CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI.

PRINCIPAL BENCH,
COURT NO. I

CUSTOMS APPEAL NO. 55134 OF 2023

[Arising out of the Order-in-Original No. 16/COMMR./VC/Sanden Vikas/ICD-PPG/22-23 dated 29/03/2023 passed by The Commissioner of Customs, New Delhi – 110 096.]

M/s Sanden Vikas (India) Pvt. Ltd., **……Appellant**
Plot No. 65, Sector – 27A,
Faridabad, Haryana (121 003).

Versus

Commissioner of Customs, **….Respondent**
ICD, Patparganj,
New Delhi – 110 096.

APPEARANCE:
Dr. Prabhat Kumar and Shri Pralabh Mathur, Advocates for the appellant.
Shri Ranjan Prakash and Shri Rajesh Singh, Authorized Representative for the Department

CORAM:
HON'BLE JUSTICE MR. DILIP GUPTA, PRESIDENT
HON'BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)

FINAL ORDER NO. 50795/2026

DATE OF HEARING : 20.01.2026
DATE OF DECISION: 27.04.2026

P.V. SUBBA RAO

The order dated 29.3.2023 passed by the Commissioner[1] is assailed by M/s. Sanden Vikas (India) Pvt. Ltd.[2] in which he decided the proposals made in the show cause notice dated 23.7.2020[3] covering the Bills of Entry filed in six different customs ports and ICDs by the appellant in this appeal.

1. **impugned order**
2. **Appellant**
3. **SCN**

2. The appellant manufactures compressors and automotive air conditioners and for this purpose, imported various components through different customs stations. Thereafter, a Premises Based Audit (PBA) was conducted by the auditors of the department who found that the appellant had mis-classified 8 goods and had also short paid duty without applying the correct value of the goods. The SCN was issued covering all six customs stations and demanding duty of Rs.77,17,73,714/- from the appellant on account of classification and valuation.

3. The Central Board of Excise and Customs[4] issued Notification No. 73/2020-Cus(NT) dated 17.8.2020 appointing Commissioner of Customs, ICD, Patparganj as the common adjudicating authority to decide the SCN covering all the six customs stations. The Commissioner passed the impugned order as the common adjudicating authority. He confirmed the demand of only Rs. 6,84,78,504/- and dropped the rest of the demand. There is no appeal by the Revenue against the demand dropped by the Commissioner. This appeal is only against that party of the demand which has been confirmed by the Commissioner.

4. This demand has broadly two components- (a) demand due to dispute regarding valuation; and (b) demand due to dispute regarding classification.

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4. CBIC

5. As far as the valuation is concerned, as per section 14 of the Customs Act, 1962[5], the value of the imported goods shall be the transaction value, i.e., the price paid or payable for delivery at the time and place of importation. Since the place of importation is India, the freight upto the port of importation in India has to be included in the assessable value. This legal position is not in dispute. If the transaction value does not include the freight, this cost has to be added to the transaction value. Sometimes, the cost of freight is not ascertainable from the records. Rule 10 of the Customs Valuation (Determination of value of Imported goods), Rules, 2007 provides that if the freight is not available, 20% of the FOB value should be added as freight. The relevant portion of this Rule is reproduced below:

> **Rule 10: Costs and services**
>
> xxxx
>
> (2) For the purposes of sub-section (1) of section 14 of the Customs Act, 1962 (52 of 1962) and these rules, the value of the imported goods shall be the value of such goods, for delivery at the time and place of importation and shall include -
>
> (a) the cost of transport of the imported goods to the place of importation;
>
> (b) loading, unloading and handling charges associated with the delivery of the imported goods at the place of importation; and
>
> (c) the cost of insurance :
>
> Provided that -
>
> **(i) where the cost of transport referred to in clause (a) is not ascertainable, such cost shall be twenty percent of the free on board value of the goods;**

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5. Act

(ii) the charges referred to in clause (b) shall be one per cent of the free on board value of the goods plus the cost of transport referred to in clause (a) plus the cost of insurance referred to in clause (c);

(iii) where the cost referred to in clause (c) is not ascertainable, such cost shall be 1.125% of free onboard value of the goods;

Provided further that in the case of goods imported by air, where the cost referred to in clause (a) is ascertainable, such cost shall not exceed twenty per cent of free on board value of the goods:

6. Learned counsel submits that the Commissioner has confirmed a demand of Rs. 2,17,18,057/- on account of freight for the reason that the appellant was unable to produce freight certificates. He submits that the appellant has now obtained the freight certificates and has enclosed them with this appeal.

7. **Since there is no dispute on the legal position regarding the valuation, we find that the matter insofar as the valuation is concerned needs to be remanded to the Commissioner so that he can get an opportunity to examine the freight certificates now said to have been obtained by the appellant and decide.**

Classification

8. This leaves us with the question of classification of the goods. In the SCN, classification of eight (8) goods was proposed to be re-determined with consequential demand of duty invoking extended period of limitation. Of these, the Commissioner accepted the appellant’s classification in respect of two (2) goods – compressors and gaskets.

9. Learned counsel submitted before us that he is not pressing the classification of two (2) goods-'O-Ring' and 'Snap Ring' because the amounts involved is just a few thousand rupees. The dispute therefore is now confined to classification of four goods :- (i) heater; (ii) gear assembly; (iii) CAM; and (iv) lip seal.

Heater

10. The Commissioner has recorded in the impugned order that the appellant had declared this good as 'Heater(component for Car Air Conditioner for captive consumption)' and classified it under various Customs tariff headings- 8516, 8708, 8414, 8415, etc. and paid basic customs duty at 7.5%/10% and IGST @18% whereas according to the SCN, they are correctly classifiable under CTI 8415 90 00 which attracts basic customs duty @10% and IGST @ 28%. The Commissioner noted that the appellant itself declared the Heater as part of the automotive air conditioner. He also found that the appellant itself classified it under Heading 8415. Hence the Commissioner recorded that there was no ambiguity in the classification. The relevant portions of the impugned order are reproduced below:

> "23. **Classification dispute of goods declared as "Heater (parts of Air-conditioner)"**
>
> 23.1 The Noticee was importing and clearing goods declared as 'Heater (Component for Car Air-conditioner for Captive consumption)' under various CTH 8516, 8708, 8414, 8415 etc. and paying BCD @ 7.5%/10% & IGST @ 18% whereas, it is alleged in the SCN that the heater being part of air-conditioner was classifiable under chapter heading 84159000, which attracts BCD @ 10% & IGST

@28%. Further it was also noticed that Noticee that Noticee had availed the benefit of Customs Notification No. 046/2011-Cus dt. 01.06.2011 (Indo-ASEAN Trade Agreement). The CTH found on the submitted AIFTA certificates was 8414 9011, whereas the item in dispute falls under CTH 8514 9000, thus the items in dispute were not to be entitled of the benefits of said Customs Notification.

23.2 I find that the Noticee has accepted classification of Heater as part of the automotive air-conditioner to be classifiable under 85149000 which attract BCD @ 10% & IGST @ 28%. Further, the noticee himself had declared the goods as "Heater (Component for car air-conditioner for captive consumption)". Therefore, there appears no ambiguity in accepting the classification of impugned goods under chapter heading 84159000.

23.3 Since benefits of Customs Notification No. 046/2011-Cus dt. 01.06.2011 (Indo-ASEAN Trade Agreement) availed by the importer against the COO issued for Chapter heading 84149011, the importer appears to have availed the benefit wrongly against the goods classifiable under CTH 84159000. Therefore, I am of the opinion that the benefit of Preferential rate of duty is liable to be denied.

23.4 Accordingly, the differential duty on the goods short-paid is calculated below. The noticee is required to pay the **differential duty of Rs. 44,36,082/- under Section 28 (4) along with interest under Section 28AA of the Customs Act, 1962**.

TABLE B

Ports	Nos. of Bill of Entry filed	Financial Year	Assessable value (in Rs.)	Assessed Duty (in Rs.)	Re-determined Duty (in Rs.)	Differential Duty (in Rs.)
-	-	2015-16	NIL	NIL	NIL	NIL
-	-	2016-17	NIL	NIL	NIL	NIL
-	-	2017-18	NIL	NIL	NIL	NIL
ACC Delhi, ICD TKD	16	2018-19	57602617.99	19803099.8	24239181.65	4436081.85
Total			**57602617.99**	**19803099.8**	**24239181.65**	**4436081.65**

11. Learned counsel, however, claimed in the synopsis before us that the impugned order 'wrongly claims the appellant accepted classification under CTI 8415 90 00' and

that it is correctly classifiable under 8708 99 00. **Since there is dispute regarding the recording of the fact, classification of this good also needs to be remanded to the Commissioner.**

Gear Assembly

12. Learned counsel submitted before us that he is not contesting the classification of 'Gear Assembly' but is only contesting the demand invoking extended period of limitation.

CAM

13. Regarding the classification of CAM, learned counsel submits that Commissioner has, in paragraph 28.4 of the impugned order, held that CAM imported by it appears to be 'CAM shaft' for the reason that the appellant had failed to explain the usage of CAM in the manufacturing of Car Air conditioners. We find that the dispute regarding classification of CAM should also be remanded to the Commissioner so that the appellant can explain the role of CAM in the Air conditioners.

14. Thus, we are left with the classification of only one good viz., lip seal. The position of classification dispute of eight (8) goods and one of valuation are as below:

S.No.	Good	Position
1	Compressors	Dropped by Commissioner
2	Gaskets	Dropped by Commissioner
3	O-ring	Not pressed by learned counsel before us
4	Snap ring	Not pressed by learned counsel

		before us
5	Heater	The Commissioner recorded that the appellant accepted the classification under **CTI 8415 90 00** (para 23.2 of impugned order) but the learned counsel states that the appellant had not accepted. The matter, therefore, needs to be remanded to the Commissioner for a decision.
6	Gear Assembly	Learned counsel submitted that he is not pressing classification but is only contesting demand invoking extended period of limitation
7	CAM	Commissioner has, in the impugned order, held that the CAM imported by the appellant appear to be CAM shaft only because the appellant did not explain the role of this part. Matter to be remanded to the Commissioner so that the appellant can explain the role of CAM
8	Lip seal	Must be decided by us whether appellant's classification under **CTI 4016 93 30** is correct or Revenue's classification under **CTI 8708 99 00** is correct
	Valuation	Demand confirmed as the appellant did not have the freight certificates which the appellant has now obtained. To be remanded to the Commissioner for verification.

15. Thus, the only two issues left to be decided by us are

a) Classification of Lip seal on merits; and
b) Whether demand could have been confirmed invoking extended period of limitation on gear assembly.

Lip seal

16. The appellant's contention is that lip seal is made of two materials- rubber and base metal of which rubber is predominant and hence it deserves to be classified under **CTI**

4016 93 30 and the finding in the impugned order is that it merits classification under **CTI 8708 99 00.**

17. The submission of the learned counsel is that Lip seal is a part of automobile gas compressor and that it is made of two components rubber (falling under 4016) and base metal (falling under 8309) and since rubber is pre-dominant by weight, it deserves to be classified under **CTI 4016 93 90** applying General Rules of Interpretation of Tariff[6] Rule 3(a) as the more specific description.

18. We now proceed to examine the two competing entries- **CTI 4016 93 90** and **CTI 8708 99 00.** The relevant portion of the Tariff is as follows:

4016 OTHER ARTICLES OF VULCANISED RUBBER OTHER THAN HARD RUBBER

4016 10 00 – of cellular rubber
- *other*
4016 91 00 - - Floor coverings and mats
4016 92 00 - - Erasers
4016 93 - - *Gaskets, washers and other seals:*
4016 93 10 --- Patches for puncture repair of self-vulcanising rubber or a rubber backing
4016 93 20 --- Rubber rings (O-ring)

4016 93 30 --- Rubber seals (Oil seals and the like)
4916 93 40 --- Gaskets

8708 PARTS AND ACCESSORIES OF THE MOTOR VEHICLES OF HEADINGS 8701 TO 8705

8708 10 - Bumpers and parts thereof :
8708 10 10 --- For tractors
8708 10 90 --- Other
- Other parts and accessories of bodies (including cabs):

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6. GIR

8708 21 00 -- Safety seat belts
8708 22 00 -- Front windscreens (windshields), rear windows and other windows specified in Sub-heading Note 1 to this Chapter
8708 29 00 -- Other
8708 30 00 - Brakes and servo-brakes; parts thereof
8708 40 00 - Gear boxes and parts thereof
8708 50 00 - Drive-axles with differential, whether or not provided with other transmission components, non-driving axles; parts thereof
8708 70 00 - Road wheels and parts and accessories thereof
8708 80 00 - Suspension systems and parts thereof (including shock absorbers)
- Other parts and accessories:
8708 91 00 -- Radiators and parts thereof
8708 92 00 - - Silencers(mufflers) and exhaust pipes; parts thereof
8708 93 00 -- Clutches and parts thereof
8708 94 00 -- Steering wheels, steering columns and steering boxes; parts thereof
8708 95 00 -- Safety airbags with in flater system; parts thereof
8708 99 00 -- Other

19. There is no dispute that the lip seal is predominantly made of rubber. There is also no dispute that it is a part of automobile and has been described as such in the Bills of Entry. The question which arises is if there are two competing entries, how should the classification be decided. The **GIR** to the customs tariff answer this question and they should be applied sequentially, i.e., if GIR 1 can answer the question, it should be followed and if not, GIR 2(a), 2(b), etc. should be followed one after the other. **GIR 1** reads as follows:

> 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:

20. Chapter notes to Chapter 40 and Chapter 87 do not contain any provisions to resolve this issue. However, section

note 2(a) to Section XVII under which Chapter 87 falls reads as follows:

> 2. **The expressions "parts" and "parts and accessories" do not apply to the following articles, whether or not they are identifiable as for the goods of this Section:**
>
> (a) joints, washers or the like of any material (classified according to their constituent material or in heading 8484) **or other articles of vulcanised rubber other than hard rubber (heading 4016)**;

21. Thus, automobile parts such as washers, joints and the like and articles of vulcanised rubber, even if they are identifiable as such, cannot be classified under Chapter 87 and must be classified under the respective headings. Applying this section note, the Lip seals deserve to be classified under **CTI 4016 93 30.** The classification of the lip seal under **CTI 8708 99 00** in the impugned order, is therefore, not correct and deserves to be set aside.

Extended period of limitation on gear assembly

22. Demands of duty can be raised invoking extended period of limitation under section 28(4) of the Act only if the non-payment or short payment is due to collusion, wilful misstatement or suppression of facts. Classification is a part of assessment. The remedy against any incorrect self-assessment is re-assessment. Classification of goods under a **CTI** is a matter of opinion. Simply because one holds a different and even an incorrect view regarding classification of the goods, it does not imply that the person has colluded or wilfully misstated or suppressed facts with an intent to evade duty. We do not find any evidence of intent to evade in this case. We,

therefore, find that the demand for extended period of limitation cannot be sustained and needs to be set aside. We, therefore, decide in favour of the appellant on the question of limitation.

Penalty under section 114A

23. The elements required to impose penalty under this section are the same as that for invoking extended period of limitation. Since we have found that these elements are not present in this case, the penalty also needs to be set aside.

24. To sum up:

a) Classification of 'O' Ring, snap ring and Gear Assembly have been conceded by the appellant and hence decided in favour of Revenue;

b) Classification of heater is remanded to the Commissioner to decide as the appellant is disputing the recording in the impugned order that the appellant had conceded the classification of this good by the department;

c) Classification of CAM has been decided by the Commissioner treating it as CAM shaft since the appellant did not explain before him its role and hence the question is remanded to the Commissioner so that the appellant can explain and the Commissioner can decide.

d) Classification of lip seal in the impugned order under **CTI 8708 99 00** is set aside and its classification under **CTI 4016 93 30** by the appellant is upheld.

e) The question of valuation is remanded to the Commissioner since the appellant claims that it has all necessary freight certificates now which it could not produce before the Commissioner at the time of adjudication.

f) The demands in respect of all goods for extended period of limitation is set aside.

g) Penalty imposed on the appellant in the impugned order is also set aside.

25. The appeal is partly allowed and remanded to the Commissioner to decide as above after giving an opportunity to the appellant to present its case and evidence.

(Order pronounced in open court on 27/04/2026.)

(JUSTICE DILIP GUPTA)
PRESIDENT

(P.V. SUBBA RAO)
MEMBER (TECHNICAL)

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