

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST ZONAL BENCH : AHMEDABAD**

REGIONAL BENCH - COURT NO. 3

EXCISE Appeal No. 10291 of 2015-DB

[Arising out of Order-in-Original/Appeal No AHM-EXCUS-002-COMMR-18-14-15 dated 26.12.2014 passed by Commissioner of Central Excise-AHMEDABAD-II]

Rippen Radiators & Heat Exchangers Pvt Ltd **Appellant**
142-143, Maha Gujarat Indu Estate, Moraiya
Changodar, AHMEDABAD, GUJARAT-382213

VERSUS

Commissioner of Central Excise & ST, Ahmedabad-ii **Respondent**
Custom House, First Floor, Old High Court Road,
Navrangpura, Ahmedabad, Gujarat-380009

AND

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[Arising out of Order-in-Original/Appeal No AHM-EXCUS-002-COMMR-18-14-15 dated 26.12.2014 passed by Commissioner of Central Excise-AHMEDABAD-II]

Nirav Shah Director **Appellant**
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VERSUS

Commissioner of Central Excise & ST, Ahmedabad-ii **Respondent**
Custom House, First Floor, Old High Court Road,
Navrangpura, Ahmedabad, Gujarat-380009

APPEARANCE :

Shri Vikrant Kackaria, Advocate for the Appellant
Shri Rajesh Nathan, Assistant Commissioner, (AR) for the Respondent

**CORAM: HON'BLE MR. RAMESH NAIR, MEMBER (JUDICIAL)
HON'BLE MR. C.L. MAHAR, MEMBER (TECHNICAL)**

DATE OF HEARING : 26.07.2023

DATE OF DECISION: 10.08.2023

FINAL ORDER NO. 11676-11677/2023

RAMESH NAIR :

The issue involved in the present case is classification of goods i.e. Parts of Drier/ parboiling parts namely Heat Exchanges, Drier Fan and Aluminium Fin Tubes cleared by the appellant for Rice Mill machinery. The department has classified the said goods under Chapter Heading 8419 which

attracted duty at the appropriate rate whereas the appellant plea was that the said goods were not chargeable to duty as the same were classifiable under Chapter heading 8437 of the Central Excise Tariff Act, 1985.

2. Shri Vikrant Kackaria, learned Counsel appearing on behalf of the appellant at the outset submits the issue regarding classification of the goods in question has been decided against the appellant by the Larger Bench of this Tribunal in the case of M/s. Jyoti Sales Corporation vs. CCE, Panchkula – 2016 (341) ELT 328 (Tri. LB) wherein it was held that parboiling plants and parts thereof are classifiable under Chapter heading 8419. The appellant in that case has challenged the order of the Tribunal before the Hon'ble Supreme Court which is pending. He further submits that subsequently after the decision of the Larger Bench, the matter was placed before the Division Bench of the Tribunal and the Division bench in the case of M/s. Jyoti Sales Corporation vs. CCE, Panchkula – 2020 (374) ELT 936 (Tri. Chan.) it has been held that there was Circular No. 924/14/2010-CX dated 19.05.2010 wherein the said item was held classifiable under Chapter heading 8437 and attracted Nil rate of duty. The said Circular was withdrawn by the department on 15.05.2014 vide Circular No. 982/06/2014-CX thus the Tribunal held that no duty can be demanded till the time the circular was withdrawn by the department. It was held that the circulars of the CBIC are binding on the departmental officers and no view contrary to that taken in the circular can be taken by the departmental officer. The Tribunal relied upon various decisions of the Hon'ble Supreme Court to hold that the circulars are binding on departmental authorities. He placed reliance on the following judgments:-

- (a) Union of India vs. Arviva Industries (I) Limited - 2007(209) ELT 5 (SC).
- (b) Paper Products Limited vs. Commissioner of Central Excise - 1999 (112) ELT 765 (S.C.)
- (c) Collector of C. Ex. Vadodara vs. Dhiren Chemical Industries - 2002 (139) ELT 3 (S.C.)
- (d) Ranadey Micronutrients vs. Collector of Central Excise - 1996 (87) ELT 19 (S.C.)
- (e) Bharat Heavy Electricals Limited vs. Commr. Of Cus & C. Ex. Bhopal - 2015 (316) ELT 413 (M.P.)
- (f) Hindustan Coca-Cola Beverages Pvt. Limited vs. Union of India - 2013 (296) ELT 150 (ALL.)
- (g) Uflex Limited vs. Commr. of C.Ex. Cus. & S.T., Noida - 2016 (335) ELT (Tri-All)
- (h) Commissioner of C. Ex. & Cus. Surat-I vs. Shreenath Fabrics - 2014 (303) ELT 540 (Guj.)
- (i) Smartchem Technologies Limited vs. Union of India - 2004 (173) ELT 456 (Guj.)
- (j) Commissioner of Central Excise vs. Auro Weaving Mills - 2017 (345) ELT 350 (H.P.)
- (k) Commissioner of Central Excise vs. Malwa Industries Limited - 2010 (251) ELT 32 (P&H)
- (l) Kalyani Packaging Industry vs. UOI - 2004 (168) ELT 145 (SC)
- (m) Alpsco Grintech Pvt. Limited vs. CCE&ST, Chandigarh - 2019 (365) ELT 944 (Tri. Chan.)

2.1 He further submits that demand in the present case pertains to period 2011-12 to 2012-13 thus the entire demand is for the period prior to 15.05.2014 i.e. the date of rescinding of the Circular. Since the issue is no more *res-integra* and decided by the Hon'ble Supreme Court as well as the Tribunal that no demand can be confirmed for the period during which the Circular was in vogue and hence the entire demand of Central Excise along with interest and penalty needs to be dropped.

2.2 Without prejudice to the above submissions, he further submits that the demand for the extended period cannot be sustained as there was no fraud, suppression or willful misstatement on the part of the appellant. Moreover, since the issue was referred to the Larger Bench itself proves that there was no fraud, suppression or willful misstatement which would warrant invocation of extended period. He placed reliance on the Hon'ble Supreme Court decision in the case Continental Foundation Jt. Venture vs. CCE, Chandigarh – 2007 (216) ELT 177 (SC). He, without prejudice to the above, further submits that the value of the goods in question realized ought to be treated as inclusive of excise duty hence, the appellant is entitled for the benefit of cum-duty price. He also submits that if the duty is demanded the appellant should be allowed benefit of modvat/ Cenvat credit.

3. Shri Rajesh Nathan, learned Assistant Commissioner, (AR) appearing on behalf of the Revenue reiterates the findings of the impugned order. He further submits that since the show cause notice was issued subsequent to rescinding of Circular No. 982/06/2014-CX dated 15.05.2014, in the present case, the show cause notice was validly issued and Circular dated 15.05.2014 will apply. Accordingly, demand on the basis of earlier Circular No. 924/14/2010-CX dated 19.05.2010 cannot be set-aside.

4. We have carefully considered the submissions made by both the sides and perused the record. We find that as regards the classification of goods, as of now, there is no dispute that the same is classifiable under Chapter heading 8419 as held by the Larger Bench. However, there is no dispute that the period in the present case is 2011-12 to 2013-14. During this

period, Board Circular No. 924/14/2010-CX dated 19.05.2010 was in force which reads as under:-

Circular No. 924/14/2010-CX., dated 19-5-2010

F.No. 167/42/2009-CX.4

Government of India

Ministry of Finance (Department of Revenue)

Central Board of Excise & Customs, New Delhi

Subject : Classification of Rice parboiling machinery - Regarding.

It has been brought to the notice of the Board that classification of Rice parboiling machinery is being disputed in certain jurisdictions. Two tariff headings under consideration for its classification are 8419 or 8437. It has been represented by the Rice Mill Machinery Manufacturers Association that the practice so far followed by the department was not to charge excise duty for many years but suddenly it has been sought to charge duty on these machines by proposing classification under heading 8419. The matter has been examined by the Board.

2. Paddy processing plant consists of sections with functions like parboiling, drying, rice milling and polishing. Parboiling plants and drier plants are used for steaming and drying paddy and also for reducing the moisture content in the paddy. The processed paddy is then sent to subsequent sections where husking, hauling, milling and polishing are undertaken. Briefly, parboiling process involves three stages, namely, pre-steaming, soaking and steaming. In the first stage, clean raw paddy is steamed for 3 to 5 minutes. In the second stage, pre-steamed paddy is soaked in water tanks for about 4-5 hours. In the last stage, the soaked paddy is passed through steaming process for 3-5 minutes. Subsequently, steamed rice are dried in a dryer. The dryer is also supplied along with parboiling rice machinery. It has been mentioned by the Association that *100% of parboil plant and equipment are used only in rice mill industry and that the parboiling process is exclusive to paddy*. It has also been contended by the Association that parboiling units are integral part of rice mill. Subsequent to the parboiling process, the further process of dehusking and drying is carried out in the same unit. Therefore, parboiling rice machinery is an integral part of rice mill plant. Thus it has been argued by the Association that these machines merit classification under heading 8419 because of following main grounds:

- (i) Rice parboiling machineries are used only in rice mill plant.
- (ii) These are integral part of rice processing plant and these cannot function in isolation. Therefore, function of Rice parboiling machinery/drying unit is complementary to other function of rice processing plant.

3. On the other hand, in support of classifying it under tariff heading 8419, it has been argued that Parboiling and drier plants perform the function of steaming and drying which are independent of milling and these occur before milling process. Therefore it has been viewed that parboiling and drier plant are not essential and integral part of rice mill and therefore it would merit classification under heading 8419. It has also been opened that machinery performing specific functions like steaming or drying are specifically covered by heading 8419. Further, reference has also been made to Chapter Note 2 to Chapter 84 to justify the classification under heading 8419.

4.1 On examination of the issue, the Board observes that the General rules for interpretation of Central Excise Tariff provide that *“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”*. Therefore the classification of these goods should be determined in terms of the headings read with the relevant section and chapter notes. Section Note 3&4 to Section XVI and chapter Note 2 to Chapter 84 are relevant for present issue and these are reproduced below :

Section Note 3 and 4 to Section XVI

“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.”

Chapter Note 2 to Chapter 84 :

“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)
- (d) ...
- (e)

4.2 Parboiling machinery, drier plant and rice mill in conjunction form the paddy processing. Thus such a plant can be considered as composite machines fitted together to perform the function of rice milling which is the principal function of such a combination. Thus in terms of the Section Note 3 & 4 even if one of the component/machinery is performing complementary functions, the classification of such component/machinery will be governed by the principal function being performed, and that in this case is rice milling.

4.3 Chapter Note 2 provides that if a machine can be classified based on description under heading 8419 and also under 8437, in that case it should be classified under 8419 only. Therefore, it would be seen that *as per Chapter Note 2, the parboiling machine merit classification under heading 8419 but as per Section Note 3 and 4, the machinery merit classification under heading 8437*. The Board observes that this controversy has been perceived by the HSN and at pages 1235 it has been mentioned that Chapter Note 2 which is known as rule of precedence for heading 8401 to 84.24 applies only to

machines considered as whole. Composite machines or multifunction machines are required to be classified in accordance with Note 3 and Note 4 of Section XVI. As per this clarification available in the HSN, *the parboiling machine and dryers which are part of composite machine (rice mill)* would be correctly classified in terms of Section Notes 3 and 4 and therefore, the correct classification should be under heading 8437. Further, grain dampening machine has been excluded from the purview of heading 8419 and placed under heading 8437. One of the functions of Rice parboiling machinery is soaking of grain, which is in nature of dampening; hence this also support the classification of parboiling machinery under heading 8437.

5.0 Therefore, Board is of the view that Rice parboiling machinery and drier which are essentially for use in conjunction with the rice mill will merit classification under heading 8437.

6.0 Trade & industry as well as field formations may please be informed suitably.

7.0 Receipt of this order may please be acknowledged.

8.0 Hindi version will follow.”

From the above, the Board has categorically clarified that the impugned goods is correctly classifiable under Chapter heading 8437. The said Circular dated 19.05.2010 was rescinded vide Circular dated 15.05.2014 which reads as under:-

Circular No. 982/06/2014-CX., dated 15-5-2014

F.No. 167/42/2009-CX. 1

Government of India

Ministry of Finance (Department of Revenue)

Central Board of Excise & Customs, New Delhi

Subject : Classification of rice par-boiling machinery - Regarding.

I am directed to draw your attention to Circular No. 924/14/2010-CX., dated 19-5-2010 [2010 (253) E.L.T. (T47)] on the subject of classification of rice par-boiling machinery under the Central Excise tariff. References have been received from trade and field to re-examine the circular consequent to the judgment of the Hon'ble Tribunal in case of *M/s. Jyoti Sales Corporation* [[2011 \(272\) E.L.T. 689](#) (Tri.-Del.) & 2011-TIOL-1498-CESTAT-DEL]. The circular has since been re-examined.

2. The classification of rice par-boiling machinery would be guided by Note 2 to Chapter 84 read with Note 3 to Section XVI. The par-boiling machine and dryer are self-contained machines which are designed to be installed independently and which perform their respective functions independently. Therefore, though they may be installed in a rice mill to work in conjunction with the milling machinery, the par-boiling machine and dryer do not appear to satisfy the requirements of Section Note 3 to be called composite machines/ multi-function machines meriting classification under CETH 8437. Further, par-boiling machinery does not constitute grain dampening machine as the end result of par-boiling of rice is reduction in the moisture of paddy. In view of the

above, rice par-boiling machine and dryer would merit classification under CETH 8419 as per Note 2 to Chapter 84.

3. Circular No. 924/14/2010-CX., dated 19-5-2010 is rescinded and it is directed that classification of rice par-boiling machine and dryer may be made under CETH 8419. Necessary action to protect the revenue interest in respect of past clearances may also be taken.

From the above Circular, it can be seen that the department has taken 'U' turn and clarified in the above Circular that the goods are correctly classifiable under Chapter heading 8419.

5. It is a settled legal position that the Board Circular issued by CBEC/CBIC is binding on the departmental officers. In view of this settled legal position, firstly, the show cause notice ought not to have been issued by following the binding Circular dated 19.05.2010. Therefore, the issuance of show cause notice itself is illegal and incorrect. Secondly, during the relevant period 2011-12 to 2013-14, Circular dated 19.05.2010 (supra) was in force according to which the goods were classifiable under heading 8437. It is settled position under various Hon'ble Supreme Court Judgments that any Circular which is beneficial to the assessee should be given effect irrespective to the different correct legal position of classification. Therefore, even though subsequently the Larger Bench has decided the classification under heading 8419 but by virtue of Circular dated 19.05.2010 during the currency of the said Circular the goods is classifiable under heading 8437 and consequently no duty could have been demanded on this very issue. This Tribunal, in the case of Jyoti Sales Corporation (supra) held as under:-

“6. On careful consideration of submission made by both sides, the relevant portions of the circulars are expected herein below :-

Circular No.	Relevant Portion
924/14/2010-CX., dated 19-5-2010	Therefore, Board is of the view that Rice 5.0 parboiling machinery and drier which are essential for use in conjunction with the rice mill will merit classification under Heading 8437

982/06/2014, dated 15-5-2014	Circular No. 924/14/2010-CX., dated 19-5-2010 is rescinded and it is directed that classification of rice par-boiling machine and dryer may be made under CETH 8419. Necessary action to protect the revenue interest in respect of past clearances may also be taken.
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Therefore, the facts are not in dispute that for the period prior to 15-5-2014, the circular dated 19-5-2010 was in operation. In that circumstance, it is to be seen that whether the circular dated 19-5-2010 is binding on the revenue authorities during the period in question or not? Admittedly, the said issue has been examined by the Hon'ble Apex Court in the case of *Paper Products Ltd.* (supra) wherein the Hon'ble Apex Court observed as under :-

"5. It is clear from the above said pronouncements of this Court that, apart from the fact that the Circulars issued by the Board are binding on the Department, the Department is precluded from challenging the correctness of the said Circulars even on the ground of the same being inconsistent with the statutory provision. The ratio of the judgment of this Court further precludes the right of the Department to file an appeal against the correctness of the binding nature of the Circulars. Therefore, it is clear that so far as the Department is concerned, whatever action it has to take, the same will have to be consistent with the Circular which is in force at the relevant point of time."

Further, in the case of *Dhiren Chemical Industries* (supra), the Hon'ble Apex Court observed as under :-

"9. We need to make it clear that, regardless of the interpretation that we have placed on the said phrase, if there are circulars which have been issued by the Central Board of Excise and Customs which place a different interpretation upon the said phrase, that interpretation will be binding upon the Revenue."

Further, the Hon'ble Apex Court came to the occasion to examine the said issue again in the case of *Kalyani Packaging Industries* (supra) wherein the Hon'ble Apex Court observed as under :-

"6. We have noticed that Para 9 of *Dhiren Chemical's* case is being misunderstood. It therefore becomes necessary to clarify Para 9 of *Dhiren Chemical's* case. One of us (Variava, J.) was a party to the Judgment of the *Dhiren Chemical's* case and knows what was the intention in incorporating Para 9. It must be remembered that law laid down by this Court is law of the land. The law so laid down is binding on all Courts/Tribunals and Bodies. It is clear that circulars of the Board cannot prevail over the law laid down by this Court. However, it was pointed out that during hearing of *Dhiren Chemical's* case because of circulars of the Board in many cases the Department had granted benefits of exemption Notifications. It was submitted that on the interpretation now given by this Court in *Dhiren Chemical's* case, the Revenue was likely to reopen cases. Thus Para 9 was incorporated to ensure that cases where benefits of exemption Notification had already been granted, the Revenue would remain bound. The purpose was to see that such cases were not reopened. However, this did not mean that even in cases where Revenue/Department had already contended that the benefit of an exemption Notification was not available, and the matter was sub judice before a Court or a Tribunal, the Court or Tribunal would also give effect to circulars of the Board in preference to a decision of the Constitution Bench of this Court. Where as a result of dispute the matter is sub judice a Court/Tribunal is, after *Dhiren Chemical's* case, bound to interpret as set out

in that judgment. To hold otherwise and to interpret in the manner suggested would mean that Courts/Tribunals have to ignore a judgment of this Court and follow circulars of the Board. That was not what was meant by Para 9 of *Dhiren Chemical's* case.”

Further, in the case of *Hindustan Coca-Cola Beverages Pvt. Ltd.* (supra), the Hon'ble Allahabad High Court observed as under :-

“18. The law is settled that the circulars issued in exercise of statutory power by the departments are binding upon the authorities and the officials of the department.”

7. We take a note of the fact that in the case of *UFLEX Ltd.* (supra) this Tribunal again observed as under :-

“6. We find that the principles laid down by the Hon'ble Supreme Court in the case of *Cadbury India Ltd.* : [2006 \(200\) E.L.T. 353](#) (S.C.) are applicable to the present case. The Hon'ble Supreme Court held that the Department is also bound by the Circular dated 13-2-2003.”

Further, in the case of *Shreenath Fabrics* (supra), the Hon'ble Gujarat High Court observed as under :-

“4.3 While it may be that when the appeal was preferred, the circular dated 17-8-2011 was not issued. However, it appears from record that the appeal was posted before the Court first time on 11-12-2011 and the notice was issued on 12-11-2012. At the time of issuance of notice in the appeal, the circular dated 17-8-2011 was very much in force and the monetary limit of 10 lakhs provided therein was applicable. Had the said aspect been pointed out to the Court, the Court would not have issued the notice. In any way, when this appeal has come up for consideration, the circular is in vogue and the monetary limit applies. We, therefore, do not find it necessary to go into the merits of the appeal, as the disputed amount in the present appeal is below 10 lakhs.

4.4 The department is bound by its own Circular and the instruction thereof. We are informed that no other circular withdrawing or reducing the monetary limit has been issued by the Department and circular dated 17-8-2011 hold the field as far as the prescription of monetary limit for filing appeal before High Court is concerned. It is pertinent to mention that we have taken the similar view in various tax appeals.

5. Accordingly, appeal is dismissed considering the monetary limit prescribed in the abovementioned circular dated 17-8-2011. While dismissing the appeal on the said ground alone, it is made clear that this Court has not gone into nor expressed anything on merits. The questions raised by the department in the appeal are kept open to be decided in appropriate case.”

8. In view of the above discussions, as the circular dated 19-5-2010 was in operation during the period in question, therefore, we hold that the said circular is binding on the departmental officers.

9. Further, we take a note of the fact that in the case of *Auro Weaving Mills* (supra) the Hon'ble Himachal Pradesh High Court has also observed that the Board Circulars are binding on department so long as they remain in operation and not open to department raise contention contrary to such circulars.

10. We also take a note of the fact that in the case of *Malwa Industries Ltd.* (supra) the Hon'ble Punjab and Haryana High Court has observed that the Revenue is precluded from challenging the correctness of the circular even on the ground of same being inconsistent with statutory provisions. It goes further to limit the right of the Revenue to file an appeal against the correctness of the binding nature of the circular. Therefore, there is no escape from the conclusion that the circular is binding on the Revenue."

11. Further, we take note of the fact that in the case of *Suchitra Components Ltd.* (supra) as held that the beneficial circulars to be applied retrospectively while oppressive circular applicable prospectively. Admittedly, the circular dated 15-5-2014 is against the appellants, therefore, the same is to be operative w.e.f. 15-5-2014 and for the period prior to 15-5-2014, the appellants are entitled for the benefit of the Circular dated 19-5-2010 by classifying their products under Chapter Heading No. 8437 of CETA.

12. We also take a note of the fact that the inputs used in manufacturing of final product are dutiable on which the appellant has discharged their duty liability. The said Cenvat credit is also available to the appellant if same is taken into consideration then duty liability calculated by the adjudicating authority is not correct.

13. In view of above analysis, we hold that for the period prior to 15-5-2014 if the appellants have classified their products in question under Chapter Heading No. 8437 of CETA, no demand is sustainable in terms of the Circular No. 924/14/2010-CX., dated 19-5-2010.

14. In result, the impugned orders for demanding duty from the appellants are set aside. Consequently, no penalties are imposable.

15. In view of the above, the appeals are allowed.

From the above decision it can be seen that even though the Larger Bench has decided the merits of classification under heading 8419 but despite that the issue that when the Board Circular was in force which classified the goods under heading 8437 shall prevail as per various Supreme Court decisions discussed by the Larger Bench in the aforesaid decision.

6. As regards the Revenue's contention that at the time of issuance of show cause notice, the Board Circular dated 19.05.2010 was rescinded, we are of the view that it is not the date of issuance of show cause notice which is relevant but the period during which the goods were cleared. In the present case, the period involved is 2011-12 to 2013-14 and during this period the circular dated 15.05.2014 was not in force but during the relevant period the Circular dated 19.05.2010 was prevailing and according to which the goods were classifiable under Chapter heading 8437. Therefore, in view

of the said Circular dated 19.05.2010 the appellant was not liable to pay any duty for the clearances made prior to rescinding the Circular dated 19.05.2010. Therefore, we are in complete agreement with the decision of this Tribunal in the case of *Jyoti Sales Corporation - 2020 (374) ELT 936 (Tri. Chan.)*.

7. Since the entire case is being decided as discussed above, we do not incline to address other issues such as time-bar, cum-duty price, Cenvat issue etc. and the same are left open. As a result the impugned order is not sustainable hence the same is set-aside. The appeals are allowed with consequential relief.

(Pronounced in the open court on 10.08.2023)

(Ramesh Nair)
Member (Judicial)

(C L Mahar)
Member (Technical)