CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH - COURT NO. 2

Customs Appeal No. 20313 of 2023

(Arising out of Order-in-Appeal No. 20/2023 dated 16.02.2023 passed by the Commissioner of Customs (Appeals), Bangalore.)

M/s. ITC Limited
ITC Life Sciences and Technology Centre,
No. 3, 1st Main Road, Peenya,
Bangalore – 560 058. .....**Appellant(s)**

VERSUS

The Commissioner of Customs,
C. R. Building, P. B. No. 5400,
Queens Road,
Bangalore – 560 001. .....**Respondent(s)**

APPEARANCE:

Mr. Nischal Agarwal, Chartered Accountant (CA) for the Appellant.
Mr. Vikalp Jain, Superintendent (AR) for the Respondent.

CORAM:

HON'BLE MR. P.A. AUGUSTIAN, MEMBER (JUDICIAL)
HON'BLE MR. PULLELA NAGESWARA RAO, MEMBER (TECHNICAL)

Final Order No. 20586 /2026

Date of Hearing: 19.12.2025
Date of Decision: 30.04.2026

PER: P.A. AUGUSTIAN

The issue in the present appeal is regarding classification of the goods imported by the Appellant whether they fall under Customs Tariff Heading (CTH) 9032 as classified by the Department or under Customs Tariff Heading (CTH) 9027 as declared by the Appellant.

2. The brief facts are the ITC Limited ('the Appellant'), having office at ITC Life Sciences and Technology Centre is a DSIR (Department of Scientific and Industrial Research, Ministry of Science and Technology, Government of India) certified Research facility which is engaged in developing various kinds of products through Research and Development activities. The Appellant imported "1520 Monodisperse Aerosol Generator: w/Acc-SN (230-20190417-01 vide Bill of Entry No. 3301122 dated 20.05.2019 and goods were classified under Customs Tariff Item (CTI) 9027 5090 of the First Schedule to the Customs Tariff Act, 1975 at the duty rate of 0% (Basic Customs Duty) + 0% (Social Welfare Surcharge) + 18% (IGST). The Appellant before the adjudicating authority submitted that they had classified the product under Customs Tariff Item 9027 5090 instead of Customs Tariff Item 9027 8090. The Appellant declared the assessable value of the goods as Rs. 25,22,168.76/- and paid IGST at 18% amounting to Rs. 4,53,990.20/-. The Appellant under the same consignment and bill of entry, the following items, viz., (i) 3321 Aerodynamic Particle Sizer: w/ACC-SN (71913011) (ii) 1090 Electrical Neutralizer (Corona-based):w/Acc-SN (109020190411-0171913011) and (iii) 3302A Aerosol Diluter:w/ACC-SN (3302191501) were also imported along with the above Product.

3. The Department alleging mis-declaration of classification of goods, proceedings were initiated and a show cause notice was issued on 05.07.2021 and Adjudication authority as per the Order-in-Original dated 29.11.2021 rejected the classification declared by the Appellant and reclassified the goods under Customs Tariff Item (CTI) 9032 8990, confirmed the differential duty with interest and also imposed equal amount of penalty under Section 114A of the Customs Act, 1962. Aggrieved by said order, an appeal was filed before the Commissioner (Appeals) and Commissioner (Appeals) as per the impugned Order-in-Appeal dated 16.02.2023 dismissed the appeal. Aggrieved by said order, present appeal is filed.

4. The Learned Chartered Accountant (CA) during the hearing submits that in the System, all the above components /instruments work in tandem to produce the final analytical result for the physical and chemical analysis of the aerosol. The Appellant follows the below-described process for this purpose:

Step 1: Aerosol particles are generated using the Mono-disperse aerosol generator (the imported item which is the subject of the present appeal).

Step 2: The generated aerosol is then fed through Electrical Neutralizer in order to neutralize the negative or positive charges of the aerosol.

Step 3: Once neutralized, a sample of such neutralized aerosol will be diluted with the Diluter to attain the required concentrate of aerosol.

Step 4: The particle size and concentration of the diluted aerosol will be measured using the APS Spectrometer.

Step 5: The Spectrometer is also used to observe that consistency in the particle size of the aerosol (to 0.8 to 12 μm in diameter) has been attained as required for the experiment.

Step 6: Using a Mass Flow Controller along with the Flow Meter and Vacuum Pump, the requisite amount and rate of diluted aerosol is administered in the analytical model which will yield the physical analysis experimental data.

4.1 In the course of procuring the various components and instruments required to construct this System, some of these components /instruments were sourced locally, while others were imported from M/s. TSI, a US-based company which supplies precision measurement instruments.

5. In this regard Relevant extract of Chapter 90 of the Customs Tariff Act, 1985 is reproduced below:

Tariff Item	Description of goods
9027	Instruments and Apparatus for Physical or Chemical Analysis (For Example, Polarimeters, Refractometers, Spectrometers, 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 Meters); Microtomes
9027 50	-Other instruments and apparatus using optical radiations (UV, visible, IR)
90275090	Other

6. The Appellant had inadvertently classified the said Product under Customs Tariff Item 9027 5090 instead of Customs Tariff Item 9027 8090. Relevant extract of Tariff Entry 9027 8090 under Chapter 90 of the Customs Tariff Act, 1985 is reproduced below:

Tariff Item	Description of goods
9027	Instruments and Apparatus for Physical or Chemical Analysis (For Example, Polarimeters, Refractometers, Spectrometers, 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 Meters); Microtomes
9027 80	-Other instruments and apparatus
902780 90	Other

7. The Learned Chartered Accountant (CA) draws our attention to description of goods falling under Customs Tariff Item (CTI) 9027 5090 and also under Customs Tariff Item (CTI) 9027 8090. Learned CA further submits that in the present facts, the Product is an instrument /apparatus which is used for generating aerosol for physical and chemical analysis. Hence, the Product is appropriately classifiable under Heading 9027 80 of the Customs Tariff Act, 1985 as "Other instruments and apparatus". Learned CA further submits that Chapter Note 3 of Chapter 90 of the Customs Tariff Act, 1985 [Section XVIII] provides that; "The provisions of Notes 3 and 4 to Section XVI apply also to this Chapter." Note 4 to Section XVI reads as:

> *"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".*

7.1 From the above, in emerges that in respect of a combination of machines or instruments intended to contribute together a clearly defined function covered by a heading in Chapter 90, then the entire combination of machines or instruments must be classified in the heading appropriate to that function.

8. Further to substantiate the above contention, Learned CA draws our attention to the diagram showing the activity of the complete machine where the goods imported by the Appellant is part of the said machine. Learned CA further draws our attention to the Bill of Entry No. 3301122 dated 20.05.2019, where the description of the goods is shown as under Customs Tariff Item (CTI) 9027 50 90, Aerodynamic Particles Sizer, w/ACC-SN (71913011) for physical and chemical analysis for research and development purpose.

9. Learned CA further submits that for the very same impugned product/goods, an allegation was made during Audit and another show cause notice (SCN) No.177/2023-24 dated 08.01.2024 was issued alleging that it is classifiable under Customs Tariff Item (CTI) 8543 70 19 and the benefit of Notification No. 24/2005-Cus dated 01.03.2005 would not be available. However, when the Appellant submitted reply to the show cause notice, they have informed that on the very same product, different show cause notice was issued, alleging different classification and prima facie it is unsustainable. Considering the reply, the Adjudicating authority as per the Order-in-Original No.572/2024-25 dated 07.01.2025 dropped the proceedings initiated against the Appellant.

10. Learned CA further submits that the Product imported vide Bill of Entry No. 3301122 dated 20.05.2019, where the assessable value of Rs. 25,22,168.76/- was declared and the applicable customs duty was paid. The Learned Respondent has issued the show cause notice (SCN) on 05.07.2021 and sought to invoke the extended period of limitation by issuing show cause notice (SCN) under Section 28(4) of the Act (i.e. beyond a period of two years from the date of the Bill of Entry) on the premise that the Appellant has suppressed and wilfully mis-stated the facts about the actual nature of the Product. In this regard, the Respondent failed to appreciate the following contentions of the Appellant, in terms of which is it evident that there was no suppression or willful misstatement of facts by the Appellant and therefore Section 28(4) of the Act is not applicable in the present facts:

(a) The Appellant has appropriately declared the Product as "Monodisperse Aerosol Generator for Physical and Chemical Analysis for Research & Development in the Bill of Entry filed;

(b) The description is in line with the Commercial invoice issued by the supplier of the Product;

(c) The supplier has classified the goods under HS code 9027 in the commercial invoice;

(d) The issue in the present facts is regarding classification of the Product, which is interpretational in nature.

11. Learned CA further submits that though the Appellant had raised the issue regarding unsustainability of the demand by invoking the extended period of limitation, the Adjudicating authority has not considered the issue and confirmed the demand by invoking the extended period of limitation as per Section 28(4) of the Act without any allegation regarding suppression of facts by the appellant; the Respondent has failed to appreciate that there has been no suppression on the part of the Appellant, and the Appellant has classified the Product in a bona fide manner under Customs Tariff Heading 9027 as the Product is an integral component of the said System used for physical and chemical analysis of aerosols. The Respondent failed to appreciate that the extended period of limitation can be invoked only in instances of evasion / escapement of tax occasioned by suppression, omission or failure to disclose wholly or truly all material facts required for verification by the assessee, or when the assessee had an intention to evade the payment of tax.

12. Learned CA also relied on the decision of the Hon'ble Supreme Court in **Pahwa Chemicals Private Limited Vs. CCE, Delhi [2005 (189) ELT 257 (S.C.)]** wherein inter alia it is held that:-

"*There must be some positive act on the part of the party to establish either willful mis-declaration or willful suppression".*

13. Learned CA also relied on the following decisions: -

(i) Anand Nishikawa Co. Ltd. Vs. CCE – 2005 (188) ELT 149 (SC)

(ii) CCE&C, Valsad Vs. Atul Ltd. – 2016 (332) ELT 97 (Guj.)

(iii) L&T Ltd. Vs. CCE, Pune – II – 2007 (211) ELT 513 (SC)

(iv) Uniworth Textiles Vs. CCE, Raipur – 2013 (288) ELT 161 (SC)

(v) Jio Infocomm Ltd. Vs. CC – 2021 (10) TMI 392 (T-Mum)

(vi) CCE Vs. Ishaan Research Lab [2008 (230) ELT 7 (SC)]

(vii) Densons Pultretaknik Vs. CCE [2003 (155) ELT 211 (SC)]

(viii) Vishal G Trivedi & Ors. Vs. C.C., Ahmedabad [2019 (4) TMI 945 - CESTAT

(ix) CCE, Chandigarh Vs. Raja Forgings & Gears Ltd. [2008 (7) TMI 710 - CESTAT]

(x) Biomax Life Sciences Ltd Vs. CC,CE&ST, Hyderabad-IV [2020 (7) TMI 585 - CESTAT]

14. Learned Authorized Representative (AR) for the Revenue reiterated the finding in the impugned order.

15. Heard both sides and on perusal of records,

16. We find that the product in dispute is an aerosol generator, which is used for producing mono-disperse droplets and aerosol particles for physical and chemical analysis. The impugned Product does not operate in isolation and forms a key component of the entire System apparatus, without the said equipment the system will be unable to generate its physical analysis experimental data. Once the aerosol is generated, the product has no in-built mechanism to measure, control or maintain its parameters on its own. Further, the Product has no means to constantly or periodically measure the actual value or parameters of the generated aerosol which is a pre-requisite for classifying an item under Chapter heading 9032. Hence the entire system and apparatus thereof including the products are classifiable under Chapter Heading 9027. Further as regards invoking the extended period of limitation, we find that following the ratio of the decisions relied by the Appellant and considering the facts that the issue regarding classification adopted by the Department against the very same goods under different classification including the impugned order and as per Order-in-Original

No. 572/2024-25 dated 07.01.2025, we find that on such classification issue, confirming the demand and imposing penalty by invoking the extended period of limitation is unsustainable.

17. In view of the above discussion, we find that the impugned product /goods are classifiable under Customs Tariff Item 90278090 as declared by the appellant. Hence, the impugned order is unsustainable and is liable to be set aside.

18. Accordingly, the impugned order is set aside, and the appeal is allowed with consequential relief, if any, in accordance with law.

(Order was pronounced in Open Court on 30.04.2026)

(P. A. AUGUSTIAN)
MEMBER (JUDICIAL)

(PULLELA NAGESWARA RAO)
MEMBER (TECHNICAL)

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