

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH – COURT NO. – IV

Customs Appeal No. 53942 of 2023 [DB]

[Arising out of Order-in-Appeal No. CC(A)/Customs/D-I/Import/NCH/407/2022-23 dated 25.07.2022 passed by the Commissioner of Customs (Appeals), New Delhi]

**Principal Commissioner of Customs,
New Delhi (ACC Import)**

New Customs Hose,
Near IGI Airport,
New Delhi - 110037

...Appellant

VERSUS

M/s. Aptar Pharma India Pvt. Ltd.

Survey No. 790, Kistapur Village,
Medchal Mandal, Medchal Malkagiri,
District Hyderabad, Telangana - 501401

...Respondent

APPEARANCE:

Shri Nagendra yadav and Shri Rakesh Kumar, Authorized Representatives for the department

Shri Rachit and Shri Amitabh Amrit, Advocates for the respondent

CORAM:

HON'BLE DR. RACHNA GUPTA, MEMBER (JUDICIAL)

HON'BLE MRS. HEMAMBIKA R. PRIYA, MEMBER (TECHNICAL)

DATE OF HEARING: 02.11.2023
DATE OF DECISION: **01.03.2024**

FINAL ORDER No. 54526/2024

DR. RACHNA GUPTA

The appellant as an importer filed a Bill of Entry No. 7818002 dated 03.06.2020 (self assessed) for clearance of goods declared as "Pump-1.200-GS-THREAD-28/410-2N-192.0 (Pump for lotion dispenser)" after classifying the goods under CTH 84248990 with Basic Customs Duty (BCD) leviable at the rate of 7.5%. The shipment was marked for clearance under RMS by the system. However, during the scrutiny of said Bill of Entry by the Shed Officer, the declared CTH 84248990 was not found appropriate for

the description of the goods given in the said Bill of Entry with the opinion that the goods appeared more appropriately classifiable under CTH 9616. The Shed Officer redirected the Bill of Entry to the Appraising Group-V for necessary action along with the representative sealed sample of the impugned goods. The said Appraising Group-V/Deputy Commissioner of Customs vide Order-in-Original No. 187/2020 dated 23.07.2020 held that the impugned goods i.e. "Pump-1.200-GS-THREAD-28/410-2N-192.0 (Pump for lotion dispenser)" imported vide Bill of Entry No. 7818002 dated 03.06.2020 are correctly classifiable under CTH 84132000 which provides in pertinent part, for "Pump-1.200-GS-THREAD-28/410-2N-192.0 (Pump for lotion dispenser)": Handpumps other than those of subheading 8413.11 and 8413.19 and are liable to be assessed accordingly.

2. Being aggrieved, assessee preferred an appeal before Commissioner (Appeals). The committee of commissioners in exercise of powers under Section 129A(2) of Customs Act, 1962 (hereinafter called as the Act) passed and Review Order No. 32/2002 dated 27.10.2022 directing the Deputy Commissioner of Customs (Review), ACC (Import) to file an appeal praying for setting aside Order-in-Appeal dated 25.07.2022. But neither any appeal was filed by the department nor department marked its presence before Commissioner (Appeals) in the appeal filed by the assessee who proceeded to decide the appeal before him as per records and submissions made by the appellant-assessee. Vide Order-in-Appeal No. 407/2022-23 dated 25.07.2022 the aforesaid Order-in-Original though was set aside but with the direction that

Bill of the Entry No. 7818002 dated 03.06.2020 should be reassessed by classifying the same under CTH 84249090. Being aggrieved of this order, department is before this Tribunal.

2. We have heard Shri Nagendra Yadav and Shri Rakesh Kumar, learned Authorized Representatives for the department and Shri Rachit and Shri Amitabh Amrit, learned Advocates for the Respondent.

3. Learned Departmental Representative has mentioned that in the instant case, the importer has classified the goods under CTH 84248990 and Commissioner (Appeals) has classified the same under CTH 84249090 which is not correct since items are intended for use in smaller containers with smaller necks for spraying small quantity for material like fragrance, liquid soaps or pharmaceutical medicines and the said chapter heading does not include scent sprays, similar toilet sprays and their mount and head. Such items are specifically covered under CTH 9616. The Tribunal is competent to classify the goods under a different heading not covered by the show cause notice. The decision of Hon'ble Supreme Court in the case of **Voltas Ltd. Vs. Collector of Customs, Bombay reported as 1997 (91) E.L.T. 261 (S.C.)** is relied upon along with the decision of this Tribunal in the case of **O.K. Play (I) Ltd. Vs. Commissioner of C. Ex., Delhi-III (Gurgaon) reported as 2004 (171) E.L.T. 378 (Tri.-Del.)**. The goods are mentioned to be the pumps and the pumps for liquids are specifically categorized under CTH 8413. Hence, the order of Commissioner (Appeals) is prayed to be set aside and department's appeal is prayed to be allowed.

4. While rebutting these submissions learned counsel for the appellant has mentioned that the impugned goods are rightly been declared under CTH 84248990 which include mechanical appliances (whether or not hand operated) for projecting, dispersing or spraying liquids or powders-other. CTH 8413, on the other hand, cover pumps which are intended for industrial applications and which are capable of continuously displacing volumes of liquids whereas the product in question is a pump for dispersing small amount of lotion (a cosmetic). Learned counsel has further mentioned that the perusal of Heading pertaining to CTH 8424 discloses that the liquid dispensers and spray pumps (other than scent sprays and toilet sprays) would get covered under the Tariff Item pertaining to 'other' under the sub Heading in respect of 'other appliances' under CTH 84248990. Hence, CTH 9616 was wrongly proposed by the Shed Officer. Commissioner (Appeals) has gone ahead in adopting a new CTH 84249090. It is impressed upon that the case which Revenue never canvassed cannot be made out by the departmental authority. The decision of Hon'ble Supreme Court in the case of **Reckitt & Colman of India Ltd. Vs. Collector of Central Excise reported as 1996 (88) E.L.T. 641 (S.C.)** is relied upon. With these submissions, it is prayed that the product under consideration be allowed to be classified under CTH 84248990 instead of 84132000 as was held by original adjudicating authority and not even under CTH 84249090 as has been held by the departmental led authority. The appeal is prayed to be disposed of accordingly.

5. Having read the rival contentions and perusing the records, we observe and hold as follows:

5.1 The product imported admittedly is a pump for lotion dispenser. The issue involved in the present case is about classification of said pumps. The appellant had imported these pumps vide Bill of Entry dated 03.06.2020 while classifying them under CTH 84248990. The Shed Officer opined CTH 9616 to be the correct classification for the said product. For adjudication of the said issue, we first need to understand the procedure of classification. We observe that the Customs Tariff is based on the Harmonised System of Nomenclature [HSN] which classifies goods under various Sections and Chapters within each section. The general scheme of this tariff is that it starts from simple goods starting with live animals and animal products and moves to higher and more complex goods. Under each section there are chapters. The chapter title is of two digits under which there are various customs tariff headings of 4, 6 or 8 digits each are listed. The General Rules of Interpretation are provided in the tariff which indicate how goods should be classified. When these rules are applied, all goods can be classified under one heading or the other of particular chapter. The general rules of interpretation are briefly, as follows:

(i) Title of sections and chapters are provided for ease of reference. Classification shall be determined according to the Customs Tariff Headings read with relevant section notes and chapter notes, if any.

2(a) Any reference to heading to an article shall include incomplete and unfinished article and disassembled or assembled articles, if they have the essential characteristics of the finished article. 2(b) Any reference to a heading of a material or substance shall include reference to the mixture or combination of that material with other materials.

(3) When by application of Rule 2(b) or for any other reason goods are prima facie classifiable under two or more headings they shall be classified as follows:

(a) Heading which provides more specific description should be preferred to the one which provides more general descriptions;

(b) Mixtures, composite goods consisting of a different materials or made of different components or goods put up in sales and retail sale which cannot be classified with reference to (a) shall be classified as per the material or components which gives them essential character;

(c) The goods cannot be classified as per (a) or (b) they should be classified under the heading which occurs last in numerical order of the numbers they shall equally merit consideration and

(d) Goods which cannot be classified in accordance with the above rules shall be classified under the heading appropriate of the goods to which they are most akin.

5.2. The impugned goods have differently been classified as follows:

(i) Importer classified under - 84248990

(ii) Shed Officer classified under - 9616

(iii) Original Adjudicating Authority - 84132000

(iv) Appellate Adjudicating Authority classified under - 84249090

(v) Review Order classified under - 8413.11

Present is the appeal filed by the department praying for setting aside the classification under CTH 84249090 and to reclassify under CTH 84132000. Accordingly, first we need to see the Chapter Headings of Chapter 84 and Chapter 96:

Chapter – 84

SECTION XVI MACHINER AND MECHANICAL APPLIANCES;
ELECTRICAL EQUIPMENTS; PARTS THEREOF; SOUND RECORDERS
AND REPRODUCERS, TELEVISION IMAGE AND SOUND RECORDERS
AND REPRODUCERS, AND PARTS AND ACCESSORIES OF SUCH
ARTICLES

8413 Pumps for liquids, whether or not fitted with a measuring device:

8424 Mechanical Appliances (Whether or Not Hand Operated) For Projecting, Dispersing or Spraying Liquids or Powders; Fire Extinguishers, Whether or not Charged; Spray Guns And Similar Appliances; Steam or Sand Blasting Machines And Similar Jet Projecting Machines

8424 20 00 – Spray guns and similar appliances

8424 89 90 --- Other

Chapter 96 – Miscellaneous manufactured articles

9616 SCENT SPRAYS AND SIMILAR TOILET SPRAYS, AND MOUNTS AND HEADS THEREFOR; POWDER-PUFFS AND PADS FOR THE APPLICATION OF COSMETICS OR TOILET PREPARATIONS

Since 9616 has not been considered either by original adjudicating authority and nor even by the departmental appellate authority, we need not to dwell into the said chapter.

5.3 Scope of appeal crystallizes to adjudicate as to:

“Whether the goods in question are pumps for liquids which can be classified under CTH 8413 or these are mechanical appliances for projecting, dispersing or spraying liquids or powders as are classifiable under CTH 8424?”

For the purpose, we foremost need to understand the meaning of pump:

We observe that the word pump has been defined in the dictionary of the technical terms by F.S. Crispin as a machine for lifting or forcing liquids either by means of a bucket or a piston working in a closed cylinder. Accordingly, pumps are the apparatus which simplify the transportation or dispersion of fluids including water. The basic operating principle of a pump is that it uses energy to move fluids from one point to another. Hence, pumps can be classified by their method of displacement into electromagnetic pumps, positive displacement pumps, velocity pumps, gravity pumps, steam pumps, valveless pumps, etc. The products to be classified under 8413, as apparent from Chapter and section note, as discussed above, are the pumps which are meant

for displacement/transportation of fluid. Admittedly the product in question is a pump but not merely for displacing the liquid but also for dispersing the same. 'Displacement' and 'Dispersion' are two different phenomenas. As per their dictionary meaning former amount to change of location whereas later is process of spreading over a wide area. Thus pumps which simply displaces the liquid are different from pumps which disperse liquid hence cannot be classified together under general entry of pumps if there is a category more specific to pumps meant for dispersing liquids.

5.4 Pump is definitely a mechanical appliance. According to the Dictionary meaning, mechanical appliances are the tools that held with everyday task i.e. the appliances which are related to mechanics i.e. the branch of physics that deals with forces acting on mass. There is no dispute about the product/pump in question that pressure is used on the impugned product to get the lotion in the container beneath the product, to disperse out. Thus, we hold that product in question is a mechanical appliance performing two functions based on simple mechanics:

(i) Transporting liquid from the container to which the product gets attached.

(ii) Dispersing the lotion in the said container to the given surface.

5.5 We observe that the section note of 8424 talks about mechanical appliances meant for projecting, dispersing or spraying liquids or powders including pumps, spray guns and all other appliances for the purposes specified in the respective entry of this chapter. Pumps merely for liquids displacement are under CTH

8413. But the pumps for dispersion of fluids are covered under CTH 8424. Admittedly, the imported goods are the pumps but for dispersion of fluids. As per GRI Rules, as quoted above, more specific entry has to be followed. We hold that imported goods deserve classification under CTH 8424, more specifically under CTH 84248990. It cannot be classified even under 84249000 as the imported good is not the part of the pump but the pump as such.

5.6 Section XVI (which includes 8413 as well as 8424) says that this section covers all mechanical or electrical machinery, plant equipment, apparatus, appliances and parts thereof. Chapter note (b) further says that goods of this section may be of any material. Though in great majority of cases they are of base metal but they may be of other material also. Pumps wholly of plastics is cited as an example in that note. Section Note 2 in part 2 of the chapters says that pumps and compressors are specifically covered under Heading 8413 and 8414.

5.7 The Section Note for 8413 specifically states that this heading covers most machines and appliances for raising or otherwise continuously displacing volumes of the liquids. The entry is absolutely silent about dispersing the raised liquid. The kind of pumps defined under this entry makes it clear that this entry cover those pumps which are meant purely for displacement of liquids. Even elevating wheels and banned elevator are uncovered under this entry. On the contrary, the section note for CTH 8424 clarifies that this heading covers machines and appliances which are meant for projecting, dispersing or spraying steam liquids or solid materials and such machines which operate under high pressures

for dispersing and spraying liquids are excluded from the scope of this entry whereas the machines under 8413 since are such which are meant for displacing volume of liquids, those are opined to be a mainly industrial in nature. Chapter note (d) excludes scent sprays and similar toilet sprays of Heading 9616 out of 8424. Similarly, dispersing or spraying appliance of Heading 8424 are excluded from the Chapter note of 9616.

6. In view of the above discussion, we hold that the product in question is a pump for displacing and dispersing the lotion/cream. Hence, it is definitely not a scent spray or toilet a spray (CTH 9616). It is a pump but not the one under 8413 where the pumps meant only for displacement of liquids are covered. The goods in question is held to be covered under CTH 84248990 being the pumps meant not only for displacing the liquid/lotion but for simultaneously dispersing the same. Hence we hold that classification made by the respondent-assessee in the Bill of Entry No. 7818002 dated 03.06.2020 is the correct classification i.e. the pumps imported by the appellant are classifiable under CTH 84248990. Hence, the Order-in-Appeal is hereby set aside which classified the impugned pump under CTH 84249090. However, the appeal filed by the department still stands dismissed as they have prayed for impugned pump to be classified under CTH 8413.

[Order pronounced in the open court on **01.03.2024**]

(DR. RACHNA GUPTA)
MEMBER (JUDICIAL)

(HEMAMBIKA R. PRIYA)
MEMBER (TECHNICAL)