its plastic parts, by filing various Bills of Entry (B/Es) filed during the period 15.04.2021 to 19.11.2021 and self-assessed the same with applicable Basic Customs Duty (BCD) of 7.5% *ad valorem* and additional duty of Customs (CVD) at applicable rates in terms of Section 17(1) of the Customs Act,

1962. The officers of the Customs Audit wing during the premises-based audit of assessment of imported goods, had objected to the classification of the imported goods and had raised a query seeking reply from the appellants as to why the imported goods should not be classified under CTI 9616 1020 with applicable Basic Customs Duty (BCD) of 20% *ad valorem*. After detailed analysis of the reply submitted to the audit objections and being not satisfied with such reply, the department had issued Show Cause Notice (SCN) dated 22.07.2022, for revising the classification of imported goods and by demanding differential duty along with interest and for imposition of penalty on the appellants. In adjudication of the said SCN, the original authority had come to the conclusion that the imported goods are used for medicaments which work on the principle of spray forming mechanism and that the goods are part of a bottle that is to hold the liquid form of medication for nasal application which disperses the liquid/a mass of droplets on the surface. Further, the original authority also found that complete scent sprays, perfume sprayer bottle and similar toilet sprays including nasal sprays is to be classified under CTI 9616 1010 and unassembled article including crimp pump is to be classified as if it were the finished product as per GRI 2(a) and vide Order-in-Original dated 30.05.2023 held that the impugned goods are classifiable under the CTI 9616 1020 of the First Schedule to the Customs Tariff Act, 1975 and not under the declared CTI 8413 5010, 8413 5090 and 3926 9090. Being aggrieved with the impugned order, the appellants have filed this appeal before the Tribunal.

3.1. Learned Advocate for the appellants submitted that ‘Crimp Pump’, as given in the picture shown in their written submission (which is extracted and shown below for ease of reference and better appreciation), is one of the components of ‘Nasal spray device’ which is used in for dispersal of medicaments which work on the principle of spray forming mechanism.

Figure 1 – Crimp Pump (imported goods) & Figure 2 – Nasal Spray (finished product)

The product literature indicate that this nasal spray relieves symptoms of rhinitis (blocked nose), running nose, sneezing and sinus discomfort. Nasal sprays are used for dispersing measured doses of drug/liquid through metered valve and is operated by hand. The nasal spray comprises of a plastic feed tube which dips in the reservoir/bottle which contains the medicament, a piston with spring which works in-tandem to perform the suction tension, and an actuator head which may not only initiates the suction action but it will also be used to dispense the medicament. He further stated that the product brochures placed on record clearly indicate that the imported 'Crimp Pump' used as part of Nasal Spray is used to dispense/spray the liquid form of drug in the nasal cavity of the patients. Thus, he claimed that the imported item is no manner whatsoever is used in a 'scent spray or perfume spray' in order to classify the same under CTI 9616 1020.

3.2 Learned Advocate submitted that their views on classification of imported goods declared by the appellants were duly supported by the Harmonized System of Nomenclature (HSN) which provides for coverage of only scent and toilet sprays in heading 9616. Hence, he pleaded that the impugned order is not legally sustainable.

3.3 In support of their stand, learned Advocate had relied upon following decisions of the Tribunal in the respective cases mentioned below:

(i) *Commissioner of Customs, Bombay Vs. CIPLA Ltd.* – 1998 (102) E.L.T. 739 (Tribunal)

(ii) *Perfect Aerosol Valves Pvt. Ltd. Vs. Commissioner of Customs, (NS-V), Nhava Sheva in the Final Order No. A/85500/2024 dated 22.04.2024* of Tribunal, Regional Bench, Mumbai.

4.1 Learned Authorised Representative (AR) reiterated the findings made by the Commissioner of Customs in the impugned order and submitted that issue of classification of impugned goods, has been examined in detail by the learned Commissioner of Customs. He stated that the appellants have described the imported goods as 'crimp pump' but claimed the classification under CTH 8413 50 which is meant for positive displacement pumps such as dosage pumps. From the sample photograph of the product, he submitted that the goods have both features of spray and pumps; pumps alone do not form aerosols on their own. He further stated that since the impugned goods by their way of functioning and other mechanism are very akin to the 'similar toilet spray', and these are rightly classifiable under CTI 9616 1020.

4.2 Learned AR also submitted that the learned Commissioner (Appeals) by relying on the General Rules of Interpretation (GRI) classified the goods CTI 9616 1020 as the description is more specific, in comparison to the general description of goods under CTI 8413 5010.

4.3 Thus, learned AR justified the action in the impugned order dated 30.05.2023, for re-classifying the goods under CTI 9616 1020 and thus pleaded for rejecting the appeals filed by the appellants.

5. We have heard the learned Advocates appearing for the appellants and the learned Authorized Representative of the Department and perused the case records. Further, we have also considered the additional written submissions in the form of paper books given by both sides.

6.1 The issue involved herein is to decide the classification of imported goods by the appellants as to whether, the same merits classification under Customs Tariff Heading (CTH) 8413 50 and further under Customs Tariff Item (CTI) 8413 5010/8413 5090 as claimed by the appellants; or, is it classifiable under CTI 9616 1020 as determined by the learned Commissioner of Customs, for deciding on the appropriate levy of customs duty.

6.2 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
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 provision 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 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."

6.3 From 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 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.

7. In the case before us, the contending classification of imported goods discussed in the impugned order are either under CTI 8413 5010/8413 5090 or CTI 9616 1020 of the First Schedule to the Customs Tariff Act. Thus, it is clear that at the Chapter level itself, there is difference of opinion among the department and the appellants. The dispute in classification therefore lies in the narrow compass of analysis of the appropriate Chapter and its Headings under which the impugned goods are covered as per the Customs Tariff and then classifying the impugned product under the corresponding Sub-heading, Tariff Item. Before we examine the classification issue as above, firstly we would like to make this preliminary observation on the classification of parts/goods covered under CTH 3926. As the scope of goods covered under CTI 3926 90 00 relates to "--- *Other"* under the "- *Other*" of sub-heading 3926 90 falling under the category of goods described as "*other articles of plastics and articles of other materials of headings 3901 to 3914*", and in as much the disputed classification of 'crimp pump' is to be examined for consideration between headings 8413 and 9616, we are of the view that the classification of parts of crimp pump not falling under headings 3901 to 3914 cannot be classifiable neither under CTI 3926 9091 nor under CTI 39260 9099. These parts would be appropriately classified under the respective headings of the crimp pump as may be arrived at herein, after examination of the issue of classification of main item i.e., Crimp Pumps, under either one of the classifications contended by the appellants and the department. Now, we may closely examine the scope of the contending classification for determining correct classification of the imported goods. The relevant headings and their tariff entries in the First Schedule to the Customs Tariff Act, 1975 of contending Chapter headings 8413 and 9616 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 chapter does not cover:*
   ….

2. *Subject to Note 1 to this Section, Note 1 to Chapter 84 and to Note 1 to Chapter 85, parts of machines (not being parts of the articles of heading 8484, 8544, 8545, 8546 or 8547) are to be classified according to the following rules:*

   (a) parts which are goods included in any of the headings of Chapter 84 or 85 (other than headings 8409, 8431, 8448, 8466, 8473, 8487, 8503, 8522, 8529, 8538 and 8548) are in all cases to be classified in their respective headings;

   (b) other parts, if suitable for use solely or principally with a particular kind of machine, or with a number of machines of the same heading (including a machine of heading 8479 or 8543) are to be classified with the machines of that kind or in heading 8409, 8431, 8448, 8466, 8473, 8503, 8522, 8529 or 8538 as appropriate. However, parts which are equally suitable for use principally with the goods of headings 8517 and 8525 to 8528 are to be classified in heading 8517;

   (c) all other parts are to be classified in heading 8409, 8431, 8448, 8466, 8473, 8503, 8522, 8529 or 8538 as appropriate or, failing that, in heading 8487 or 8548.

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.

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CHAPTER 84

Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof

Notes :

1. This Chapter does not cover :
   (a) millstones, grindstones or other articles of Chapter 68;
   (b) machinery or appliances (for example, pumps) of ceramic material and ceramic parts of machinery or appliances of any material (Chapter 69);
   (c) laboratory glassware (heading 7017); machinery, appliances or other articles for technical uses or parts thereof, of glass (heading 7019 or 7020);
   (d) articles of heading 7321 or 7322 or similar articles of other base metals (Chapters 74 to 76 or 78 to 81);
   (e) vacuum cleaners of heading 8508;
   (f) electro-mechanical domestic appliances of heading 8509; digital cameras of heading 8525;
   (g) radiators for the articles of Section XVII; or
   (h) hand-operated mechanical floor sweepers, not motorised (heading 9603).

2. Subject to the operation of Note 3 to Section XVI and subject to Note 9 to this Chapter, a machine or appliance which answers to a description in one or more of the headings 8401 to 8424, or heading 8486 and at the same time to a description in one or other of the headings 8425 to 8480 is to be classified under the appropriate heading of the headings 8401 to 8424 or under the heading 8486, as the case may be, and not under the headings 8425 to 8480.

   Heading 8419 does not, however, cover :
   (a) germination plant, incubators or brooders (heading 8436);
   (b) grain dampening machines (heading 8437);
   (c) diffusing apparatus for sugar juice extraction (heading 8438);
   (d) machinery for the heat-treatment of textile yarns, fabrics or made up textile articles (heading 8451); or
   (e) machinery, plant or laboratory equipment, designed for mechanical operation, in which a change of temperature, even if necessary, is subsidiary.

   Heading 8422 does not cover :
   (a) sewing machines for closing bags or similar containers (heading 8452); or
   (b) office machinery of heading 8472.

   Heading 8424 does not cover :
   (a) Ink-jet printing machines (heading 8443); or
   (b) Water-jet cutting machines (heading 8456).

3. A machine-tool for working any material which answers to a description in heading 8456 and at the same time to a description in heading 8457, 8458, 8459, 8460, 8461, 8464 or 8465 is to be classified in heading 8456.

4. Heading 8457 applies only to machine-tools for working metal, other than lathes (including turning centers), which can carry out different types of machining operations either :
   (a) by automatic tool change from a magazine or the like in conformity with a machining programme (machining centers),
   (b) by the automatic use, simultaneously or sequentially, of different unit heads working on a fixed position workpiece (unit construction machines, single station), or
   (c) by the automatic transfer of the workpiece to different unit heads (multi-station transfer machines).

5. (A) For the purposes of heading 8471, the expression "automatic data processing machine" means machine capable of :
   (i) storing the processing programme or programmes and at least the data immediately necessary for the execution of the programme;
   (ii) being freely programmed in accordance with the requirements of the user;
   (iii) performing arithmetical computations specified by the user; and
   (iv) executing, without human intervention, a processing programme which requires them to modify their execution, by logical decision during the processing run.

   (B) Automatic data processing machines may be in the form of systems consisting of a variable number of separate units.

   (C) Subject to paragraphs (D) and (E), a unit is to be regarded as being part of an automatic data processing system if it meets all of the following conditions :
   (i) it is of a kind solely or principally used in an automatic data processing system;
   (ii) it is connectable to the central processing unit either directly or through one or more other units; and
   (iii) it is able to accept or deliver data in a form (codes or signals) which can be used by the system.

   Separately presented units of an automatic data processing machine are to be classified in heading 8471. However, keyboards, X-Y co-ordinate input devices and disk storage units which satisfy the conditions of (ii) and (iii) above, are in all cases to be classified as units of heading 8471.

   (D) Heading 8471 does not cover the following when presented separately, even if they meet all of the conditions set forth in paragraph (C) :
   (i) printers, copying machines, facsimile machines, whether or not combined;

8413	Pumps for liquids, whether or not fitted with a measuring device; liquid elevators			
	- *Pumps fitted or designed to be fitted with a measuring device :*			
8413 11	-- *Pumps for dispensing fuel or lubricants, of the type used in filling stations or in garages :*			
8413 11 10	--- Hand pumps	u	10%	-
	--- *Other :*			
8413 11 91	---- Pumps for dispensing fuel	u	7.5%	-
8413 11 99	---- Other	u	7.5%	-
8413 19	-- *Other :*			
8413 19 10	--- Hand pumps	u	10%	-
8413 19 90	--- Other	u	7.5%	-
8413 20 00	- Hand pumps, other than those of sub-heading 8413 11 or 8413 19	u	10%	-
8413 30	- *Fuel, lubricating or cooling medium pumps for internal combustion piston engines :*			
8413 30 10	--- Injection pumps for diesel engines	u	7.5%	-
8413 30 20	--- Oil pump	u	7.5%	-
8413 30 30	--- Water pump	u	7.5%	-
8413 30 90	--- Other	u	7.5%	-

Chapter 84	Machinery and mechanical appliances			1484
8413 40 00	- Concrete pumps	u	7.5%	-
8413 50	- *Other reciprocating positive displacement pumps :*			
8413 50 10	--- Metering and dosing pumps	u	7.5%	-
	--- *Primarily designed for handling water :*			
8413 50 21	---- Deep tube well turbine pump	u	7.5%	-
8413 50 29	---- Other	u	7.5%	-
8413 50 90	--- Other	u	7.5%	-
8413 60	- *Other rotary positive displacement pumps :*			
8413 60 10	--- Gear type pumps	u	7.5%	-
8413 60 20	--- Screw type pumps	u	7.5%	-
8413 60 90	--- Other	u	7.5%	-
8413 70	- *Other centrifugal pumps :*			
8413 70 10	--- Primarily designed to handle water	u	7.5%	-
	--- *Other :*			
8413 70 91	---- Single and multistage chemical process pumps	u	7.5%	-
8413 70 92	---- Horizontal split casing pumps	u	7.5%	-
8413 70 93	---- Horizontal self priming pumps	u	7.5%	-
8413 70 94	---- Vertical turbine driven pumps	u	7.5%	-
8413 70 95	---- Boiler feed pumps	u	7.5%	-
8413 70 96	---- Slurry pumps	u	7.5%	-
8413 70 97	---- Dredger pumps	u	7.5%	-
8413 70 99	---- Other	u	7.5%	-
	- *Other pumps-liquid elevators :*			
8413 81	-- *Pumps :*			
8413 81 10	--- Gas pumps	u	7.5%	-
8413 81 20	--- Hydraulic ram	u	7.5%	-
8413 81 30	--- Axial flow and mixed flow vertical pump designed primarily for handling water	u	7.5%	-
8413 81 90	--- Other	u	7.5%	-
8413 82 00	-- Liquid elevators	u	7.5%	-
	- *Parts :*			
8413 91	-- *Of pumps :*			
8413 91 10	--- Of reciprocating pumps	kg.	7.5%	-
8413 91 20	--- Of centrifugal pumps	kg.	7.5%	-
8413 91 30	--- Of deep well turbine pumps and of other rotary pumps	kg.	7.5%	-
8413 91 40	--- Of hand pump for handling water	kg.	10%	-
8413 91 90	--- Other	kg.	7.5%	-
8413 92 00	-- Of liquid elevators	kg.	7.5%	-
8414	**Air or vacuum pumps, air or other gas compressors and fans; ventilating or recycling hoods incorporating a fan, whether or not fitted with filters**			
8414 10 00	- Vacuum pumps	u	7.5%	-
8414 20	- *Hand or foot-operated air pumps :*			
8414 20 10	--- Bicycle pumps	u	10%	-
8414 20 20	--- Other hand pumps	u	10%	-
8414 20 90	--- Other	u	7.5%	-
8414 30 00	- Compressors of a kind used in refrigerating equipment	u	15%	-
8414 40	- *Air compressors mounted on a wheeled chassis for towing :*			
8414 40 10	--- Reciprocating air compressors	u	15%	-
8414 40 20	--- Centrifugal air compressors	u	15%	-
8414 40 30	--- Screw air compressors	u	15%	-
8414 40 90	--- Other	u	15%	-
	- *Fans :*			
8414 51	-- *Table, floor, wall, window, ceiling or roof fans, with a self-contained electric motor of an output not exceeding 125 W :*			
8414 51 10	--- Table fans	u	20%	-
8414 51 20	--- Ceiling fans	u	20%	-
8414 51 30	--- Pedestal fans	u	20%	-
8414 51 40	--- Railway carriage fans	u	10%	-
8414 51 50	--- Wall fans	u	20%	-
8414 51 90	--- Other	u	20%	-
8414 59	-- *Other :*			

and

CHAPTER 96

Miscellaneous manufactured articles

Notes :

1. This Chapter does not cover :

(a) pencils for cosmetic or toilet uses (Chapter 33);

(b) articles of Chapter 66 (for example, parts of umbrellas or walking-sticks);

(c) imitation Jewellery (heading 7117);

(d) parts of general use, as defined in Note 2 of Section XV, of base metal (Section XV), or similar goods of plastics (Chapter 39);

(e) cutlery or other articles of Chapter 82 with handles or other parts of carving or moulding materials; heading 9601 or 9602 applies, however, to separately presented handles or other parts of such articles;

(f) articles of Chapter 90, for example, spectacle frames (heading 9003), mathematical drawing pens (heading 9017), brushes of a kind specialised for use in dentistry or for medical, surgical or veterinary purposes (heading 9018);

(g) articles of Chapter 91 (for example, clock or watch cases);

(h) musical instruments or parts or accessories thereof (Chapter 92);

(ij) articles of Chapter 93 (arms and parts thereof);

(k) articles of Chapter 94 (for example, furniture, lamps and lighting fittings);

(l) articles of Chapter 95 (toys, games, sports requisites);

(m) works of art, collectors' pieces or antiques (Chapter 97).

2. In heading 9602, the expression "vegetable or mineral carving material" means :

(a) hard seeds, pips, hulls and nuts and similar vegetable materials of a kind used for carving (for example, corozo and dom);

(b) amber, meerschaum, agglomerated amber and agglomerated meerschaum, jet and mineral substitutes for jet.

3. In heading 9603, the expression "prepared knots and tufts for broom or brush making" applies only to unmounted knots and tufts of animal hair, vegetable fibre or other material, which are ready for incorporation without division in brooms or brushes, or which require only such further minor processes as trimming to shape at the top, to render them ready for such incorporation.

4. Articles of this Chapter, other than those of headings 9601 to 9606 or 9615, remain classified in the Chapter whether or not composed wholly or partly of precious metal or metal clad with precious metal, of natural or cultured pearls, or precious or semi-precious stones (natural, synthetic or reconstructed). However, headings 9601 to 9606 and 9615 include articles in which natural or cultured pearls, precious or semi-precious stones (natural, synthetic or reconstructed), precious metal or metal clad with precious metal constitute only minor constituents.

Tariff Item	Description of goods	Unit	Rate of duty*†#	
			Standard	*Preferential Areas*
(1)	(2)	(3)	(4)	(5)
9601	**Worked ivory, bone, tortoise-shell, horn, antlers, coral, mother-of-pearl and other animal carving material, and articles of these materials (including articles obtained by moulding)**			
9601 10 00	- Worked ivory and articles of ivory	kg.	10%	-
9601 90	- *Other* :			
9601 90 10	--- Worked tortoise-shell and articles thereof	kg.	10%	-
9601 90 20	--- Worked mother-of-pearl and articles thereof	kg.	10%	-
9601 90 30	--- Worked bone (excluding whale bone) and articles thereof	kg.	10%	-
9601 90 40	--- Worked horn, coral and other animal carving material and articles thereof	kg.	10%	-
9601 90 90	--- Other	kg.	10%	-
9602	**Worked vegetable or mineral carving material and articles of these materials moulded or carved articles of wax, of stearin, of natural gums or natural resins or of modelling pastes, and other moulded or carved articles, not elsewhere specified or included; worked, unhardened gelatin (except gelatin of heading 3503) and articles of unhardened gelatin**			
9602 00	- *Worked vegetable or mineral carving material and articles of these materials moulded or carved articles of wax, of stearin, of natural gums or natural resins or of modelling pastes, and other moulded or carved articles, not elsewhere specified or included; worked, unhardened gelatin (except gelatin of heading 3503) and articles of unhardened gelatin* :			
9602 00 10	--- Worked vegetable carving material and articles thereof	kg.	10%	-

Chapter 96	Miscellaneous manufactured articles			1672
9612	Typewriter or similar ribbons, inked or otherwise prepared for giving impressions, whether or not on spools or in cartridges; ink-pads, whether or not inked, with or without boxes			
9612 10	- *Ribbons :*			
9612 10 10	--- Computer printer ribbon	u	10%	-
9612 10 20	--- Ribbon for typewriters, other than electronic and similar machines	u	10%	-
9612 10 30	--- Ribbon for electronic typewriter	u	10%	-
9612 10 90	--- Other	u	10%	-
9612 20 00	- Ink-pads	u	10%	-
9613	Cigarette lighters and other lighters, whether or not mechanical or electrical, and parts thereof other than flints and wicks			
9613 10 00	- Pocket lighters, gas fuelled, non-refillable	u	20%	-
9613 20 00	- Pocket lighters, gas fuelled, refillable	u	20%	-
9613 80	- *Other lighters :*			
9613 80 10	--- Electronic	u	20%	-
9613 80 90	--- Other	u	20%	-
9613 90 00	- Parts	u	20%	-
9614 00 00	Smoking pipes (including pipe bowls) and cigar or cigarette holders and parts thereof	u	10%	-
9615	Combs, hair-slides and the like, hairpins, curling pins, curling grips, hair-curlers and the like, other than those of heading 8516, and parts thereof			
	- *Combs, hair-slides and the like :*			
9615 11 00	-- Of hard rubber or plastics	kg.	20%	-
9615 19 00	-- Other	kg.	20%	-
9615 90 00	- Other	kg.	20%	-
9616	Scent sprays and similar toilet sprays, and mounts and heads therefor; powder-puffs and pads for the application of cosmetics or toilet preparations			
9616 10	- *Scent sprays and similar toilet sprays, and mounts and heads therefor :*			
9616 10 10	--- Scent sprays and similar toilet sprays	kg.	20%	-
9616 10 20	--- Mounts and heads	kg.	20%	-
9616 20 00	- Powder-puffs and pads for the application of cosmetics or toilet preparations	kg.	20%	-
9617	Vacuum flasks and other vacuum vessels, complete with cases; parts thereof other than glass inners			
9617 00	- *Vacuum flasks and other vacuum vessels, complete with cases; parts thereof other than glass inners :*			
	--- *Vacuum flasks and other vacuum vessels, complete with case :*			
9617 00 11	---- Vacuum flasks having a capacity not exceeding 0.75 l	kg.	20%	-
9617 00 12	---- Vacuum flasks having a capacity exceeding 0.75 l	kg.	20%	-
9617 00 13	---- Casserol and other vacuum containers	kg.	20%	-
9617 00 19	---- Other	kg.	20%	-
9617 00 90	--- Parts (other than glass inners)	kg.	20%	-
9618 00 00	Tailors' dummies and other lay figures; automata and other animated displays, used for shop window dressing	kg.	10%	-
9619	Sanitary towels (pads) and tampons, napkins and napkin liners for babies and similar articles, of any material			
9619 00	- *Sanitary towels (pads) and tampons, napkins and napkin liners for babies and similar articles, of any material :*			
9619 00 10	--- Sanitary towels (pads) or sanitary napkins	kg.	10%	-
9619 00 20	--- Tampons	kg.	10%	-
9619 00 30	--- Napkins and napkin liners for babies	kg.	10%	-

8.1 It could be seen that by applying the GIR 1, the position is made clear that Chapter Heading 8413 covers within its scope and ambit, mainly of six broad categories of goods:

(i) first one i.e., "Pumps fitted or designed to be fitted with a measuring device like the one used for dispensing fuel or lubricants, of the type used in filling stations or in garages; and hand pumps" covered under CTH 8413 10 and 8413 20, respectively;

(ii) the second one i.e., "Fuel, lubricating or cooling medium pumps for internal combustion engines" covered under CTH 8413 30;

(iii) the third one i.e., "Concrete pumps" covered under CTH 8413 40";

(iv) the fourth one i.e., "Other reciprocating positive displacement pumps, including metering and dosing pumps; and such pumps designed for handling water", covered under CTI 8413 5010 and CTI 8413 5020, respectively and "similar pumps designed for other liquids" covered under CTI 8413 5090;

(v) the fifth one i.e., other rotary positive displacement pumps; other centrifugal pumps; other pumps not covered in the above groups; and pump liquid elevators grouped under CTH 8413 60, 8413 70 and 8413 80 respectively; and

(vi) the sixth one i.e., parts of any of the above pumps and liquid elevators classifiable under heading 8413 is covered under CTH 8413 90, and their respective tariff items.

8.2. Similarly, by applying same GIR 1, it could also be seen that Chapter Heading 9616 covers within its scope and ambit, mainly of three broad categories of goods:

(i) first one i.e., "Scent sprays and similar toilet sprays," covered under CTI 9616 1010;

(ii) the second one i.e., "mounts and heads for scent sprays and similar toilet sprays" covered under CTI 9616 1020; and

(iii) the third one i.e., "powder-puffs and pads for the application of cosmetics or toilet preparations" covered under CTI 9616 20 00.

8.3 Broadly, we find that the chapter heading 8413 deals with "various types of pumps and other similar mechanical appliances for liquids, along with their respective parts". Whereas, Chapter heading 9616 deals with products of "Scent sprays and similar toiler preparations along with mounts, heads, powder-puffs and pads" as a part of miscellaneous manufactured articles. The scope of coverage of Chapter 8413 is large enough to cover all types of pumps and other similar appliances, irrespective of its application in dispersal of medicament liquid or other use; Whereas the scope of coverage of goods under chapter heading 9616 is restrictive to scent sprays, toilet sprays which are of cosmetics in nature and those items such as mounts, heads, powder-puffs and pads which are essential for its application have alone been included with such items.

8.4 The learned Commissioner of Customs had come to the conclusion that the imported goods are classifiable under CTI 9616 1020 on the basis of following findings:

> *"16.2 From the above, it can be seen that CTH 9616 covers sprays whether table or pocket type and whether intended for personal or professional use.* ***It consists of a complete set which includes a reservoir, to which is fixed the mount which incorporates the head with its spray forming mechanism and a pneumatic pressure bulb or a piston device.***
>
> *16.3 I find that the noticee has contended that their product does not figure under CTH 9616 and the product is more appropriately classifiable under CTH 8413. As discussed supra, CTH 8413 covers mechanical devices and not impugned goods which is hand operated whereas I find that Chapter 96 covers "Miscellaneous manufactured articles" and the classification held by the department under CTH 9616 specifically covers the impugned goods and as per explanatory notes the same is not limited to usage in cosmetics and toilet sprays.*
>
> *…*
>
> *19.2 On perusal of text of GRI 2(a) of the General Rules for the Interpretation of Import Tariff/ the General Rules for the Interpretation of the First Schedule to the Customs Tariff Act, 1975 and taking into account the actual usage/ characteristics of the impugned goods which form a bottle that is to hold a NASAL SPRAYS liquid in other words the impugned goods are fitted on bottle containing meditational liquid for nasal, I find the complete scent sprays/ perfume sprayer bottle and similar toilet sprays including nasal sprays is to be classified under heading 96161010 of the first Schedule to the Customs Tariff Act, 1975. Thus, by virtue of GRI 2(a), such a complete scent sprays/perfume sprayer bottle and similar toilet sprays including nasal sprays and unassembled article including crimp pump is to be classified as if it were the finished product under heading 96161010 of the first Schedule to the Customs Tariff Act, 1975. Also, the mounts and head are classifiable under heading 96161020 of the first Schedule to the Customs Tariff Act, 1975. Hence, tariff heading 9616 is the most appropriate classification for the impugned product."*

8.5 From the above, it is seen that the Revenue's contention is that in terms of GIR-2(a), the impugned goods shall be classifiable under CTH 9616 1020 as the description of the goods i.e., 'crimp pumps' forms part of the nasal sprayer mechanism and therefore learned adjudicating authority had held that classification under this heading is more specific, and appropriate over the contending heading as claimed by the appellants under 8413 5010/ 8413 5090, which is appropriate for mechanical devices. From the careful reading of the GIRs, it could be seen that these are required to be followed sequentially; in other words when the classification of goods is not possible to be arrived under the first rule GIR-1 then one need to proceed further, one by one. Further, for invoking GIR-2(a), the preceding rules i.e., GIR 1, is to be exhausted. As it could be seen that in the present case, when the classification of goods can be arrived at by following GIR-1, by detailed analysis of the specific customs tariff items under the respective headings, then there is no case for invoking GIR-2(a) arbitrarily. Further, the learned Commissioner in the impugned order had not examined and discussed the terms of headings and the scope of contending tariff entries, read with relevant section or chapter notes, before going ahead for adoption of GIR 2(a). Thus, it is not feasible to determine appropriate classification by application of GIR-2(a) alone, by ignoring the terms of headings which alone is sustainable inasmuch as the terms of heading solely determines appropriate classification for legal purposes.

8.6 Further, in order to evaluate the proper classification of imported goods, in terms of GIR-1, one has to take the assistance of the relative Section or Chapter notes besides the description or terms of the headings. In terms of Section Notes 3, 4 and 5 to Section XVI containing Chapter 84, 85 deals with appliances or machines. In terms of Section Note 3 the principal function would determine the classification; Section Note 4 states that if individual components which clearly contribute performance of specific function, then the whole machine shall also be classified under the respective entry in Chapter 84 or 85. Further Section Note 5 provide that the expression 'machine' shall refer to any machine, machinery, plant, equipment, apparatus or appliance cited in the headings of Chapter 84 or 85. Therefore, the description of chapter heading 8413 covers various types of appliances used in containers like tanks, vats or other similar containers. Whereas there is no specific section note or chapter note covering the articles of chapter heading 9616.

8.7 We find that the two contending classification are i.e., one under CTI 8413 50 10 'metering and dosing pumps' as well as CTI 8413 5090 'Other' of 'Other positive displacement pumps' as claimed by the appellants; and the other one is under CTI 9616 10 20 'mounts and heads', have to be analysed at the level of 'terms of headings', to apply GIR-1 to come to the conclusion as to which of these two classification is more appropriate for classification of impugned goods. Therefore, we need to examine the specific customs tariff entries under the two contending headings, the scope of coverage of goods under each of the specific tariff entries, in order to arrive at appropriate classification of imported goods.

9.1 In order to further examine the classification in terms of various customs tariff entries under the two contending sub-headings, we would like to examine the HS explanatory notes of the WCO, which describe in detail the scope and coverage of goods under Customs classification which is universally followed across all Customs Administrations of Members of WCO. The extract of HS classification in respect of relevant headings 8413 and 9616 are given below:

84.13 - Pumps for liquids, whether or not fitted with a measuring device; liquid elevators (+).

	- Pumps fitted or designed to be fitted with a measuring device :
8413.11	- - Pumps for dispensing fuel or lubricants, of the type used in filling-stations or in garages
8413.19	- - Other
8413.20	- Hand pumps, other than those of subheading 8413.11 or 8413.19
8413.30	- Fuel, lubricating or cooling medium pumps for internal combustion piston engines
8413.40	- Concrete pumps
8413.50	- Other reciprocating positive displacement pumps
8413.60	- Other rotary positive displacement pumps
8413.70	- Other centrifugal pumps
	- Other pumps; liquid elevators :
8413.81	- - Pumps
8413.82	- - Liquid elevators
	- Parts :
8413.91	- - Of pumps
8413.92	- - Of liquid elevators

This heading covers most machines and appliances for raising or otherwise continuously displacing volumes of liquids (including molten metal and wet concrete), whether they are operated by hand or by any kind of power unit, integral or otherwise.

The heading also includes delivery pumps equipped with measuring or price-calculating mechanisms such as are used for supplying petrol or oil in garages, and also pumps specially designed for use with other machines, vehicles, etc. (including petrol, oil or water pumps for internal combustion engines, and pumps for man-made textile fibre spinning machines).

The machines of this heading can be subdivided, according to their system of operation, into the following five categories.

9.2 In careful reading of the above HSN explanatory notes, it is understood that heading 8413 covers under its scope *inter alia*, most of the machines and appliances for pumping, dispensing, raising or otherwise delivering the liquid contained that needs to be displaced/dispersed from the container to the desired place, irrespective of whether they are operated by hand or any kind of power, reciprocating or rotary or centrifugal pumps, under five different categories as described therein covered under heading 8513 of HSN Explanatory Notes.

96.16 - Scent sprays and similar toilet sprays, and mounts and heads therefor; powder-puffs and pads for the application of cosmetics or toilet preparations.

9616.10 - Scent sprays and similar toilet sprays, and mounts and heads therefor

9616.20 - Powder-puffs and pads for the application of cosmetics or toilet preparations

This heading covers :

(1) **Scent, brilliantine and similar toilet sprays**, whether of the table or pocket type, and whether for personal or professional use. They consist of a reservoir, generally in the form of a bottle (of glass, plastics, metal or other material), to which is fixed the mount; this mount incorporates the head (with its spray-forming mechanism) and a pneumatic pressure bulb (sometimes enclosed in a textile net) or a piston device.

(2) **Mounts for toilet sprays**.

(3) **Head-pieces for toilet sprays**.

(4) **Powder-puffs and pads** for applying any kind of cosmetic or toilet preparation (face-powder, rouge, talcum-powder, etc.). They may be made of any material (swan's or eider-down, skin, animal hair, pile fabrics, foam rubber, etc.), and they remain in this heading whether or not they have handles or trimmings of ivory, tortoise-shell, bone, plastics, base metal, precious metal or metal clad with precious metal.

The heading **does not apply to** :

(a) Reservoirs (bottles, flasks, etc.) for scent sprays, presented separately (classified according to constituent material).

(b) Rubber bulbs (**heading 40.14**).

(c) Dispersing or spraying appliances of **heading 84.24**.

(d) Scent spraying machines of **heading 84.76**.

9.3 From the plain reading of above HSN explanatory notes to heading 9606, it is understood that this heading covers under its scope, all preparations of a kind used in cosmetics and more specifically scent sprays, toilet sprays. Thus, these are essentially required for applying cosmetics like spray formation of the liquid that is used as scent or other similar perfume etc. This does not cover all types of mounts and heads or pumps or other appliances, for dispersal or spray of liquids as the phrase 'therefor' appearing in HSN description of 9606.10 and in the entries at CTH 9616 10 at the six digit level of the First Schedule to the Customs Tariff Act, 1975, is limited in its scope covering such mounts and heads for scent sprays and similar toilet sprays only. This position is also made clear from the scope of goods under "---" /three dash entry covered under the broader category of goods of " – "/ single dash entry, in terms of General Explanatory Notes mean that the 'mounts and heads' are sub-classification of goods mentioned at single dash level i.e., 'scent sprays' and 'similar toilet sprays'. The fact that the impugned goods are nasal spray mechanism for dispersing medicament is not under dispute. In view of the above analysis, we are of the considered view that such spray mechanism including 'crimp pump' cannot be brought under entirely different category of goods as the one specifically provided for 'cosmetics and toilet sprays', for classifying under CTI 9616 1020.

9.4 From the above discussion and analysis, we are of the *prima facie* view that the impugned goods are classifiable under CTI 8413 5010/ 8413 5090 as the imported goods at the time of import remain as 'appliance used for spraying or dispersion of liquid' called as 'Crimp Pump for nasal spray along with its components or parts.

9.5 We also find that our such view on the aspect of classification of imported goods under heading 8413 has also been supported by the above Notes of the HSN explanatory notes to chapter heading 8413, which cover all types of pumps for liquids.

9.6. We further find that the learned Commissioner in arriving at the conclusion for classification of the imported goods under the heading 9616 1020 has relied upon the nature of usage by referring to definition of 'crimp pumps' in public domain/websites for comparing the impugned goods with those mentioned for use in body sprays, eyeglass cleaner, room and car freshers, vitamin sprays. The reasoning adopted in the above case is that scope of coverage of goods under chapter heading 8413 is for industrial use, where as the classification under chapter heading 9616 is for consumer purposes. However, we find from the detailed discussion on the scope of coverage of goods under chapter heading 8413 as discussed in paragraphs 9.1 and 9.2 above, that this above view of restricting goods of 8413 only for industrial use is not supported by the facts.

10. Since, we had examined the merits of the case with respect to the issue in dispute i.e., classification of the impugned goods and have come to the conclusion that there is no merit in the classification arrived at by the learned adjudicating authority, we do not consider it necessary to examine other issues raised by the appellants with respect to limitation of time and imposition of penalty on the appellants.

11. We further find from the order passed by the Tribunal in the case of *CIPLA Limited* (supra) that it was held that aerosol valves containing medicament is a type of non-return valve and decided the classification of goods under chapter sub-heading 8481 ibid and not under Chapter 96. Further, in the case of *Perfect Valves* (supra) it was held that classification of 'aerosol valve components', are classifiable under heading 8481 and are not covered under CTH 9616 1020. Therefore, it is clear that the Tribunal has consistently held that the valves, pumps and other similar appliances are correctly classifiable under chapter 84 and not under chapter 96.

12. In view of the foregoing discussions and analysis, and on the basis of the orders of the Tribunal as discussed above, we are of the considered view that the impugned goods are classifiable under CTH 8413 50 and further depending upon the type of liquid dispensed under CTI 8413 5010, 8413 5090 of the First Schedule to the Customs Tariff Act, 1975. Accordingly, the impugned order dated 30.05.2023 classifying imported goods under heading 9616 1020 does not stand the scrutiny of law and therefore is not legally sustainable.

13. In the result, the appeal is allowed by setting aside the impugned order dated 30.05.2023.

(Order pronounced in open court on 25.02.2025)

(S.K. MOHANTY)
MEMBER (JUDICIAL)

(M.M. PARTHIBAN)
MEMBER (TECHNICAL)

Sinha