

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL  
REGIONAL BENCH, HYDERABAD.**

**Customs Appeal No.30302 of 2020 (DB)**

(Arising out of Order-in-Original No.HYD-CUS-23-COM-19-20 dated 04.02.2020 passed by Principal Commissioner of Customs, Hyderabad)

**M/s.Sandor Medicaids,**  
8-2-326/5, 4<sup>th</sup> Floor, Plot No.1,  
Road No.3, Banjara Hills,  
Hyderabad-500 034.

**Appellant**

Versus

**Principal Commissioner of Customs**  
GST Bhawan, LBS Road, Basheerbaug,  
Hyderabad-500 004.

**Respondent**

**APPEARANCE:**

Shri Rajiv Sindhi, Co. Representative (Managing Director) for the appellant.  
Shri Amresh, Authorised Representative for the respondent.

**CORAM:**

**HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)**  
**HON'BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)**

**FINAL ORDER NO. A/30018/2023**

**DATE OF HEARING:13.09.2022**  
**DATE OF DECISION:10.03.2023**

**Anil Choudhary:**

The issue involved in this appeal is with regard to the classification of imported goods namely i) I Stat Blood Gas Investigation Cartridges, ii) I Stat Wireless Analysers with printer kit and iii) I Stat Alinity Instruments with accessories.— whether the said goods are classifiable under Customs Tariff Heading 9027 as classified by the Appellant Importer or under CTH 9018, as contended by Revenue and further regarding eligibility of concessional duty/exemption under Notification Nos.24/2005-Cus and 25/2005-Cus, both dated 1st March, 2005.

2. The brief facts are that the product in question is a cartridge (an essential accessory) for I Stat blood Gas Analyzer, which was being imported by the appellant for the last several years. The product is used for the chemical analysis of blood including gases in a short span of time for better patient management and treatment. The Appellant -importer classified the I Stat Blood Gas Analyser under heading 90279090 and claimed the benefit of notification No.24/2005- Customs (Sl. No. 35 of the notification) for the cartridges, as an accessory of the blood gas analyser under heading 90279090 and also claimed benefit of notification No. 25/2005 –Customs (Serial No. 32 of the notification).

3. The contention of the Revenue is that the goods are correctly classifiable under heading 9018 (sub-heading 90181990) and the benefit of notification No. 24/2005-Customs and No.25/2005-Cus is not available to the product under the classification as suggested by Revenue. Revenue issued show cause notice alleging as follows: –

“ The cartridge under import is used in ‘I Stat Blood Gas Analyser’, a portable clinical analyser, used at the bedside of a patient. The analyser is a point of care instrument for use by the Physicians, intensivists, anaesthetists and surgeons or doctors at the patient's bedside.

It has no provision to do more than single test at any point of time; the instrument uses the whole blood without any other process to be done on the blood before being injected into the machine; the instrument works on battery; the instrument measures various parameters like cardiac markers, blood gases, electrolytes, coagulation levels, etc., the device appears to satisfy the functions associated with instruments connected with

checking the physiological parameters of patients as mentioned under CTH 9018 and, therefore, merits classification under it.”

4. The Commissioner (Appeals) in order-in-appeal no.20/2011 (H-II)-Cus dated 18.05.2011(for past imports) has held that cartridges in question are accessories of I. Stat Blood Analyser, which is an instrument falling under 9018 of CTH.

5. The show cause notice dated 05.04.2019 was adjudicated on contest vide order-in-original dated 4.2.2020 holding that the goods in question are classifiable under CTH 90181990 and further denied the benefit of Notification No. 24/2005-Cus and Notification No.25/2005 – Customs, both dated 1st March 2005.

6. It was also held that the goods imported vide bills of entry as per Annexure (during July, 2017 to Feb., 2018) to the show cause notice are liable for confiscation, as the goods are not available, no redemption fine is imposed. Further, direction to pay differential duty of Rs. 1,51,48,545/- was made under Section 28(8) of the Customs Act along with interest. Further, equal penalty of the differential duty was imposed under such 114 A of the Customs Act.

7. The proposed penalty under Section 112 (a)(ii) of the Customs Act was dropped.

8. Being aggrieved, the Appellant is in appeal before this Tribunal.

9. Heard Shri Rajiv Sindhi, Managing Director of the Appellant Company and Shri Amresh, Authorised Representative for the respondent/Department.

10. Shri Rajiv Sindhi, Managing Director appearing for the appellant contends that First and foremost, the order is cryptic as it is written in complete ignorance to the facts submitted before the learned Commissioner, and has been simply copied from the earlier order of the lower authority.

10.1 The I Stat Blood Gas Analyser, as the name suggests, is an analyser. It is a chemical analyser used at the bedside of a patient or in a laboratory to analyse the critical parameters of his blood. It is typically used when such parameters are urgently needed, say before a surgical procedure or after a trauma. A few drops of blood are placed on the cartridge, which is an accessory of the analyser, and the doctor would be in a position to read the blood gas levels, sugar levels, electrolytes and other parameters of the patient on the analyser screen.

10.2 One of the most important document relied in favour of argument is the Explanatory Notes to chapter 9018. It was argued before the lower authority, both, while submitting reply to the show cause notice and during the course of personal hearing, that **explanatory note to heading 90 18 pointedly says that instruments apparatus used in laboratories to test blood, tissue fluids, urine, etc. whether or not such tests serve in diagnosis are excluded from the purview of heading 90 18 and are classifiable generally under 90 27.** After the schedule of customs tariff is aligned with HSN, it is incumbent on the part of the assessing officers to abide by what has been stated in the explanatory notes, in case a doubt arises as to the scope of an entry. There is a catena of judgements on the issue. The appellant pleads that in view of the explanatory note to heading

9018, diagnostic equipment and instruments are excluded from heading 9018. Any attempt to classify such goods under 9018 on the specious ground that they are used by medical professionals to diagnose a patient at a certain location is contrary to what is stated in the HSN. An adjudicating authority cannot substitute his logic and limited understanding with what has been stated in the HSN.

10.3 There is a catena of judgements on the issue. In the case of **Khandwala Enterprises Vs. UOI [2020 (371) ELT 50]**, the Delhi High Court held that the customs tariff in its eight digit avatar which came into effect from 2003 is based on the HSN and the explanatory notes to the HSN are treated as of practically binding value in interpreting entries under the Customs Tariff, where the entries are aligned to the entries in the HSN.

10.4 The HC in turn had relied on the judgement of the Apex Court in the case of **Woodcraft Products Vs. CCE and CC Vs. Business Forms** while ruling so.

10.5 In light of the above two rulings of higher courts, the lower authority cannot ignore the explanatory notes to the chapter, which clearly validate appellant's contention on the classification under 9027 90, which is specific to the blood gas analyser.

10.6 Another important fact missed completely by the lower authority is the fact that an analyser which does chemical analysis, whether in a house, a laboratory or in an ICU of a hospital, still remains an analyser. The location of the analyser and the source of power used, battery or live current, does not change its function and/or its classification, which is clearly

based on the functionality of the product and not the location or the source of power.

10.7 Appellant further relies on the decision of the Tribunal (Division Bench) in the case of **M/s. Bayer Pharmaceuticals Vs. CC, Mumbai [ 2016 (331) ELT 317]**, which dealt with the issue of classification of Gluco Meter. The Tribunal held that the instrument falls under Chapter heading 90 27 as it is an instrument for chemical analysis of blood. The Tribunal held that Heading 90 27 covering instruments for chemical analysis was more specific and appropriate than general heading 90 18 which covered instruments used in medical and surgical etc. sciences. It was more so as Gluco-Meters were mostly used by common people as compared with professional practitioners or in laboratories. Appellant had pleaded before the lower authority that the ratio of the decision equally and aptly applies to Accessories of I Stat Blood Analyser, as the Analyser was more specifically fitting the description of Chapter 9027 90.

10.8 The lower authority also contends and takes shelter on the fact that on an earlier occasion, way back in 2011, we had argued for the analyser to be classified under Chapter 9018 and had received a favourable order and today we are arguing against our earlier premise.

10.9 There were some inherent capabilities which were specifically added to the analyser making it more useful in terms of testing for many more parameters, making it a whole some analyser. Furthermore, an argument taken 10 years ago, without the benefit of judgements from Higher Authorities like in the case of the **Bayer Pharmaceutical Vs. CC, Mumbai,**

which clarified once and for all the exact classification of an analyser.

10.10 We would also like to state that even though we had received a favourable order earlier, the lower authority has to use his discretion judiciously and in a reasonable manner based on the facts presented before him, and not on the biased opinion that since the same appellant is presenting a differing view point, it should be summarily rejected ignoring even the case laws from higher authorities. There is no res-judicata in taxation.

10.11 Last but not the least, the cartridges, which house the main technology of the analyzing process and is an accessory of the I Stat Blood Gas Analyser, was also imported at Mumbai Air Cargo complex many times during the last few years, along with similar competitor product at Delhi Airport, and the same was accepted under the classification 9027 90 as an accessory of blood analyser and cleared from customs.

10.12 In the light of the above facts, there is no case of mis-declaration, goods are not liable to be confiscated under 111(m) of the Customs Act, 1962.

10.13 The Tribunal in the case of **Sirthai super Ware India Ltd. Vs. CC, Mumbai [2020 (371) ELT 324]** held that the fact that goods correspond to the declaration in respect of the description and value is sufficient to take goods away from the application of Section 111(m) and (o) of the Act. Similar rulings were rendered by the Tribunal in the case of **Kores India Ltd. Vs. CC, Nava Sheva [2019 (370) ELT 1444]**. The Tribunal in the case of **Tetra Pak India Ltd. Vs. CC, Nava Sheva [2019(370) ELT 1289]** held

that even when consequences of mis-declaration were to benefit the importer, the goods are not liable to confiscation under 111 (m) of the Act. The appellant relies on these decisions of the Tribunal and pleads that the court below acted in gross violation of pronouncements of higher judicial forums on the interpretation of Section 111(m). The impugned order may be set aside in so far as the liability of the impugned goods to confiscation under the said section.

**Penalty under Section 114 A is also not sustainable.**

10.14 The lower authority imposed equal amount of penalty under Section 114 A relying on two decisions of the Apex Court, which are irrelevant. The first case he cites is **SEBI Vs. Shriram Mutual Funds & Another**, wherein the apex court seemed to have held that penalty is attracted as soon as the contravention of the statutory obligations is established irrespective of the fact whether the contravention is made by the defaulter with any guilty mind or not. Under Customs Act a similar provision does exist under Section 112, where mens rea is not relevant. But the lower authority has not imposed any penalty under that Section. He has imposed a penalty under 114 A where guilty mind has to be established before the authority imposes a penalty. The appellant pleads that the case law relied upon is irrelevant. The second case he relied upon is **Indian AL Company Ltd. Vs. Municipal Corporation [1991 (55) ELT 454]**, wherein the court have held that in case of exemption or concessions, interpretation of statute should be in such a way that non-observance of even a procedural condition not be condoned, if likely to facilitate commission of fraud and

introduce administrative inconvenience. This ruling also lacks relevance in imposition of penalty under Section 114 A in the present case.

10.15 The appellant relies on the decision of the Tribunal in the case of **Teracom Pvt. Ltd. Vs. CCE, Goa – [ 2018 (363) ELT 1013]**, wherein the Tribunal held that in the absence of any mis-declaration of description of imported goods, merely claiming exemption, under a particular notification, which is based on interpretation, does not amount to mis-declaration, penalty not imposable. This decision was cited before the lower authority.

10.16 The Tribunal in the case of **CCE & ST, Hyderabad Vs. Sandor Medicaids [2019 (367) ELT 486]** held that once the appellant has declared what is being imported in the invoice and the B/E, he cannot be faulted for claiming a particular classification of goods imported by him. The department is not precluded from seeking further clarification and information to re-determine the classification. The Tribunal had set aside the demand and the penalty, ruling that there is no mis-declaration.

11. Opposing the appeal, Id. Authorised Representative relies on the impugned order.

11.1 He further urges that the cartridges of the analyser are essential accessories of the instrument (I Stat System), since without the cartridges, the instrument cannot function. All reagents, technology and membrane etc. are embedded in the cartridges. A few drops of blood are put up on the cartridge and then the same is inserted in the I Stat Instrument and immediately after two minutes, the analysis results are available on the screen. The readings are utilized for assessing the condition of the patient with regard to various parameters for monitoring, etc. The instrument is easy to use, reliable and

portable, suitable for use at various places like patient's bedside, etc. The device satisfies the function associated with instruments connected with the checking of physiology parameters of patient. It is further urged that Rule 2 of General Rule of Interpretation is not applicable. Further, Rule 3 stipulates that the heading, which provides the most specific description shall be preferred to the heading providing a general description. Further, urges that I Stat Instrument is used for analysis of blood, which provides readings as to chemistry, electrolyte, hematology, blood gases, coagulation, cardiac markers, etc. Further, the goods in question are being used in medical field, are more aptly classifiable under Heading No.9018, being a specific entry rather than CTH 9027, which is a general entry.

11.2 Ld. Authorised Representative relies on the order of the Commissioner (Appeals) dated 30<sup>th</sup> April, 2011 in appellant's own case, wherein it was held that I Stat System (Portable Clinical Analyser) was classifiable under CTH 9018 1900. It is also urged that under the facts and circumstances, invocation of extended period of limitation is justified. It is also urged that the ruling of this Tribunal in **Bayer Pharmaceuticals Vs. CC, Mumbai (supra)** is distinguishable, as in the said case, it has been held that Glucometer were mostly used by common people and not by professionals or laboratories in general. Ld. Departmental Representative also relied on the order of the Commissioner (Appeals) in order-in-appeal no.19/2018 dated 12.04.2018 in the appellant's own case related to the similar dispute.

12. Having considered the rival contentions, we find that it is not disputed that the I Stat System is prima facie an instrument/apparatus for physical or chemical analysis of various parameters of the blood by chemical analysis, electrolysis, etc. The instrument is capable of being used along with the cartridge either at patient's bedside or in the laboratory, etc. We further

find that Explanatory Note (o) to CTH 9018, specifically mentions that the heading does not cover – instruments and appliances used in laboratory to test blood tissue, fluids, urine, etc. - whether or not such tests serve in diagnosis (generally Heading 90.27). Blood and other analysers are mainly used in laboratories etc, only for the reasons that the same is portable and can be used at patient's bedside or is being mostly used at bedside or in an ICU, will not change the classification from 9027 to 9018.

13. We further find that the court below has been influenced by the orders of the Commissioner (Appeals) in past. We hold that there is no res-judicata in taxation matters. We further find that the facts herein are squarely covered by the precedent order of this Tribunal in **Bayer Pharmaceuticals Pvt. Ltd. (supra)**, wherein this Tribunal was considering the classification of blood glucose meter or glucometer, which analyses only one component i.e. blood sugar. In the facts of the present case, there are more than one parameters, being analysed, in addition to blood glucose like sodium, potassium, calcium, hemoglobin, blood gases, ACT, coagulation parameters, cardiac markers, etc. The competing headings for classification of the impugned goods are extracted below:-

**"9027** Instruments and apparatus for physical or chemical analysis (for example, polarity meters, refractory meters, spectrometers, gas or smoke analysis apparatus); instruments and apparatus for measuring or checking viscosity, porosity, expansion.....

**9018** instruments and appliances used in medical, surgical dental or veterinary sciences...."

14. On going through the product catalogue and considering the arguments, we hold that instrument – I Stat System along with cartridges, etc are prima facie used for anylysis of various parameters of blood, and is prima

facie a blood analyser. Both in case of glucometer or in the case of the present I Stat System with cartridge, blood is drawn and a few drops of blood are put on the cartridges or test strip and thereafter, on being attached to the I Stat System/Analyser, gives the readings. The only difference is that the item under consideration is more sophisticated than the glucosemeter. The testing of blood by analyzing and indicating the various parameters is undisputedly an outcome of chemical analysis, etc. In the facts and circumstances, we find that the heading 9027, which covers instruments for chemical analysis is more specific than CTH 9018, which covers instruments used in medical/surgical science, etc. Further, we find that Rule 3 of General Rules of Interpretation provides that a specific description is to be preferred over a general description. We further find that the Court Below have erred in deciding the classification relying on the facts that the goods in question are mostly used on bedside or in an ICU. Accordingly, following the precedent ruling of this Tribunal in **Bayer Pharmaceuticals (supra)**, we hold that the goods under consideration are appropriately classifiable under CTH 9027. We further hold that the extended period of limitation is not attracted in the facts and circumstances, the issue being wholly interpretational in nature and there being no res judicata in tax matters. Accordingly, the appeal is allowed with consequential benefits and the impugned order is set aside.

[Order pronounced on 10.03.2023]

( Anil Choudhary)  
Member (Judicial)

( P.V. Subba Rao)  
Member (Technical)

Ckp.

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**APPEARANCE:**

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**CORAM:**

**HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)**  
**HON'BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)**

**DATE OF HEARING:13.09.2022**

**Pronounced on 10.03.2023.**

( Anil Choudhary)  
Member (Judicial)

Ckp.