

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.....OF 2025
(@Diary No.32474/2025)

COMMISSIONER OF CUSTOMS (IMPORT), MUMBAI

Appellant(s)

VERSUS

GLENMARK PHARMACEUTICALS LIMITED

Respondent(s)

O R D E R

1. Delay condoned.
2. We find no reason to interfere with the impugned order dated 25-02-2025 passed by the Custom Excise Service Tax Appellate Tribunal, West Zonal Bench at Mumbai.
3. The Civil Appeals is, accordingly, dismissed.
4. Pending application(s), if any, stands disposed of.

.....J.
[J.B.PARDIWALA]

.....J.
[R. MAHADEVAN]

New Delhi
17th July, 2025.

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

CIVIL APPEAL Diary No.32474/2025

[Arising out of impugned final judgment and order dated 25-02-2025 in CA No. 87155/2023 passed by the Custom Excise Service Tax Appellate Tribunal, West Zonal Bench at Mumbai]

COMMISSIONER OF CUSTOMS (IMPORT), MUMBAI

Appellant(s)

VERSUS

GLENMARK PHARMACEUTICALS LIMITED

Respondent(s)

IA No. 155486/2025 - CONDONATION OF DELAY IN FILING APPEAL

IA No. 155488/2025 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT

IA No. 155487/2025 - STAY APPLICATION

Date : 17-07-2025 This matter was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE J.B. PARDIWALA
HON'BLE MR. JUSTICE R. MAHADEVAN

For Petitioner(s) : Mr. V C Bharathi, Adv.
Mr. Gurmeet Singh Makker, AOR
Mr. Navanjay Mahapatra, Adv.
Mr. Sarthak Karol, Adv.
Mr. Padmesh Mishra, Adv.
Ms. Arunima Dwivedi, Adv.

For Respondent(s) : Ms. Charanya Lakshmikumaran, AOR
Mr. Ayush Agarwal, Adv.
Ms. Neha Choudhary, Adv.
Ms. Umang Motiyan, Adv.
Mr. Swastik Mishra, Adv.
Ms. Nitum Jain, Adv.

UPON hearing the counsel the Court made the following
O R D E R

1. Delay condoned.
2. The Civil Appeal is dismissed in terms of the signed order.
3. Pending application(s), if any, stands disposed of.

(CHANDRESH)

ASTT. REGISTRAR-cum-PS

(Signed order is placed on the file)

(POOJA SHARMA)

COURT MASTER (NSH)

Glenmark Pharmaceuticals Ltd vs Mumbai-Air Cargo Import on 25 February, 2025

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
MUMBAI

REGIONAL BENCH - COURT NO. I

Customs Appeal No. 87155 of 2023

(Arising out of Order-in-Original No. CC-GSS/05/2023-24 Adj. (I) ACC dated 30.05.2023 passed by the Commissioner of Customs (Import), Air Cargo Complex (ACC), Mumbai)

Glenmark Pharmaceuticals Limited
B/2, Mahalaxmi Chambers,
22, Bhulabhai Desai Road,
Mumbai - 400 026.

.... Appellants

Versus

Commissioner of Customs (Import)
Air Cargo Complex, Sahar
Andheri (East), Mumbai - 400 099.

.... Respondent

Appearance:

Shri T. Viswanathan a/w Shri Akhilesh Kangsia, Ms. Madhura Khandekar, Advocates
for the Appellant

Shri Ram Kumar, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR. M.M. PARTHIBAN, MEMBER (TECHNICAL)

FINAL ORDER NO. A/85262/2025

Date of Hearing: 26.08.2024
Date of Decision: 25.02.2025

PER: M.M. PARTHIBAN

This appeal has been filed by M/s Glenmark Pharmaceuticals Limited, Mumbai (herein after, referred to as 'the appellants'), assailing Order-in-Original No. CC-GSS/05/2023-24 Adj. (I) ACC dated 30.05.2023 (herein after, referred to as 'the impugned order') passed by the Commissioner of Customs (Import), Air Cargo Complex (ACC), Mumbai.

2. The brief facts of the case are that the appellants had imported 'Crimp Pumps' of various types and configurations by classifying it under Customs Tariff Item (CTI) 8413 5010, 8413 5090, and CTI 3926 9090 for its plastic

parts, by filing various Bills of Entry (B/Es) filed during the period 15.04.2021 to 19.11.2021 and self-assessed the same with applicable Basic Customs Duty (BCD) of 7.5% ad valorem and additional duty of Customs (CVD) at applicable rates in terms of Section 17(1) of the Customs Act,

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1962. The officers of the Customs Audit wing during the premises-based audit of assessment of imported goods, had objected to the classification of the imported goods and had raised a query seeking reply from the appellants as to why the imported goods should not be classified under CTI 9616 1020 with applicable Basic Customs Duty (BCD) of 20% ad valorem. After detailed analysis of the reply submitted to the audit objections and being not satisfied with such reply, the department had issued Show Cause Notice (SCN) dated 22.07.2022, for revising the classification of imported goods and by demanding differential duty along with interest and for imposition of penalty on the appellants. In adjudication of the said SCN, the original authority had come to the conclusion that the imported goods are used for medicaments which work on the principle of spray forming mechanism and that the goods are part of a bottle that is to hold the liquid form of medication for nasal application which disperses the liquid/a mass of droplets on the surface. Further, the original authority also found that complete scent sprays, perfume sprayer bottle and similar toilet sprays including nasal sprays is to be classified under CTI 9616 1010 and unassembled article including crimp pump is to be classified as if it were the finished product as per GRI 2(a) and vide Order-in-Original dated 30.05.2023 held that the impugned goods are classifiable under the CTI 9616 1020 of the First Schedule to the Customs Tariff Act, 1975 and not under the declared CTI 8413 5010, 8413 5090 and 3926 9090. Being aggrieved with the impugned order, the appellants have filed this appeal before the Tribunal.

3.1. Learned Advocate for the appellants submitted that 'Crimp Pump', as given in the picture shown in their written submission (which is extracted and shown below for ease of reference and better appreciation), is one of the components of 'Nasal spray device' which is used in for dispersal of medicaments which work on the principle of spray forming mechanism.

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The product literature indicate that this nasal spray relieves symptoms of rhinitis (blocked nose), running nose, sneezing and sinus discomfort. Nasal sprays are used for dispersing measured doses of drug/liquid through metered valve and is operated by hand. The nasal spray comprises of a plastic feed tube which dips in the reservoir/bottle which contains the medicament, a piston with spring which works in-tandem to perform the suction tension, and an actuator head which may not only initiates the suction action but it will also be used to dispense the medicament. He further stated that the product brochures placed on record clearly indicate that the imported 'Crimp Pump' used as part of Nasal Spray is used to dispense/spray the liquid form of drug in the nasal cavity of the patients.

Thus, he claimed that the imported item in no manner whatsoever is used in a 'scent spray or perfume spray' in order to classify the same under CTI 9616 1020.

3.2 Learned Advocate submitted that their views on classification of imported goods declared by the appellants were duly supported by the Harmonized System of Nomenclature (HSN) which provides for coverage of only scent and toilet sprays in heading 9616. Hence, he pleaded that the impugned order is not legally sustainable.

3.3 In support of their stand, learned Advocate had relied upon following decisions of the Tribunal in the respective cases mentioned below:

(i) Commissioner of Customs, Bombay Vs. CIPLA Ltd. - 1998 (102) E.L.T. 739 (Tribunal)

(ii) Perfect Aerosol Valves Pvt. Ltd. Vs. Commissioner of Customs, (NS-V), Nhava Sheva in the Final Order No. A/85500/2024 dated 22.04.2024 of Tribunal, Regional Bench, Mumbai.

4.1 Learned Authorised Representative (AR) reiterated the findings made by the Commissioner of Customs in the impugned order and submitted that issue of classification of impugned goods, has been examined in detail by the learned Commissioner of Customs. He stated that the appellants have described the imported goods as 'crimp pump' but claimed the classification under CTH 8413 50 which is meant for positive displacement pumps such as dosage pumps. From the sample photograph of the product, he submitted that the goods have both features of spray and pumps; pumps alone do not form aerosols on their own. He further stated that since the impugned goods by their way of functioning and other mechanism are very akin to the 'similar toilet spray', and these are rightly classifiable under CTI 9616 1020.

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4.2 Learned AR also submitted that the learned Commissioner (Appeals) by relying on the General Rules of Interpretation (GRI) classified the goods CTI 9616 1020 as the description is more specific, in comparison to the general description of goods under CTI 8413 5010.

4.3 Thus, learned AR justified the action in the impugned order dated 30.05.2023, for re-classifying the goods under CTI 9616 1020 and thus pleaded for rejecting the appeals filed by the appellants.

5. We have heard the learned Advocates appearing for the appellants and the learned Authorized Representative of the Department and perused the case records. Further, we have also considered the additional written submissions in the form of paper books given by both sides.

6.1 The issue involved herein is to decide the classification of imported goods by the appellants as to whether, the same merits classification under Customs Tariff Heading (CTH) 8413 50 and further under Customs Tariff Item (CTI) 8413 5010/8413 5090 as claimed by the appellants; or, is it classifiable under CTI 9616 1020 as determined by the learned Commissioner of Customs, for deciding on the appropriate levy of customs duty.

6.2 In order to address the above issue of classification of imported goods, we would like to refer the relevant legal provisions contained in Section 12 of the Customs Act, 1962; the Customs Tariff Act, 1975 and rules framed thereunder for consideration of proper and appropriate classification of the subject goods under dispute.

"Section 12. Dutiable goods. -

(1) Except as otherwise provided in this Act, or any other law for the time being in force, duties of customs shall be levied at such rates as may be specified under the Customs Tariff Act, 1975 (51 of 1975), or any other law for the time being in force, on goods imported into, or exported from, India.

(2) The provisions of sub-section (1) shall apply in respect of all goods belonging to Government as they apply in respect of goods not belonging to Government."

"Section 1. Short title, extent and commencement. -

(1) This Act may be called the Customs Tariff Act, 1975.

(2) It extends to the whole of India.

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(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

Section 2. Duties specified in the Schedules to be levied. -

The rates at which duties of customs shall be levied under the Customs Act, 1962 (52 of 1962), are specified in the First and Second Schedules.

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THE FIRST SCHEDULE - IMPORT TARIFF
(Refer Section 2)

THE GENERAL RULES FOR THE INTERPRETATION OF IMPORT TARIFF
Classification of goods in this Schedule shall be governed by the following principles:

1. The titles of Sections, Chapters and sub-chapters are provided for ease of reference only; 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, according to the following provisions:

2. (a) Any reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, as presented, the incomplete or unfinished articles has the essential character of the complete or finished article. It shall also be taken to include a reference to that article complete or finished (or falling to be classified as complete or finished by virtue of this rule), presented unassembled or disassembled.

(b) Any reference in a heading to a material or substance shall be taken to include a reference to mixtures or combinations of that material or substance with other materials or substances. Any reference to goods of a given material or substance shall be taken to include a reference to goods consisting wholly or partly of such material or substance. The classification of goods consisting of more than one material or substance shall be according to the principles of rule 3.

3. When by application of rule 2(b) or for any other reason, goods are, prima facie, classifiable under two or more headings, classification shall be effected as follows:

(a) The heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods.

(b) Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to (a), shall be classified

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as if they consisted of the material or component which gives them their essential character, in so far as this criterion is applicable.

(c) When goods cannot be classified by reference to (a) or (b), they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration.

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

5. In addition to the foregoing provisions, the following rules shall apply in

respect of the goods referred to therein:

(a) Camera cases, musical instrument cases, gun cases, drawing instrument cases, necklace cases and similar containers, specially shaped or fitted to contain a specific article or set of articles, suitable for long-term use and presented with the articles for which they are intended, shall be classified with such articles when of a kind normally sold therewith. This rule does not, however, apply to containers which give the whole its essential character;

(b) Subject to the provisions of (a) above, packing materials and packing containers presented with the goods therein shall be classified with the goods if they are of a kind normally used for packing such goods. However, this provision does not apply when such packing materials or packing containers are clearly suitable for repetitive use.

6. For legal purposes, the classification of goods in the sub-headings of a heading shall be determined according to the terms of those sub headings and any related sub headings Notes and, mutatis mutandis, to the above rules, on the understanding that only sub headings at the same level are comparable. For the purposes of this rule the relative Section and Chapter Notes also apply, unless the context otherwise requires.

THE GENERAL EXPLANATORY NOTES TO IMPORT TARIFF

1. Where in column (2) of this Schedule, the description of an article or group of articles under a heading is preceded by "-", the said article or group of articles shall be taken to be a sub-classification of the article or group of articles covered by the said heading. Where, however, the description of an article or group of articles is preceded by "- -", the said article or group of articles shall be taken to be a sub-classification of the immediately preceding description of the article or group of articles which has "-". where the description of an article or group of articles is preceded by "---" or "----", the said article or group of articles shall be taken to be a sub-classification of the immediately preceding description of the article or group of articles which has "-" or "--".

2. The abbreviation "%" in any column of this Schedule in relation to the rate of duty indicates that duty on the goods to which the entry relates shall be charged on the basis of the value of the goods as defined in section 14 of the Customs Act, 1962 (52 of 1962), the duty being equal to such percentage of the value as is indicated in that column.

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3. In any entry, if no rate of duty is shown in column (5), the rate shown under column (4) shall be applicable.

ADDITIONAL NOTES

In this Schedule,--

- (1)(a) "heading", in respect of goods, means a description in list of tariff provisions accompanied by a four-digit number and includes all sub-headings of tariff items the first four-digits of which correspond to that number;
- (b) "sub-heading", in respect of goods, means a description in the list of tariff provisions accompanied by a six-digit number and includes all tariff items the first six-digits of which correspond to that number;
- (c) "tariff item" means a description of goods in the list of tariff provisions accompanying eight digit number and the rate of customs duty;
- (2) the list of tariff provisions is divided into Sections, Chapters and Sub-Chapters;
- (3) in column (3), the standard unit of quantity is specified for each tariff item to facilitate the collection, comparison and analysis of trade statistics."

6.3 From plain reading of the above legal provisions, it transpires that in order to determine the appropriate duties of customs payable on any imported goods, one has to make an assessment of the imported goods for its correct classification under the First Schedule to Customs Tariff Act, 1975 in accordance with the provisions of the Customs Tariff Act by duly following the General Rules for Interpretation (GIR) and the General Explanatory notes (GEN) contained therein. The First Schedule to the Customs Tariff Act, 1975 specifies the various categories of imported goods in a systematic and well-considered manner, in accordance with an international scheme of classification of internationally traded goods, i.e., 'Harmonized Commodity Description and Coding System' (HS). Accordingly, goods are to be classified taking into consideration the scope of headings / sub-headings, related Section Notes, Chapter Notes and the General Rules for the Interpretation (GIR) of the First Schedule to the Customs Tariff Act, 1975. Rule 1 of the GIR provides that the classification of goods shall be determined according to the terms of the headings of the tariff and any relative Section notes or Chapter notes and thus, gives precedence to this while classifying a product. Rules 2 to 6 provide the general guidelines for classification of goods under the appropriate sub-heading. In the event of the goods cannot be classified solely on the basis of GIR 1, and if the headings and legal notes do not otherwise require, the remaining Rules 2 to 6 may then be applied in

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sequential order. Further, while classifying goods, the foremost consideration is the 'statutory definition', if any, provided in the Customs Tariff Act. In the absence of any statutory definition, or any guideline provided by HS explanatory notes, the trade parlance theory is to be adopted for ascertaining as to how the goods are known in the common trade parlance for the purpose of dealing between the parties.

7. In the case before us, the contending classification of imported goods discussed in the impugned order are either under CTI 8413 5010/8413 5090 or CTI 9616 1020 of the First Schedule to the Customs Tariff Act. Thus, it is clear that at the Chapter level itself, there is difference of opinion among the department and the appellants. The dispute in classification therefore lies in the narrow compass of analysis of the appropriate Chapter and its Headings under which the impugned goods are covered as per the Customs Tariff and then classifying the impugned product under the corresponding Sub-heading, Tariff Item. Before we examine the classification issue as above, firstly we would like to make this preliminary observation on the classification of parts/goods covered under CTH 3926. As the scope of goods covered under CTI 3926 90 00 relates to "--- Other" under the "- Other" of sub-heading 3926 90 falling under the category of goods described as "other articles of plastics and articles of other materials of headings 3901 to 3914", and in as much the disputed classification of 'crimp pump' is to be examined for consideration between headings 8413 and 9616, we are of the view that the classification of parts of crimp pump not falling under headings 3901 to 3914 cannot be classifiable neither under CTI 3926 9091 nor under CTI 3926 9099. These parts would be appropriately classified under the respective headings of the crimp pump as may be arrived at herein, after examination of the issue of classification of main item i.e., Crimp Pumps, under either one of the classifications contended by the appellants and the department. Now, we may closely examine the scope of the contending classification for determining correct classification of the imported goods. The relevant headings and their tariff entries in the First Schedule to the Customs Tariff Act, 1975 of contending Chapter headings 8413 and 9616 are extracted as below:

"SECTION XVI
MACHINERY AND MECHANICAL APPLIANCES; ELECTRICAL EQUIPMENT;
PARTS THEREOF; SOUND RECORDERS AND REPRODUCERS, TELEVISION
IMAGE AND SOUND RECORDERS AND REPRODUCERS, AND PARTS AND
ACCESSORIES OF SUCH ARTICLES

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NOTES :

1. This chapter does not cover:

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2. Subject to Note 1 to this Section, Note 1 to Chapter 84 and to Note 1 to Chapter 85, parts of machines (not being parts of the articles of heading 8484, 8544, 8545, 8546 or 8547) are to be classified according to the following rules:

(a) parts which are goods included in any of the headings of Chapter 84 or 85 (other than headings 8409, 8431, 8448, 8466, 8473, 8487, 8503, 8522, 8529, 8538 and 8548) are in all cases to be classified in their respective headings;

(b) other parts, if suitable for use solely or principally with a particular kind of machine, or with a number of machines of the same heading (including a machine of heading 8479 or 8543) are to be classified with the machines of that kind or in heading 8409, 8431, 8448, 8466, 8473, 8503, 8522, 8529 or 8538 as appropriate. However, parts which are equally suitable for use principally with the goods of headings 8517 and 8525 to 8528 are to be classified in heading 8517;

(c) all other parts are to be classified in heading 8409, 8431, 8448, 8466, 8473, 8503, 8522, 8529 or 8538 as appropriate or, failing that, in heading 8487 or 8548.

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.

5. For the purposes of these Notes, the expression "machine" means any machine, machinery, plant, equipment, apparatus or appliance cited in the headings of Chapter 84 or 85.

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and

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8.1 It could be seen that by applying the GIR 1, the position is made clear that Chapter Heading 8413 covers within its scope and ambit, mainly of six broad categories of goods:

(i) first one i.e., "Pumps fitted or designed to be fitted with a measuring device like the one used for dispensing fuel or lubricants, of the type used in filling stations or in garages; and hand pumps" covered under CTH 8413 10 and 8413 20, respectively;

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(ii) the second one i.e., "Fuel, lubricating or cooling medium pumps for internal combustion engines" covered under CTH 8413 30;

(iii) the third one i.e., "Concrete pumps" covered under CTH 8413 40";

(iv) the fourth one i.e., "Other reciprocating positive displacement pumps, including metering and dosing pumps; and such pumps designed for handling water", covered under CTI 8413 5010 and CTI 8413 5020, respectively and "similar pumps designed for other liquids" covered under CTI 8413 5090;

(v) the fifth one i.e., other rotary positive displacement pumps; other centrifugal pumps; other pumps not covered in the above groups; and pump liquid elevators grouped under CTH 8413 60, 8413 70 and 8413 80 respectively; and

(vi) the sixth one i.e., parts of any of the above pumps and liquid elevators classifiable under heading 8413 is covered under CTH 8413 90, and their respective tariff items.

8.2. Similarly, by applying same GIR 1, it could also be seen that Chapter Heading 9616 covers within its scope and ambit, mainly of three broad categories of goods:

(i) first one i.e., "Scent sprays and similar toilet sprays," covered under CTI 9616 1010;

(ii) the second one i.e., "mounts and heads for scent sprays and similar toilet sprays" covered under CTI 9616 1020; and

(iii) the third one i.e., "powder-puffs and pads for the application of cosmetics or toilet preparations" covered under CTI 9616 20 00.

8.3 Broadly, we find that the chapter heading 8413 deals with "various types of pumps and other similar mechanical appliances for liquids, along with their respective parts". Whereas, Chapter heading 9616 deals with products of "Scent sprays and similar toilet preparations along with mounts, heads, powder-puffs and pads" as a part of miscellaneous manufactured articles. The scope of coverage of Chapter 8413 is large enough to cover all types of pumps and other similar appliances, irrespective of its application in dispersal of medicament liquid or other use; Whereas the scope of coverage of goods under chapter heading 9616 is restrictive to scent sprays, toilet sprays which are of cosmetics in nature and those items such as mounts, heads, powder-puffs and pads which are essential for its application have alone been included with such items.

C/87155/2023 8.4 The learned Commissioner of Customs had come to the conclusion that the imported goods are classifiable under CTI 9616 1020 on the basis of following findings:

"16.2 From the above, it can be seen that CTH 9616 covers sprays whether table or pocket type and whether intended for personal or professional use. It consists of a complete set which includes a reservoir, to which is fixed the mount which incorporates the head with its spray forming mechanism and a pneumatic pressure bulb or a piston device.

16.3 I find that the noticee has contended that their product does not figure under CTH 9616 and the product is more appropriately classifiable under CTH 8413. As discussed supra, CTH 8413 covers mechanical devices and not impugned goods which is hand operated whereas I find that Chapter 96 covers "Miscellaneous manufactured articles" and the classification held by the department under CTH 9616 specifically covers the impugned goods and as per explanatory notes the same is not limited to usage in cosmetics and toilet sprays.

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19.2 On perusal of text of GRI 2(a) of the General Rules for the Interpretation of Import Tariff/ the General Rules for the Interpretation of the First Schedule to the Customs Tariff Act, 1975 and taking into account the actual usage/ characteristics of the impugned goods which form a bottle that is to hold a NASAL SPRAYS liquid in other words the impugned goods are fitted on bottle containing meditational liquid for nasal, I find the complete scent sprays/ perfume sprayer bottle and similar toilet sprays including nasal sprays is to be classified under heading 96161010 of the first Schedule to the Customs Tariff Act, 1975. Thus, by virtue of GRI 2(a), such a complete scent sprays/perfume sprayer bottle and similar toilet sprays including nasal sprays and unassembled article including crimp pump is to be classified as if it were the finished product under heading 96161010 of the first Schedule to the Customs Tariff Act, 1975. Also, the mounts and head are classifiable under heading 96161020 of the first Schedule to the Customs Tariff Act, 1975. Hence, tariff heading 9616 is the most appropriate classification for the impugned product."

8.5 From the above, it is seen that the Revenue's contention is that in terms of GIR-2(a), the impugned goods shall be classifiable under CTH 9616 1020 as the description of the goods i.e., 'crimp pumps' forms part of the nasal sprayer mechanism and therefore learned adjudicating authority had held that classification under this heading is more specific, and appropriate over the contending heading as claimed by the appellants under 8413 5010/ 8413 5090, which is appropriate for mechanical devices. From the careful reading of the GIRs, it could be seen that these are required to be followed sequentially; in other words when the classification of goods is not possible to be arrived under the first rule GIR-1 then one need to proceed further, one by one. Further, for invoking GIR-2(a), the preceding rules i.e., GIR 1, is to be exhausted. As it could be seen that in the present case, when the C/87155/2023 classification of goods can be arrived at by following GIR-1, by

detailed analysis of the specific customs tariff items under the respective headings, then there is no case for invoking GIR-2(a) arbitrarily. Further, the learned Commissioner in the impugned order had not examined and discussed the terms of headings and the scope of contending tariff entries, read with relevant section or chapter notes, before going ahead for adoption of GIR 2(a). Thus, it is not feasible to determine appropriate classification by application of GIR-2(a) alone, by ignoring the terms of headings which alone is sustainable inasmuch as the terms of heading solely determines appropriate classification for legal purposes.

8.6 Further, in order to evaluate the proper classification of imported goods, in terms of GIR-1, one has to take the assistance of the relative Section or Chapter notes besides the description or terms of the headings. In terms of Section Notes 3, 4 and 5 to Section XVI containing Chapter 84, 85 deals with appliances or machines. In terms of Section Note 3 the principal function would determine the classification; Section Note 4 states that if individual components which clearly contribute performance of specific function, then the whole machine shall also be classified under the respective entry in Chapter 84 or 85. Further Section Note 5 provide that the expression 'machine' shall refer to any machine, machinery, plant, equipment, apparatus or appliance cited in the headings of Chapter 84 or

85. Therefore, the description of chapter heading 8413 covers various types of appliances used in containers like tanks, vats or other similar containers. Whereas there is no specific section note or chapter note covering the articles of chapter heading 9616.

8.7 We find that the two contending classification are i.e., one under CTI 8413 50 10 'metering and dosing pumps' as well as CTI 8413 5090 'Other' of 'Other positive displacement pumps' as claimed by the appellants; and the other one is under CTI 9616 10 20 'mounts and heads', have to be analysed at the level of 'terms of headings', to apply GIR-1 to come to the conclusion as to which of these two classification is more appropriate for classification of impugned goods. Therefore, we need to examine the specific customs tariff entries under the two contending headings, the scope of coverage of goods under each of the specific tariff entries, in order to arrive at appropriate classification of imported goods.

C/87155/2023 9.1 In order to further examine the classification in terms of various customs tariff entries under the two contending sub-headings, we would like to examine the HS explanatory notes of the WCO, which describe in detail the scope and coverage of goods under Customs classification which is universally followed across all Customs Administrations of Members of WCO. The extract of HS classification in respect of relevant headings 8413 and 9616 are given below:

9.2 In careful reading of the above HSN explanatory notes, it is understood that heading 8413 covers under its scope inter alia, most of the machines and appliances for pumping, dispensing, raising or otherwise delivering the liquid contained that needs to be displaced/dispersed from the container to the desired place, irrespective of whether they are operated by hand or any kind of power, reciprocating or rotary or centrifugal pumps, under five different categories as described therein covered under heading 8513 of HSN Explanatory Notes.

C/87155/2023 9.3 From the plain reading of above HSN explanatory notes to heading 9606, it is understood that this heading covers under its scope, all preparations of a kind used in cosmetics and more specifically scent sprays, toilet sprays. Thus, these are essentially required for applying cosmetics like spray formation of the liquid that is used as scent or other similar perfume etc. This does not cover all types of mounts and heads or pumps or other appliances, for dispersal or spray of liquids as the phrase 'therefor' appearing in HSN description of 9606.10 and in the entries at CTH 9616 10 at the six digit level of the First Schedule to the Customs Tariff Act, 1975, is limited in its scope covering such mounts and heads for scent sprays and similar toilet sprays only. This position is also made clear from the scope of goods under "---" /three dash entry covered under the broader category of goods of " - "/" single dash entry, in terms of General Explanatory Notes mean that the 'mounts and heads' are sub-classification of goods mentioned at single dash level i.e., 'scent sprays' and 'similar toilet sprays'. The fact that the impugned goods are nasal spray mechanism for dispersing medicament is not under dispute. In view of the above analysis, we are of the considered view that such spray mechanism including 'crimp pump' cannot be brought under entirely different category of goods as the one specifically provided for 'cosmetics and toilet sprays', for classifying under CTI 9616 1020.

C/87155/2023 9.4 From the above discussion and analysis, we are of the prima facie view that the impugned goods are classifiable under CTI 8413 5010/ 8413 5090 as the imported goods at the time of import remain as 'appliance used for spraying or dispersion of liquid' called as 'Crimp Pump for nasal spray along with its components or parts.

9.5 We also find that our such view on the aspect of classification of imported goods under heading 8413 has also been supported by the above Notes of the HSN explanatory notes to chapter heading 8413, which cover all types of pumps for liquids.

9.6. We further find that the learned Commissioner in arriving at the conclusion for classification of the imported goods under the heading 9616 1020 has relied upon the nature of usage by referring to definition of 'crimp pumps' in public domain/websites for comparing the impugned goods with those mentioned for use in body sprays, eyeglass cleaner, room and car freshers, vitamin sprays. The reasoning adopted in the above case is that scope of coverage of goods under chapter heading 8413 is for industrial use, where as the classification under chapter heading 9616 is for consumer purposes. However, we find from the detailed discussion on the scope of coverage of goods under chapter heading 8413 as discussed in paragraphs 9.1 and 9.2 above, that this above view of restricting goods of 8413 only for industrial use is not supported by the facts.

10. Since, we had examined the merits of the case with respect to the issue in dispute i.e., classification of the impugned goods and have come to the conclusion that there is no merit in the classification arrived at by the learned adjudicating authority, we do not consider it necessary to examine other issues raised by the appellants with respect to limitation of time and imposition of penalty on the appellants.

11. We further find from the order passed by the Tribunal in the case of CIPLA Limited (supra) that it was held that aerosol valves containing medicament is a type of non-return valve and decided the

classification of goods under chapter sub-heading 8481 *ibid* and not under Chapter 96. Further, in the case of Perfect Valves (*supra*) it was held that classification of 'aerosol valve components', are classifiable under heading 8481 and are not covered under CTH 9616 1020. Therefore, it is clear that the Tribunal has consistently held that the valves, pumps and other similar appliances are correctly classifiable under chapter 84 and not under chapter 96.

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12. In view of the foregoing discussions and analysis, and on the basis of the orders of the Tribunal as discussed above, we are of the considered view that the impugned goods are classifiable under CTH 8413 50 and further depending upon the type of liquid dispensed under CTI 8413 5010, 8413 5090 of the First Schedule to the Customs Tariff Act, 1975. Accordingly, the impugned order dated 30.05.2023 classifying imported goods under heading 9616 1020 does not stand the scrutiny of law and therefore is not legally sustainable.

13. In the result, the appeal is allowed by setting aside the impugned order dated 30.05.2023.

(Order pronounced in open court on 25.02.2025) (S.K. MOHANTY) MEMBER (JUDICIAL) (M.M. PARTHIBAN) MEMBER (TECHNICAL) Sinha