CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

NEW DELHI

PRINCIPAL BENCH- COURT NO. I

Customs Appeal No. 55715 of 2023

(Arising out of Order-in-Original No. 14/2023/VCG/Pr. Commr./ICD-Import/TKD dated 28.06.2023 passed by the Principal Commissioner of Customs, New Delhi)

M/s Vanesa Cosmetics Pvt. Ltd. **....Appellant**
Village-Akbarpur, Barota, District-Sonipat,
Haryana-131 101
IEC No. :0513089900

Versus

Principal Commissioner of Customs, **....Respondent**
ICD (Import), Tughlakabad, New Delhi

APPEARANCE:

Shri Karan Chandna, Advocate for the Appellant
Shri M.K. Shukla, Authorised Representative of the Department

CORAM:

HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT
HON'BLE MR. P. ANJANI KUMAR, MEMBER (TECHNICAL)

DATE OF HEARING: 28.01.2026
DATE OF DECISION: 18.05. 2026

FINAL ORDER NO. 50911//2026

JUSTICE DILIP GUPTA

M/s Vanesa Cosmetics Pvt Ltd[1] has filed this appeal to assail the order dated 28.06.2023 passed by the Principal Commissioner of Customs, ICD (Import) TKD[2] to the extent it confirms the demand of customs duty of Rs. 13,67,324/- for import made through ICD (Import), TKD and demand of customs duty of Rs. 12,08,439/- for import made through Delhi Air Cargo/ACC Import with interest and

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1 the appellant
2 the Principal Commissioner

penalty under section 114A of the Customs Act, 1962[3]. The order also holds that the goods are liable to confiscation under 111(m) of the Customs Act.

2. The appellant is primarily engaged in the business of sales and supplies of perfume and scent sprays of various brand names such as Denver, Envy, Force, Hamilton, Honour and Noir.

3. A show cause notice dated 04.07.2022 was issued to the appellant under section 28(4) of the Customs Act alleging wrong classification of the items imported by the appellant and demanding differential duty with interest and penalty.

4. The description of the items imported by the appellant the Customs Tariff Item[4] declared by the appellant and the CTI proposed by the department are reproduced below:

S.No.	Item Description	CTI declared by appellant	CTI by department
1	Empty Plastic Container (Packing Material for Cosmetic)	39231090	96161020
2	Empty Perfume Bottle/Container	39233090	96161020
3	Plastic Cap	39235090	96161020
4	Actuator/empty Plastic Container/white Insert/Insert Orifice	39269099	96161020
5	Empty Glass Bottle of Vibrant Colours/ Coting Bottle + Gold Hotstamping	70109000	96161020
6	Metal Ring	73269099	96161020
7	Metal Ring	76169990	96161020
8	Metal Ring	83099090	96161020
9	Actuator	84249000	96161020
10	Actuator/ Valve	84818090	96161020

5. The show cause notice also invoked the extended period of limitation contemplated under section 28(4) of the Customs Act. The relevant portions of the show cause notice are reproduced below:

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3 the Customs Act
4 CTI

"15. From the statements of Sh. Vijesh Gupta recorded under Section 108 of the Customs Act, 1962, it is evident that he was aware of the nature of the goods and its classification and he intentionally wrongly classified the imported goods in the import documents. These facts are also substantiated with the statement dated 09.12.2021 of Sh. Surendran K., Director of M/s Three Aces Global Logistics Pvt. Ltd., he in his statement had also admitted that they used to file bill of entry on the basis of declaration approved by the importer i.e. M/s Vanesa Cosmetics Pvt. Ltd., as and when importer had made correct declaration they had filed the Bill of entry of imported goods in correct CTH and when goods are mis-declared they used to suggest CTH accordingly. Hence, it was the importer who was solely responsible for mis-classification. His own admission also suggests that he was well aware with the nature of impugned goods. The import documents of M/s Vanesa Cosmetics Pvt. Ltd. (i.e. Invoice and packing list) submitted by the Customs Broker, in his statement dated 09.12.2021 contained "VLCC" in item description. Moreover, the Customs Broker was also marking the emails to the representative of M/s VLCC Personal Care Products Ltd. These facts indicated that both the importer as well as the Customs Broker were aware of the end use of these imported products for VLCC.

Thus, it appears that provisions of Section 28(4) relating to wilful misstatement and suppression are attracted and therefore the extended period demand is rightly invokable.

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17. M/s Vanesa Cosmetics Pvt. Ltd. evaded applicable customs duty on the import of Actuator, Empty Pocket Spray Bottle etc. by way of willful misstatement. The company had mis-declared and mis- classified the true and correct description of the imported goods before Custom Officer during

> filing of bill of entry under Section 46 of the Customs Act, 1962, thereby suppressed the facts by not declaring correct duty before Customs."
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> **(emphasis supplied)**

6. The appellant filed a reply to the show cause notice and apart from contesting the demand on merits contended that the extended period of limitation could not be invoked in the facts and circumstances of the case. The appellant pointed out that the dispute pertained to classification of the goods and the classification resorted to by the importer was based on his own understanding and merely because the department may have a different opinion on classification would not mean that the extended period of limitation could be invoked. The appellant also pointed out when the past Bills of Entry for the period 2017-2020 were filed, no objection was raised by the officers regarding classification of the goods. The Commissioner, however, held that the extended period of limitation was correctly invoked and the relevant findings are reproduced below:

> **"9.3** On plain reading of the above said clause of Section 28 of the Act, I observe that for invocation of extended period of demand, either of ingredients i.e. collusion or any wilful mis-statement or suppression of facts must be present. In the present case, the Noticee is engaged in the business of perfumery as is evident from the end use data submitted by them in DRI office and has claimed more than 50 years of experience in the industry, as per information available on their website. **Since they have such a vast experience in this field, it is incumbent upon them to know their products and their classification. Also, in the era of self-assessment, the duty to declare correct description, classification etc. has been cast upon the importer. During the pre-GST period, the Noticee was happily classifying these goods under CTH 9616 but during the post-GST period, the Noticee has changed their classification of such items happily to different CTHs as per their convenience to pay**

lesser duty, when Duty/IGST on CTH 9616 increased. In the present case, it is observed that the Noticee has resorted to different classification of their same imported goods which indicates that only thing the Noticee is concerned with is payment of lesser duty, not correct classification of their imported raw materials. **A company claiming to have experience of more than 50 years should act accordingly and cannot be allowed to change classification of their imported raw material every time, there is an increase in rate of customs duty. It also reflects from the statement of Sh. Vijesh Gupta, Director of the Noticee firm wherein he had interalia stated that he had switched the classification of the impugned goods from CTH 9616 to CTH 8424 etc. on advice of his Customs Broker. It is nothing but passing on the blame. The Noticee was changing classification of their imported goods during pre-GST to post-GST era, just to gain from the difference in rate of customs duty.** There is absence of bonafide belief on the part of the Noticee that the impugned goods are classifiable under a particular chapter head to which he adhered to till the department objects to such classification.

In the present case, the Noticee resorted to different classification during different period of time, just to gain from the difference in rate of customs duty. "Suppression" means not providing any information which the person is legally required to state but is intentionally or deliberately not stated. "Wilful" refers to acts which are intentional, conscious and directed toward achieving a purpose. Thus, in the instant case, the ingredients of wilful mis-statement and suppression of facts, necessary for invocation of extended period, are present as the Noticee has willfully resorted to misstatement and suppression by mis-declaring the classification of the impugned goods as discussed above.

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9.5 In view of the above, it is apparent that the Noticee has resorted to mis-declaration at various stages by classifying the same items under different CTH in different bills of entry at different occasion to claim lower rate of duty. The importer noticee claiming incorrect classification and changing classification of goods to suit payment of lower duty shows mis-declaration with intention to evade payment of appropriate duty. Therefore, this is a fit case for invocation of extended period of limitation."

(emphasis supplied)

7. Shri Karan Chandna, learned counsel for the appellant submitted that not only had the appellant declared the correct classification of the goods imported, but even otherwise the extended period of limitation could not have been invoked in the facts and circumstances of the case.

8. Shri M.K. Shukla, learned authorized representative appearing for the department, however, supported the findings recorded by the Commissioner on the extended period of limitation.

9. On 28.01.2026, the Bench reserved orders only on the issue of invocation of the extended period of limitation. It is this issue that is, therefore, requested to be decided.

10. In the present case, the appellant had filed the Bills of Entry indicating a particular Customs Tariff Item. The department believed that the correct Customs Tariff Item was different from the one indicated by the appellant. It is in this context that the extended period of limitation would have to be examined.

11. A division bench of this Tribunal in **Challenger Cargo Cargo Carriers Pvt Ltd** vs. **Principal Commissioner of Customs (Import) Inland Container Depot, Tughlakabad, New Delhi**[5] held that section 17 of the Customs Act requires the importer to self-assess duty and empowers the officers to reassess the duty so self-assessed by the importer. While the importer is required to subscribe to the truth of the contents of the Bill of Entry, it refers to facts and not opinions. The importer may self-assess the duty under a particular tariff heading as per its view and understanding, but the officer reassessing the Bill of Entry may take a different view. Under the risk

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5 Customs Appeal No. 50980 of 2021 decided on 01.12.2022

managing system of the customs electronic data managing system, the electronic data interchange selects only some of the Bills of Entry for assessment and allows clearance of other Bills of Entry based on self-assessment. In such circumstances, the extended period of limitation cannot be invoked for the department has to establish that there was not only suppression of facts but suppression was with an intent to evade payments of duty.

12. In the present case, the appellant had provided all the relevant information to the department and at the time of import, the goods were physically examined by the customs authority prior to the clearance. The appellant had indicated a particular Customs Tariff Item in the Bills of Entry and merely because the department believes that the goods should have been classified under a different Customs Tariff Item will not mean that the extended period of limitation contemplated under section 28(4) of the Customs Act cannot be invoked.

13. This apart, the Commissioner has recorded a finding that the appellant had changed the classification as per the convenience to pay lesser duty as and when the duty changed. This was not even the allegation made in the show cause notice. It was, therefore, not open to the Commissioner to examine this fact when the show cause notice had not called upon the appellant to show cause on this aspect.

14. The impugned order has also placed reliance upon the statement made by the importer and the Customs Broker under section 108 of the customs. These statements could not have been relied upon as the procedure contemplated under section 138B of the Customs Act had not been followed. In this connection, reliance can be placed on the

decision of this Tribunal in **M/s Surya Wires Pvt. Ltd.** vs. **Principal Commissioner, CGST, Raipur**[6].

15. The decision of the Supreme Court in **Commissioner of Central Excise, Ahmedabad v. M/s. Urmin Products P. Ltd. & Others**[7]**,** on which reliance has been placed by the learned authorized representative of the department, does not come to the aid of the department. This was a case where the assessee had deliberately changed the classification to change advantage of lower rates of duties by very clearly drafting the letter without giving any details of the product which they were manufacturing at the material time. This apart, in the present case, as noticed above, there was no allegation on this aspect in the show cause notice.

16. The Commissioner has placed much emphasis on the fact that in an era of self-assessment, the assessee is required to state the correct facts. This, it needs to be noted, was not even a charge in the show cause notice.

17. Even otherwise, this issue was examined by a division bench of this Tribunal in **M/s GD Goenka Private Limited** vs. **The Commissioner of Central Goods and Services Tax, Delhi South**[8] and it was held that this cannot be made a ground to invoke the extended period of limitation. The relevant observations are as follows:

> "**16.** Another ground for invoking extended period of limitation given in the impugned order is that the appellant was operating under self-assessment and hence had an obligation to assess service tax correctly and take only eligible CENVAT credit and if it does not do so, it amounts to suppression of facts with an intent to evade and violation of Act or

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6 Excise Appeal No. 51148 of 2020 decided on 01.04.2025
7 2024(388) E.L.T. 418 S.C.
8 Service Tax Appeal No. 51787 of 2022 decided on 21.08.2023

> Rules with an intent to evade. We do not find any force in this argument because every assessee operates under self-assessment and is required to self-assess and pay service tax and file returns. If some tax escapes assessment, section 73 provides for a SCN to be issued within the normal period of limitation. This provision will be rendered otiose if alleged incorrect self assessment itself is held to establish wilful suppression with an intent to evade. To invoke extended period of limitation, one of the five necessary elements must be established and their existence cannot be presumed simply because the assessee is operating under self-assessment.
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> **17.** The argument that the appellant had not disclosed in its returns that it was availing and using ineligible CENVAT credit also deserves to be rejected. The appellant cannot be faulted for not disclosing anything which it is not required to disclose. Form ST-3 in which the appellant is required to file the returns does not require details of the invoices or inputs or input services on which it availed CENVAT credit and the appellant is not required to and hence did not provide the details of the CENVAT Credit taken. It also needs to be pointed out that the Returns are filed online and therefore, it is also not possible to provide any details which are not part of the returns. If the format of ST-3 Returns is deficient in design and does not seek the details which the assessing officers may require to scrutinise them, the appellant cannot be faulted because as an assessee, the appellant neither makes the Rules nor designs the format of the Returns. So long as the assessee files the returns in the formats honestly as per its self assessment, its obligation is discharged."

18. In view of the aforesaid discussion, the extended period of limitation could not have been invoked in the facts and circumstances of the case.

19. The impugned order confirming the demand of duty under section 28(4) of the Customs Act, therefore, cannot be sustained and is set aside. Penalty under section 114A of the Customs Act is imposed for the same reasons as for invoking the extended period of limitation. Penalty under section 114A of the Customs Act, therefore, could not have been imposed.

20. The confiscation of the goods under section 111(m) of the Customs Act cannot also be justified. This issue was examined by this Tribunal in **Challenger Cargo Carriers** and it was observed:

> **"20.** Section 111(m) does not provide for confiscation of goods if the importer or on his behalf, the Customs Broker claims any wrong classification in the Bill of Entry. It only provides for confiscation if there is mis-declaration of goods. Even if the goods are mis-classified or duty is otherwise wrongly self-assessed by the importer, the goods do not become liable for confiscation."

21. Thus, for all the reasons stated above, the impugned order dated 28.06.2023 passed by the Commissioner so far it concerns the appellant is set aside and the appeal is allowed.

(Order pronounced in the Open Court on **18.05.2026**)

(JUSTICE DILIP GUPTA)
PRESIDENT

(P. ANJANI KUMAR)
MEMBER (TECHNICAL)

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