CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

WEST ZONAL BENCH

CUSTOMS APPEAL NO: 89252 OF 2013

[Arising out of Order-in-Appeal No: 720 & 721 (Gr.VA/VB & VII-H/2013(JNCH)/IMP-528 & Exp-193 dated 31st July 2013 passed by the Commissioner of Customs (Appeals), Mumbai – II.]

Cipla Ltd
4th Floor, Raj Plaza, LBS Marg, Vikhroli (W)
Mumbai – 400083 … ***Appellant***

versus

Commissioner of Customs (Import)
Jawaharlal Nehru Customs House, Nhava Sheva
Tal: Uran, Dist: Raigad - 400707 ***…Respondent***

WITH

CUSTOMS APPEAL NO: 89253 OF 2013

[Arising out of Order-in-Appeal No: 720 & 721 (Gr.VA/VB & VII-H/2013(JNCH)/IMP-528 & Exp-193 dated 31st July 2013 passed by the Commissioner of Customs (Appeals), Mumbai – II.]

Cipla Ltd
4th Floor, Raj Plaza, LBS Marg, Vikhroli (W)
Mumbai – 400083 … ***Appellant***

versus

Commissioner of Customs (Import)
Jawaharlal Nehru Customs House, Nhava Sheva
Tal: Uran, Dist: Raigad - 400707 ***…Respondent***

AND

CUSTOMS APPEAL NO: 87808 OF 2014

[Arising out of Order-in-Appeal No: 1351(Gr.VA&B/2014(JNCH)/IMP-1294 dated 26th March 2014 passed by the Commissioner of Customs (Appeals), Mumbai – II.]

Cipla Ltd
4th Floor, Raj Plaza, LBS Marg, Vikhroli (W)
Mumbai – 400083 … ***Appellant***

versus

Commissioner of Customs (Import)
Jawaharlal Nehru Customs House, Nhava Sheva
Tal: Uran, Dist: Raigad - 400707 …***Respondent***

APPEARANCE:

Shri Brijesh Pathak, Advocate for the appellant

Shri DS Maan, Deputy Commissioner (AR) for the respondent

CORAM:

HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)
HON'BLE MR AJAY SHARMA, MEMBER (JUDICIAL)

FINAL ORDER NO: 85969-85971/2025

DATE OF HEARING: 07/11/2024
DATE OF DECISION: 06/05/2025

PER: C J MATHEW

M/s Cipla Ltd filed bill of entry no. 6583822/19.04.2012, 9039026/16.01.2013 and 9784393/06.04.2013 for import of 'glass vials', 'caps with rubber PTFE', 'magnetic caps' and 'silicon PTFE septa' which was sought to be assessed at rate of duty corresponding to tariff item 9027 9090 of First Schedule to Customs Tariff Act, 1975 and, thereby, eligible to avail exemption notification[1]. The 'proper

[1] [no. 25/2005-Cus dated 1st March 2005 (serial no. 32)]

officer' rejected the said classification and revised the duty liability of 'glass vials' by adopting rate corresponding to tariff item 7010 9090 of First Schedule to Customs Tariff Act, 1975, of 'caps rubber' and 'cap with silicon' at the rate of duty corresponding to tariff item 3923 5010 of First Schedule to Customs Tariff Act, 1975 and of the 'magnetic caps' to rate of duty corresponding to tariff item 7318 2990 of First Schedule to Customs Tariff Act, 1975. The claim of the appellant before the original authority was that the said goods were intended for use along with 'chromatograph' and consequently properly classifiable as 'parts and accessories' thereof. The denial of exemption in notification was carried to the first appellate authority who held that assessment order, relying upon the exclusions in note 1(e) to chapter 90 of First Schedule to Customs Tariff Act, 1975 and observing that the explanatory notes relevant to tariff heading 9027 excluded goods that had the essential characteristics of glassware, had originating the finding rendered that, owing to usage with chromatograph of different specifications as well as 'single use', classification as 'parts and accessories' of chromatograph was precluded.

2. According to Learned Counsel for the appellant, the impugned order is bereft of any justification for affirming the assessment by the original authority and it was submitted that the restricted use for chromatography sufficed for inclusion in chapter 90 of First Schedule to Customs Tariff Act, 1975. Reliance was placed on the decision of

the Tribunal in *Eureka Forbes Limited v. Commissioner of Central Excise, Meerut [2001 (130) ELT 146 (Tri. - De*l)]. It is also submitted that, with the previous imports of theirs having been permitted against the declared tariff item, the classification could be disturbed only on sufficient cause which is lacking in the impugned order.

3. We have heard Learned Authorised Representative

4. It is common ground that the imported goods do find placement within description elsewhere in the First Schedule to Customs Tariff Act, 1975 and that claim for inclusion within the headings in chapter 90 of the First Schedule to Customs Tariff Act, 1975 rests upon use as 'parts and accessories' of articles therein. 'Parts and accessories' are emplaced within same headings as original goods in several chapters of First Schedule to Customs Tariff Act, 1975 to negate existence by description or characteristics but, nonetheless, not without appropriate construing from the relevant notes in respective chapters. Therefore, the expression 'parts and accessories' is to be construed harmoniously in the manner prescribed in rule 1 of the General Interpretative Rules for the Import Tariff Appended to Customs Tariff Act, 1975.

5. From the Explanatory Notes to the Harmonized System Nomenclature, it is seen that 'glass vial' may be classified along with 'chromatograph' only to the extent of lack of specific placement elsewhere in the First Schedule to Customs Tariff Act, 1975.

Obviously, the intent thereby is to give effect to rule 1 of General Interpretative Rules for the Import Tariff appended to Customs Tariff Act, 1975 and to be excluded from headings of chapter 90 thereby. At no stage has evidence been put forth that 'glass vial' is not classifiable under another heading when imported by others. The entire case for declared classification rests solely upon the activities undertaken by the importer. As pointed out by the lower authorities, usage is not a criterion of classification except when explicitly qualified so in the descriptions within a chapter or in the notes pertaining to chapter and sections of First Schedule to Customs Tariff Act, 1975. Likewise, 'caps' – of 'rubber' or 'magnetic' – and 'silicone septa' are to be used as stopper on 'glass vials' and, consequently, would not qualify as 'parts and accessories' intended by tariff item 9027 9090 of First Schedule to Customs Tariff Act, 1975. In the absence of such 'qualifier' for the impugned goods, they are, accordingly, required to be classified in accordance with their description and not by usage. Consequently, there is no merit in the appeals which are dismissed.

(Order pronounced in the open court on 06/05/2025)

(AJAY SHARMA)
Member (Judicial)

(C J MATHEW)
Member (Technical)

**/as*