CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI

REGIONAL BENCH - COURT NO. I

Customs Appeal No. 87378 of 2021

(Arising out of Order-in-Appeal No. MUM-CUSTM-AMP-APP-395/2021-22 dated 20.07.2021 passed by the Commissioner of Customs (Appeals), Mumbai-III)

M/s Biomerieux India Pvt. Ltd. **.... Appellant**
43A, 1st Floor, Okhla Industrial Estate,
Phase -3, Modi Mill Compound,
New Delhi – 110 020

Versus

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

Appearance:

Shri Akhilesh Kangasia a/w Ms. Apoorva Parihar, Advocates for the Appellant

Shri Dinesh Nanal, Authorized Representative for the Respondent

CORAM:

HON'BLE DR. SUVENDU KUMAR PATI, MEMBER (JUDICIAL)
HON'BLE MR. M.M. PARTHIBAN, MEMBER (TECHNICAL)

FINAL ORDER NO. A/86793/2025

Date of Hearing: 06.10.2025
Date of Decision: 14.11.2025

Per: M.M. Parthiban

This appeal has been filed by M/s Biomerieux India Private Limited, New Delhi (herein after, referred to as 'the appellant'), assailing Order-in-Appeal No. MUM-CUSTM-AMP-APP-395/2021-22 dated 20.07.2021 (herein after, referred to as 'the impugned order') which was passed by the Commissioner of Customs (Appeals), Mumbai-III, Mumbai.

2. The issue involved herein is to decide the classification of imported goods by the appellant as to whether, the same merits classification under Customs Tariff Item (CTI) 3822 0019 as "Other diagnostic reagents" for medical diagnosis as claimed by the appellant; or, is it classifiable under CTI 3822 0090 as 'Other' residual entry, but incorrectly mentioned as "All goods

originating from USA" as determined by the Assistant Commissioner of Customs, and upheld by the learned Commissioner of Customs (Appeals) in the impugned order, for deciding on the appropriate levy of customs duty.

3.1 Briefly stated, the facts of the case are that the appellant herein, had imported 'In-Vitro Diagnostic Reagents' from M/s Biomerieux S.A., Craponne, France by filing Bill of Entry (B/E) No. 5621432 dated 11.11.2019. In the said B/E, the appellant had declared the description of imported goods as 'VITEK MS-DS Medical Diagnostic Reagents' by classifying it under Customs Tariff Item (CTI) 3822 0019 of the First Schedule to the Customs Tariff Act, 1975, with country of origin declared as 'United States of America' (USA). These imported diagnostic reagents were meant for medical diagnosis as kits. It was the contention of the department that since the appellant had imported goods originating from USA, which have been separately classifiable under CTI 3822 0090 which clearly reads as "All goods originating from USA", these are chargeable to Basic Customs Duty (BCD) at 30% *ad valorem,* instead of the classification claimed by the appellant of imported goods under CTI 3822 0019 which attract BCD at 10%. As the goods are urgently required by the appellant, it had paid the higher rate of 30% BCD and IGST under protest by filing its letter of protest dated 21.11.2019 and requested the proper officer of customs for issue of a speaking order in terms of Section 17(5) of the Customs Act, 1962.

3.2 On the basis of above understanding, the Assistant Commissioner of Customs, Group-II, Air Cargo Complex, Sahar, Mumbai had revised the classification of the imported goods from CTI 3822 0019 to CTI 3822 0090, in respect of the B/E No. 5621432 by passing the Assessment/Speaking Order dated 10.01.2020 under Section 17(5) of the Customs Act, 1962. Being aggrieved with the aforesaid order of the original authority, the appellant had filed an appeal before the learned Commissioner of Customs (Appeals), who vide the impugned order had dismissed their appeal by upholding the order of the original authority. Feeling aggrieved with the impugned order, the appellant has filed this appeal before the Tribunal.

4.1 Learned Advocate submitted that the imported goods are diagnostic reagents for medical diagnosis; and these are rightly classifiable under tariff item 3822 0019. He further submitted that the origin of imported goods from USA is not a criterion that would affect the classification of the imported goods inasmuch it is only in respect of the entry 249A in the Notification

No.50/2017-Customs dated 30.06.2017 for providing the effective rate of BCD at 10% for all goods covered under CTI 3822 0090, a proviso was made to make such concession inapplicable in respect of goods originating from USA, by amending the Notification No. 17/2019-Customs dated 15.06.2019. This change would in no way brought any amendment to the description of the tariff entry under CTI 3822 0090 as "All goods originating from USA", as has been claimed by the learned Commissioner of Customs (Appeals) in paragraph 7 & 8 of the impugned order. He further stated that the entire basis on which such conclusion was arrived by the learned Commissioner of Customs (Appeals) based on the BPD's customs tariff is factually incorrect as evidenced from the copy of the notifications issued by the Central Government vide Notifications No. 16/2019-Customs and No. 17/2019-Customs both dated 15.06.2019 and extract of relevant Chapter 38 of the departmental tariff produced by him. Therefore, he submitted that the description of the goods for the tariff item 3822 0090 had been incorrectly quoted as "All goods originating in USA" in the impugned order instead of correct description as "--- Others". Therefore, he claimed that the impugned order is bad in law and claimed that it is liable to be set-aside on this ground itself.

4.2 Learned Advocate further submitted that in the appellant's own case for classification of same goods i.e., "In- Vitro Diagnostic Kits" at Chennai Air Cargo Complex, the Commissioner of Customs (Appeals-I) vide Order-in-Appeal dated 27.11.2023 has held its classification under CTI 3822 0019. Further, the said order has been accepted by the department upon its review on 19.02.2024, and no appeal has been filed against such classification of impugned goods, as informed vide RTI reply of the department dated 08.07.2024.

4.3 He further submitted that in terms of the import licence dated 06.11.2019 issued by the Central Drugs Standard Control Organisation under the Directorate General of Health Services, Ministry of Health & Family Welfare (Medical Device & Diagnostic Division) to the appellant, it is evidential that these are diagnostic kits for use in medical diagnosis. Therefore, he submitted that the classification of the goods under CTI 3822 0090 adopted by the appellant is appropriate.

4.4 In view of the above, he claimed that the impugned order is liable to be set aside and the appeal filed by the appellant may be allowed.

5. Learned Authorised Representative (AR) reiterated the findings made by the Commissioner of Customs (Appeals) in the impugned order.

6. We have heard both sides and perused the case records and additional paper books submitted in this case.

7.1 In the impugned order, the learned Commissioner of Customs (Appeals) has upheld the classification of impugned goods under CTI 3822 0090 on the conclusion that all goods of CTI 3822 0090 originating from USA are chargeable to BCD at 30% and the goods imported by the appellant is undisputedly are of USA origin. The relevant paragraphs of the impugned order is extracted and given below:

> *"7. By these amendments, the Govt. of India amended the Customs Tariff Act, 1975 and brought all the goods falling under CTH 3822 under the ambit of CTH 3822.00.90 and imposed retaliatory duties on 28 specified goods including the goods falling under CTH 3822.00.90* ***originating in or exported from USA*** *and preserving the existing MFN rate for all these goods for all countries other than USA. Hence items falling against Sr. No.249A of Notification No.50/2017 will attract merit rate of duty (here in this case 30%) if they are of USA origin or are being exported from USA.*
>
> *8. For reference and crystal clear of the position, the scanned copy of Heading 38.22 as it appearing in the BPD's Customs Tariff with IGST 2019-20 is depicted below:*
>
> *…… 3822 0090 N50 All goods originating to USA …….*
>
> *9. From the above, it is seen that "Diagnostic or laboratory reagents on a backing, prepared diagnostic or laboratory reagents whether or not on a backing, other than those of heading 30.02 or 30.06; Certified reference materials"* ***of any country of origin other than USA*** *will fall either under CTH 3822.00.11 or 3822.00.12 or 3822.00.19 and all the goods of "Diagnostic laboratory reagents on a backing, prepared diagnostic or laboratory reagents whether or not on a backing, other than those of heading 30.02 or 30.06; Certified reference materials"* ***of USA origin*** *irrespective of their various sub-headings classification/ use of medical and non-medical etc. will fall specifically under CTH 3822.00. 90, for which the Notification No.50/2017 dated 30.06.2017 S. No.249A (as amended by Notification No.16/2019-Customs attracting BCD at 30%.*
>
> *xxx xxx xxx xxx*
>
> *11. I, therefore, find the Original authority vide his impugned order has rightly held that all the goods originating from USA falling under CTH 3822 are correctly and separately classifiable under CTH 3822.00.90 and as per S. No.249A of Notification No.50/2017-Cus dated 30.06.2017 as amended by Notification No.16/2019-Cus. dated 15.6.2019/ Notification No.17/2019-Cus. dated 15.6.2019, attracts merit rate of duty @ 30% BCD."*

On perusal of the impugned order passed by the learned Commissioner of Customs (Appeals), and on plain reading of the Notifications No.16/2019 and No.17/2019 both dated 15.06.2019, it is clear that there is no proposal therein for changing the description of the goods covered under any of the tariff item under chapter heading 3822. The rate of duty has been revised upwards to 30% vide Notifications No.16/2019-Customs; and certain amendments were made which *inter alia* provide for non-application of the benefit of 10% effective rate of BCD in respect of entry at serial number 249A of the Notification No.50/2017-Customs dated 30.06.2017. Therefore, it is apparent on the face of the record, that the conclusions arrived at by the learned Commissioner of Customs (Appeals) is factually incorrect and against the actual description of the tariff entry for the item at CTI 3822 0090, as provided in the First Schedule to the Customs Tariff Act, 1975.

7.2 We further find that the above issue was examined in the self-same appellant's case, for the same product under dispute, and the classification has been held in the Chennai Air Complex Customs Commissionerate under CTI 3822 0019 and not under CTI 3822 0090. Further, such decision on classification has been accepted in review and has not been appealed against. Therefore, we are of the view that the department cannot take different stand before the Tribunal praying for classification under the CTI 3822 0090, which has been disallowed in other jurisdiction and such decision having been accepted in review on merits, preferring no further appeal to be filed in the case of self-same appellant.

8.1 In this regard, we find that the Hon'ble Supreme Court in the case of *Boving Fouress Limited* v. *Commissioner of Central Excise, Chennai* - 2006 (202) E.L.T. 389 (S.C.) have held that the department cannot have pick and choose method; and having accepted the earlier order on the same issue, the department is not permitted to press the same against the previously accepted stand. The relevant paragraphs of the said judgement dated 29.08.2006 is extracted and given below:

> *"10. The Commissioner (Appeals) in its order dated 31st July, 2003 in show cause notices dated 27th September, 1999 and 1st March, 2000 has also recorded a finding that the facts in the Sulzer's case are identical to the facts of the present case. A copy of the decision in Sulzer's case was handed over to the Counsel for the Revenue and he fairly conceded that the facts and the point of law in the said case are identical to that of the present case and therefore covered by that decision.*

11. This Court in a catena of decisions has held that where the department accepts the principle laid down by the Tribunal in one case and let it become final, then the department is not entitled to raise the same point in other cases. The department cannot pick and choose. [See: The decisions of this Court in Union of India v. Kaumudini Narayan Dalal - (2001) 10 SCC 231; Collector of Central Excise, Pune v. Tata Engineering & Locomotives Co. Ltd. - 2003 (158) E.L.T. 130 (S.C.) ; Birla Corporation Ltd. v. Commissioner of Central Excise - 2005 (186) E.L.T. 266 (S.C.)(S.C.); and Jayaswals Neco Ltd. v. Commissioner of Central Excise, Nagpur - 2006 (195) E.L.T. 142 (S.C.). It has been held in all these cases that if no appeal is filed against an earlier order or the earlier appeal involving the identical issue was not pressed by the Revenue, the Revenue is not entitled to press the other appeals involving the same question. In Birla Corporation Ltd. (supra), this Court observed as follows :

> *"In the instant case the same question arises for consideration and the facts are almost identical. We cannot permit the Revenue to take a different stand in this case. The earlier appeal involving identical issue was not pressed and was, therefore, dismissed. The respondent having taken a conscious decision to accept the principles laid down in Pepsico India Holdings Ltd. [2001 (130) E.L.T. 193 (Tri.-Mad)] cannot be permitted to take the opposite stand in this case. If we were to permit them to do so, the law will be in a state of confusion and will place the authorities as well as the assessees in a quandary."*

12. The principle in Birla Corporation Ltd. (supra) is being followed consistently.

13. Since admittedly the point involved in the present case is identical to the point involved in Sulzer's case (supra) and the department having accepted the principle laid down therein, the department cannot be permitted to take a different stand in the present appeals."

8.2 In the Order-in-Appeal dated 27.11.2023 passed by learned Commissioner (Appeals-I), Chennai in determining the classification of 'In Vitro Diagnostic Kits' for the self-same appellant under CTI 3822 0019, he had examined each of the issues in detail and had arrived at that decision based on the tariff entries as correctly appeared on the department's customs tariff. The said order has also been reviewed and has been accepted by the department on merits. Therefore, we find that there is no ground for objecting to such classification by the department for the self-same appellant in the present case, by taking a different stand before the Tribunal.

9. In view of the foregoing discussions and analysis, we are of the considered view that the impugned goods are classifiable under CTI 3822 0019 of the First Schedule to the Customs Tariff Act, 1975. Accordingly, the impugned order dated 20.07.2021 upholding the classification of imported goods under CTI 3822 0090 does not stand the scrutiny of law and therefore is not legally sustainable.

10. In the result, by setting aside the impugned order dated 20.07.2021, we allow the appeal in favour of the appellant with consequential relief, if any, as per law.

(Order pronounced in open court on 14.11.2025)

(M.M. Parthiban)
Member (Technical)

(Dr. Suvendu Kumar Pati)
Member (Judicial)

Sinha