

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

REGIONAL BENCH – COURT NO. 03

CUSTOMS Appeal No. 12797 of 2014-DB

CUSTOMS CROSS Application No. 16061 of 2014

[Arising out of OIA-157-2014-CUS-COMMR-A—AHD dated 09/04/2014 passed by Commissioner of CUSTOMS-AHMEDABAD]

C.C.-Ahmedabad

Custom House,
Near All India Radio Navrangpura,
Ahmedabad,
Gujarat

...Appellant

VERSUS

Smaltochimia India Pvt Ltd

T-233, D B Gupta Road,
Pahar Ganj,
New Delhi,

...Respondent

APPEARANCE:

Shri Vijay G. Iyengar, Assistant Commissioner (AR) appeared for the Appellant

Shri N V Suchak, CA appeared for the Respondent

**CORAM: HON'BLE MEMBER (TECHNICAL), RAJU
HON'BLE MEMBER (JUDICIAL), SOMESH ARORA**

FINAL ORDER NO. A / 11666 /2023

DATE OF HEARING: 12.05.2023

DATE OF DECISION: 07.08.2023

RAJU

This appeal has been filed by Revenue against the order of Commissioner (Appeals) modifying the classification made by the original Adjudicating Authority. The respondents have also filed cross objection.

2. The respondents had imported the following items:

Sl. No.	Description of Goods	Qty.	Classification of goods sought by appellant	Classification Applied for assessment
1.	Eye One Basic Pro EOBAS(spectrophotometer) Equipment for use in ceramic industry.	1	90273020	90279090
2.	Twin vision scanner spectral dedicated for color management for digital printing support.	1	84716050	84439990
3.	Ink Tester (for use in ceramic industry)	1	90268090	90248090
4.	Analyzer mastersizer (for use in ceramic industry)	1	90278090	90318000

2.1 This classification sought by the respondents was changed by the assessing officer, resulting in a payment of duty of Rs. 10,13,647/-. The Respondents requested the assessing officer to pass a speaking order, but no speaking order was passed. Therefore, the respondents challenged the assessment made on the bill of entry before Commissioner (Appeals). The respondents produced Chartered Engineer certificate. The Commissioner (Appeals) allowed the appeal of the respondents and accepted the classification sought by them, in respect of item No. 1, 2 & 3 of the table. However in respect of item no 4 in the assessment order of the original Adjudication Authority was upheld. Aggrieved by this order revenue has filed appeal before the Tribunal challenge the reclassification done by the Commissioner (Appeals) of item No. 1 & 2 of the table in para 1 above. The respondents have filed cross objection, seeking to challenge the order of Commissioner (Appeals) in respect of Item No. 4 of the table above.

3. Learned AR reiterated the grounds of appeal. In the grounds of appeal it is stated that, the Commissioner (Appeals) has allowed the classification under Heading No. 90273020 without ascertaining, if the said equipment uses optical radiation. From the order of Commissioner (Appeals), it is seen that the Commissioner (Appeals) has relied on the Chartered Engineer certificate. The Chartered Engineer certificate describes the products as follows:

" The function of the Eye One Basic Pro 2 spectrophotometer is measures the LAB value of each colours/solutions/transparent or opaque solids, hence this equipment is a testing equipment to exactly measure the properties of colours. Hence this equipment is considered as quality control equipment/testing equipment."

3.1 Commissioner (Appeals) has observed that, since the goods are described as Spectrophotometer by the Chartered Engineer and

Spectrophotometer are specifically covered under 90273020, and the same should be classified under that sub heading. Heading 9027 reads as follows:

"9027 *Instruments and apparatus for physical or chemical analysis (for example Polarimeters, Refractometers. Sptrometers, Gas or Smoke Analysis apparatus): Instruments and Apparatus for measuring or checking viscosity, porosity, expansion, surface tension or the like; Instruments and Apparatus for measuring or checking quantities of heat, sound or light (including exposure meter); Micrometers.*

902730 *Spectrometers, Spectrophotometers and Spectrographs **using optical radiations** (UV, Visible, IR)*

90273010 *Spectrometers*

90273020 *Spectrophotometers"*

9090 -----

3.2 From the function of the Spectrophotometer described in the Chartered Engineer certificate, it is seen that the same is used to exactly measure property of colors. It is common knowledge that the radiation imitated by the Colors is in the optical range and therefore the objection raised by the revenue that Commissioner (Appeals) should have first verified if the instrument analyses optical radiation is totally misplaced. The appeal filed by the revenue on this ground is dismissed.

4. The second item under dispute is 'Twin vision scanner'. The appellant had sought to classify this item under Heading 84716050. However, revenue has sought classification under Heading 84439990. The heading reads as follows:

"**8443** *Printing machinery used for printing by means of plates, cylinders and other printing components of heading 8442; other printers, copying machines and facsimile machines, whether or not combined; parts and accessories thereof*
--Machinery for printing repetitive word or design or colour:
--On cotton textile"

"8471 *Automatic data processing machines and units thereof; magnetic or optical readers, machines for transcribing data on to data media in coded form and machines for processing such data, not elsewhere specified or included"*

The Chartered Engineer has described the goods as follows:

" The function of Twin vision Scanner Hyspectral is to capture the spectral composition of any point/section of the scanned object. With this system it is possible to obtain the intensity of the colour distribution at different wavelength for every measured point. Hence, this equipment is a measuring / testing equipment which is used for quality control in manufacturing unit."

4.1 The Commissioner (Appeals) has observed that these goods in the nature of scanner and therefore classifiable under Heading 84716050. He has observed that these goods provide input to another machine loaded with software "Twin vision and color profiler" to hold elaboration of spectral or graphic files. The revenue has changed this classification on the ground that the said goods are not part of data processing unit and they do not perform any function of data processing unit. It has been argued that even if it is assumed that the item is scanner providing input to another machine loaded with software which is thereafter used as input for printing on files or other objects, these goods do not classify as data processing machine. Revenue has placed reliance on chapter note 5 (E), which according to revenue states that such goods do not merit classification under heading 8471 Chapter note 5(E) reads as follows:

"5[E] Machines incorporating or working in conjunction with an automatic data processing machine and performing a specific function other than data processing are to be classified in the headings appropriate to their respective functions or, failing that in residual headings."

The revenue does not deny that the goods are dedicated for digital printing support.

4.2. We have considered rival submissions, we find that Chartered Engineer has clearly stated these goods measure the intensity of the color distribution at different wave lengthy for every measured point. It is not in dispute that this data is obtained in digital form. As the equipment converts color data into digital data. The very function of converting color data to digital data in itself is a data processing function. In this background, we do not find any merit in the appeal filed by the revenue on the ground that no processing is done by the machine. The appeal filed by revenue on this count is rejected.

5. The respondents have challenged classification of item No. 4 of the lable in the cross objection filed by them. The Chartered Engineer describes the following products as follows:

"The Analyser Mastersizer is used as laboratory measuring equipment which measures the size of the particles in any liquid or solution and gives the analysis report on the size of the particle alongwith the percentage data. Hence this is a measuring equipment / quality control equipment."

5.1 The Commissioner (Appeals) has held that the 2 headings being considered for this classification are follows:

- The heading 9027 reads as follows:

"Instruments and apparatus for physical or chemical analysis (for example Polarimeters, Refractometers. Sptrometers, Gas or Smoke Analysis apparatus): Instruments and Apparatus for measuring or checking viscosity, porosity, expansion, surface tension or the like; Instruments and Apparatus for measuring or checking quantities of heat, sound or light (including exposure meter); Micrometers."

- The heading 9031 reads as follows:

"Measuring Or Checking Instruments Appliances And Machines, Not Specified Or Included Elsewhere In This Chapter: Profile Projectors"

5.2 It is seen that the heading 9027 covers instruments and apparatus used for physical and chemical analysis. The Commissioner (Appeals) has held that this machine essentially measures the size of the particles but "redundantly gives analysis report of the size of the particle along with the percentage data". He argued that there is no analysis happening and therefore he has held that the goods are not classification under Heading 9027. The belief of Commissioner (Appeals) that the data analysis of particles size is a redundant process is without any basis. We find no merit in the argument of the Commissioner (Appeals) also because his observations contradict Chartered Engineer certificate without any ground. Thus, the order of Commissioner (Appeals) on this count is set aside and cross objections of respondents are allowed.

6. Consequently, the appeal filed by revenue is dismissed. Cross objections filed by respondents are disposed of in above terms.

(Pronounced in the open Court on 07.08.2023)

(RAJU)
MEMBER (TECHNICAL)

(SOMESH ARORA)
MEMBER (JUDICIAL)