CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI

REGIONAL BENCH – COURT No. I

Customs Appeal No. 40167 of 2024

(Arising out of Order-in-Original No. 104282/2024 dated 03.01.2024 passed by the Commissioner of Customs, No. 60, Rajaji Salai, Custom House, Chennai – 600 001)

M/s. Mehara Eyetech Private Limited **...Appellant**
B-80 I, Lotus Corporate Park,
Graham Firth Steel Compound,
Jay Coach, Signal Off Weh,
Goregaon-E, Mumbai Suburban,
Maharashtra – 400 063.

Versus

Commissioner of Customs **...Respondent**
Chennai II Commissionerate,
No. 60, Rajaji Salai,
Custom House,
Chennai – 600 001.

APPEARANCE:

For the Appellants : Mr. Sankaravadivelu, Advocate
For the Respondent : Ms. O.M. Reena, Authorised Representative

CORAM:
HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)
HON'BLE MR. AJAYAN T.V., MEMBER (JUDICIAL)

FINAL ORDER No. 40871 / 2026

DATE OF HEARING : 23.03.2026
DATE OF DECISION : 13.07.2026

Per Mr. VASA SESHAGIRI RAO

This appeal is filed by M/s. Mehra Eyetech Pvt. Ltd., Mumbai (hereinafter referred to as "the appellant") to assail the Order-in-Original No. 104282/2024 dated 03.01.2024 (hereinafter referred to as "the Impugned Order") passed by the Commissioner of Customs, Chennai-II

(Imports), Custom House, Chennai, whereby the imported goods, namely Operation Microscopes, Lensmeters/ Focimeters and Chart Projectors, were held to be misclassified, resulting in confirmation of differential duty of ₹3,89,79,752/- under Section 28(4) of the Customs Act, 1962 along with interest under Section 28AA. The adjudicating authority also ordered confiscation of the goods under Section 111(m) with an option to redeem the same on payment of redemption fine of ₹3,00,00,000/- under Section 125, and imposed an equal penalty of ₹3,89,79,752/- under Section 114A on the allegation of wilful misstatement and suppression of facts.

2. The appellant had imported the subject goods during the period April 2018 to March 2023 through Chennai Sea Port/Airport and classified them under CTH 9018 5090 as "other ophthalmic instruments and appliances," which was accepted at the time of assessment and clearance of goods. However, based on audit objection raised by Customs Revenue Audit (CRA), it was alleged that the goods were wrongly classified and ought to be classified as under: -

i. Operation Microscopes under CTH 9011 8000
ii. Lensmeters under CTH 9031 8000
iii. Chart Projectors under CTH 9008 5030

3. Consequently, differential duty demand of Rs. 3,89,79,752/- was proposed and confirmed under Section 28(4) of the Customs Act, 1962 along with interest, redemption fine and penalties as mentioned above.

4. Aggrieved by the said Impugned Order, the Appellant has filed the present appeal before this Tribunal.

5. The Ld. Advocate Shri S. Sankaravadivelu appeared for the appellant and advanced detailed arguments in support of the appeal. The Ld. Authorized Representative Ms. O.M. Reena appeared for the Revenue and supported the Impugned Order.

6.1 The Ld. Counsel for the appellant submitted that the classification adopted by the appellant is legally correct and is supported by HSN Explanatory Notes. It was submitted that Heading 9018 specifically covers instruments and appliances used in medical, surgical, dental or veterinary sciences, including ophthalmic instruments. The imported goods, namely binocular ophthalmic microscopes, are used in eye surgeries such as cataract and vitreoretinal surgeries and therefore squarely fall under Heading 9018.

6.2 It was further submitted that Heading 9011 covers surgical microscopes used while operating on a small portion of the body, whereas the imported microscopes are meant for ophthalmic diagnosis and surgical procedures, which are covered under Heading 9018 as per the HSN Explanatory Notes. The appellant relied upon the explicit exclusion under Heading 9011, which excludes ophthalmic binocular microscopes and places them under Heading 9018.

6.3 With respect to Lensmeters/Focimeters and Chart Projectors, it was submitted that these are ophthalmic testing instruments forming part of eye examination systems and are used by optometrists and ophthalmologists in clinical settings. Therefore, they are integral to diagnosis and treatment and fall within the scope of Heading 9018.

6.4 It was further submitted that, in terms of Rule 3(a) of the General Rules for Interpretation, the heading providing the most specific description is to be preferred. According to the appellant, Heading 9018 provides a more specific description for medical instruments than the general headings proposed by the Department.

6.5 On limitation, it was submitted that all imports were made under the self-assessment regime and were subjected to examination by the Customs officers. Product catalogues were regularly furnished and accepted by the Department. It was therefore contended that there was neither suppression of facts nor wilful misstatement and that the extended period of limitation was not invocable. Reliance was placed on decisions holding that classification disputes are interpretational in nature and do not amount to suppression.

6.6 The Ld. Counsel also relied upon several decisions of the Hon'ble Supreme Court and the Tribunal to contend that classification must be determined on the basis of functional use, trade understanding and the HSN Explanatory Notes, and that reassessment after clearance, in the absence of suppression or wilful misstatement, is unsustainable.

7.1 The Ld. Authorized Representative appearing for the Revenue reiterated the findings of the impugned order and submitted that the goods imported by the appellant have been incorrectly classified under Heading 9018 of the Customs Tariff. It is contended that the operation microscopes are classifiable under Heading 9011, which covers compound optical microscopes, including special purpose microscopes. Reliance is placed on the HSN

Explanatory Notes to Heading 9011 to contend that the said heading includes microscopes used in surgical and medical fields, and that the goods in question, being capable of magnification and optical observation, fall squarely within its scope. It is further submitted that the appellant's reliance on Heading 9018 is misplaced, as the said heading is intended for diagnostic or treatment instruments, whereas the microscopes in question function primarily as optical devices.

7.2 The Ld. Authorized Representative further submitted that the operation microscopes imported by the appellant are not restricted to ophthalmic use alone but are capable of being used in various microsurgical procedures such as ENT, neurosurgery and dental applications. It is contended that the capability of multi-specialty use takes the goods outside the scope of exclusive ophthalmic instruments under Heading 9018. In this regard, reliance is placed on the product catalogues to demonstrate that the microscopes provide enhanced visualization, magnification and illumination, which are general optical functions applicable across multiple medical disciplines. It is therefore argued that the goods cannot be classified based on a limited or claimed end-use but must be classified according to their broader functional characteristics.

7.3 In respect of lensmeters and chart projectors, it is submitted that these goods are classifiable under Headings 9031 and 9008 respectively. It is contended that lensmeters are essentially measuring instruments used for determining optical parameters of lenses and therefore fall under Heading 9031, which covers measuring or checking instruments not specified elsewhere. Similarly, chart projectors are projection devices used for displaying images and fall under Heading 9008. The learned Authorized Representative submits that the appellant has adopted an overly broad interpretation of Heading 9018 and has sought to bring within its scope goods which are more appropriately classifiable under specific alternative headings.

7.4 On the issue of limitation and penalties, the learned Authorized Representative submitted that the appellant has misclassified the goods despite being aware of their true nature and use, and has thereby short-paid duty. It is contended that under the regime of self-assessment, the importer bears the responsibility of correct classification, and failure to do so justifies invocation of extended limitation under Section 28(4) of the Customs Act, 1962. Reliance is placed on the decision of the Hon’ble Madras High Court in *M/s. Huawei Telecommunications India Co. Pvt. Ltd. vs. Commissioner of Customs [2024 (111) TMI 142 (Mad.)]* to submit that proceedings under Section 28 are independent of assessment and can be initiated even after clearance of goods. It is further submitted that the appellant is liable for confiscation under Section 111(m) and penalty under Sections 114A, as the misclassification amounts to misdeclaration with intent to evade duty.

7.5 The Ld. Authorized Representative has also relied upon judicial precedents to argue that classification must be strictly construed and that benefit of lower duty cannot be extended where goods are classifiable elsewhere.

8. We have carefully considered the rival submissions, the records of the case, relevant Customs Tariff Entries and HSN Explanatory Notes, Product catalogues, and the judicial precedents relied upon by both the sides.

9. Upon consideration of the rival submissions and the records of the case, the following issues arise for determination as to Whether the: -

i. Whether the imported goods, namely Operation Microscopes, Lensmeters/Focimeters and Chart Projectors, are correctly classifiable under Heading 9018 or under the respective headings as proposed by the Department? And,

ii. Whether the demand of differential duty is sustainable in law, including on the grounds of limitation, and whether the appellant is liable for confiscation, redemption fine and penalties?

Classification of imported goods, *Viz.*, Operation Microscopes, Lensmeters/Focimeters and Chart Projectors?

10. The main controversy in the present appeal pertains to the correct classification of three categories of imported goods, namely Operation Microscopes, Lensmeters/Focimeters and Chart Projectors. While the appellant has consistently classified all the said goods under Heading 9018 of the Customs Tariff as "other ophthalmic instruments and appliances", the department has sought to reclassify them under different headings, namely Heading 9011 for microscopes, Heading 9031 for measuring instruments and Heading 9008 for projectors. The resolution of this dispute requires a comprehensive examination of the statutory framework of the Customs Tariff, the Harmonised System of Nomenclature (HSN), Section Notes, Chapter Notes, General Rules for Interpretation, product catalogues, Bills of Entry filed, comparative import practices and judicial precedents.

11. We observe that Section XVIII of Customs Tariff Act, 1975, deals with, optical photographic, cinematographic,

measuring, checking, precision, medical or surgical instruments and apparatus; clocks & watches; musical instruments, parts and accessories thereof whereas Chapter 90 deals with optical, photographic, cinematographic, checking, precision, medical or surgical instruments and apparatus and parts and accessories thereof. What is to be decided is appropriate classification under Chapter 90 of the Customs Tariff Act, 1975 of all the imported goods in question. Rule 1 of the General Rules for Interpretation, mandates that classification shall be determined according to the terms of the headings and relevant Section or Chapter Notes, and Rule 3(a), provides that the heading providing the most specific description shall be preferred over headings providing a more general description. These principles form the statutory foundation for classification of the imported goods in dispute in this appeal.

12. In this context, we have examined the appellant's contentions on classification as follows: -

Surgical / Operating Microscope:-

"(i) What is included under Heading 90.11 are "Surgical Microscopes for use by surgeon when operating on a very small portion of body. Their light sources result in independent light paths which will provide a three dimensional image";

(ii) It may be seen from the HSN under Heading 90.11 that "The Heading also excludes (a)...., (b) Ophthalmic Binocular type Microscopes (Heading 90.18);

(iii) Therefore, the subject Microscopes are specifically excluded from Heading 90.11 and specifically included under Heading 90.18;

(iv) It may also be seen from HSN under the Heading 90.18:

> (2) INSTRUMENTS AND APPLIANCES FOR HUMAN MEDICAL OR SURGERY"
>
> This group includes:-
>
> (D).....
>
> (E).....
>
> (F) Ophthalmic instruments. These fall into various categories:-
>
> 1) Surgical instruments........
>
> 2) Diagnostic instruments such as .... binocular type microscope for the examination of eyes.
>
> 3) Orthoptic or sight testing apparatus.....

(v) Therefore, on account of the "specific inclusion" under Heading 90.18 and "specific exclusion from Heading 90.11 of HSN, the Binocular type ophthalmic Microscopes are correctly classifiable under Heading 90.18 of HSN / Customs Tariff Heading 1975 ONLY, as already assessed;

(vi) Copies of relevant pages of HSN are also enclosed

vii) Though it is not required to invoke the "Interpretative Rules for determination of classification" under Import Tariff of Customs Tariff Act, 1975, in the instant case, it is pertinent to mention that:-

(a) As per Rule (1) classification shall be determined according to the terms of the Headings;

(b) As per rule 3(a) the Heading which provides the most specific description shall be performed; and

(c) As per Rule 3(c), the goods shall be classified under the Heading which occurs last in numerical order among those which equally merit classification.

(viii) Therefore, by any route, the goods are correctly classifiable under Heading 9018 of Customs Tariff Heading 1975 only, as classified.

(ix) The consignment covered "Topcon Operation Microscope. The relevant catalogues are enclosed. It may be seen that these are Binocular type Microscopes, is for the examination of eyes by the surgeons". Hence, those goods are correctly classifiable/classified 1975 under the specific Heading 9018 of Customs Tariff Act, 1975."

13. Further, a detailed examination of the Harmonised System of Nomenclature (HSN) Explanatory Notes assumes determinative importance. The Hon'ble

Supreme Court in *Collector of Customs vs. Business Forms Ltd. [2002 (142) E.L.T. 18 (S.C.)]* has held that HSN Explanatory Notes are a safe and reliable guide for classification. The Hon'ble Supreme Court held that the Explanatory Notes to the Harmonized System of Nomenclature (HSN) are not merely persuasive but deserve significant weight and serve as a safe and reliable guide for interpreting the Customs and Central Excise Tariffs. The Court reaffirmed the principle from *Collector of Central Excise, Shillong v. Wood Craft Products Ltd. [1995 (77) E.L.T. 23 (S.C.)],* stating that because the Indian Tariff is structured based on the HSN, HSN terminology should guide classification unless a different intention is expressed in the Act. The relevant tariff entries under Chapter 90 read as follows: -

> **Heading 9011**: "Compound optical microscopes, including those for photomicrography, cinephotomicrography or microprojection"
>
> **Heading 9018**: "Instruments and appliances used in medical, surgical, dental or veterinary sciences… including ophthalmic instruments"
>
> **Heading 9031**: "Measuring or checking instruments, appliances and machines, not specified or included elsewhere in this Chapter"

Heading 9008: "Image projectors, other than cinematographic"

The HSN Explanatory Notes to Heading 9011 clearly state that while the heading covers compound optical microscopes used for observation and laboratory analysis, it specifically excludes ophthalmic binocular-type microscopes, which are classifiable under Heading 9018. This exclusion is decisive and operates directly against the case of the Revenue.

14. In contrast, the HSN Explanatory Notes under Heading 9018 explicitly includes instruments used in medical and surgical sciences and further clarify that ophthalmic instruments include both diagnostic and surgical instruments used for examination and treatment of the eye, including binocular microscopes mounted for clinical use, tonometers and other sight-testing devices. Thus, the tariff structure read with HSN creates a clear statutory demarcation between general-purpose microscopes and specialized ophthalmic instruments.

15. The Ld. Authorized Representative for the Revenue has contended that operation microscopes fall under Heading 9011 as "these can be used for surgical purposes and for various types of treatments. She has drawn our attention to the finding of the adjudicating authority in

para 24 & 25 of the impugned order which reads as follows: -

> *"24. I find that OMS 800's versatility extends to delicate procedures in otolaryngology, neurosurgery, plastics, dentistry, and even orthopedics, offering magnified visualization for intricate ear surgery, brain interventions, skin flap transfers, root canals, and joint repairs. The OMS 90 brings its precision to similar procedures within otolaryngology, neurosurgery, plastics, and dentistry. Thus basically the Imported goods are meant for surgery to be used by the surgeons when operating on small portion of the body.*
>
> *25. The importer argues for the classification of the goods under CTH 9018, citing the exclusion of ophthalmic binocular-type microscopes from CTH 9011. However, I find that the imported goods are not limited/confined to ophthalmic use alone. Despite being binocular-type, they are primarily designed for surgical purposes and are therefore not subject to the exclusion clause of CTH 9011. The OMS microscopes imported by the Importer are basically microscopes used for surgery."*

Whereas the appellant has emphasized the exclusion of Binocular type ophthalmic microscopes from Chapter Heading 9011 as per HSN.

16. We find that this contention of the revenue is contrary to the HSN Explanatory Notes. The exclusion under Heading 9011 does not carve out any such distinction between diagnostic and surgical ophthalmic microscopes. On the contrary, heading 9018 expressly covers instruments used in medical and surgical sciences, which necessarily includes surgical microscopes. The attempt of the Revenue to artificially bifurcate ophthalmic microscopes into diagnostic and surgical categories is not supported by any statutory provision or HSN explanatory notes.

17. We note that the product catalogues on record clearly establish that the imported operation microscopes are designed for ophthalmic surgical procedures such as cataract and vitreoretinal surgeries, incorporating features such as stereoscopic visualization, coaxial illumination, apochromatic optics, multi-function foot controls and integration with surgical systems. These features demonstrate that the goods are not general-purpose microscopes but are specialized microscopes used in ophthalmological treatment procedures.

18. The Ld. Authorized Representative for the Revenue has contended that the operation microscopes in question are capable of being used not only in ophthalmic procedures but also in other microsurgeries such as ENT, neurosurgery and dental applications, and therefore cannot be restricted to classification as ophthalmic instruments under Heading 9018. It is submitted that the capability of use across multiple medical disciplines renders the goods general-purpose microscopes falling under Heading 9011. This contention, though attractive at first glance, is not legally sustainable as these microscopes stand excluded from 9011 in terms of the HSN scheme as well as the evidence about the nature of microscopes and their functional uses on record.

19. It is evident that the HSN Explanatory Notes do not classify goods based on theoretical or occasional alternate uses, but on their design, essential character and primary intended use. Heading 9018 expressly covers "instruments and appliances used in medical, surgical… sciences, including ophthalmic instruments", and does not require exclusivity of use. The presence of the words "including ophthalmic instruments" indicates that instruments designed for specific branches of medical science are to be classified within this heading even if they may have adaptable use elsewhere.

20. Further the exclusion clause under Heading 9011 is decisive. The HSN specifically excludes ophthalmic binocular-type microscopes and directs their classification under Heading 9018. This exclusion is based on the specialized design and medical application of such microscopes. The department's argument that the same instrument could be used in other microsurgeries does not override this explicit exclusion. Once a product falls within an exclusion clause, it is impermissible to reclassify it under the excluded heading on the basis of hypothetical alternate uses.

21. The product catalogues placed on record clearly demonstrate that the microscopes in question are designed, marketed and configured as ophthalmic surgical microscopes. The catalogues highlight features such as red reflex optimization, stereo co-axial illumination, high depth of focus specifically for ocular tissues, fine motorized controls suited for delicate eye surgery and integration with ophthalmic surgical workflows. These features are uniquely aligned with ophthalmic procedures and are not characteristic of general-purpose microscopes. Even if certain models may be technically adaptable for limited use in other microsurgeries, such adaptability does not alter their essential character, which remains that of a specialized ophthalmic surgical instrument.

22. The Hon'ble Supreme Court in *CCE vs. Wockhardt Life Sciences Ltd. [2012 (277) E.L.T. 299 (S.C.)]* has held that classification must be based on the primary function and intended use of the product. The SC held that classification depends on composition, product literature, label, character and actual use; a miniscule quantity of a prophylactic ingredient is not decisive. Similarly, in *Dunlop India Ltd. vs. Union of India [1983 (13) E.L.T. 1566 (S.C.)],* it was held that classification must be based on common parlance and commercial understanding. The Supreme Court

held that in a taxing statute, where no specific technical definition is provided, the classification of goods must be based on common parlance and commercial understanding. The court ruled that goods should be understood in the sense that people dealing with them—traders and consumers—attribute to them, rather than relying on technical or scientific definitions. In trade and commercial parlance, the goods in question are understood and marketed as ophthalmic surgical microscopes, and not as general-purpose microscopes.

23. In view of the explicit HSN exclusion under Heading 9011 and also by specific inclusion under Heading 9018, the product catalogues demonstrating specialized ophthalmic design, and the settled legal principle that classification is based on primary use and essential character, the contention of the Revenue that the goods are general-purpose microscopes on account of possible multi-specialty use is not tenable and needs to be rejected.

24. Insofar as Lensmeters/Focimeters are concerned, the Revenue has contended that these are measuring instruments falling under Heading 9031, relying upon their function of measuring optical parameters of lenses. However, heading 9031 is a residuary entry

applicable only where goods are not specified elsewhere and the HSN explanatory notes to Heading 9031 specifically state that the heading excludes instruments covered more specifically under other headings of Chapter 90.

We observe that the product literature demonstrates that lensmeters are specialized ophthalmic diagnostic instruments used in clinical examination of the eye. These are not general-purpose measuring devices but are integral to treatment of eye i.e., ophthalmic purposes. Therefore, by application of Rule 3(a), Heading 9018, being a specific entry, must prevail over the residuary Heading 9031.

25. With regard to Chart Projectors, the Revenue has classified them under Heading 9008 as projection apparatus. However, the HSN Explanatory Notes to Heading 9008 indicate that it covers general-purpose projectors. The chart projectors in the present case are specialized ophthalmic devices used for projecting visual acuity charts in clinical environment and form an integral part of eye testing systems. The HSN explanatory notes under Heading 9018 include instruments used for examination of the eye, which necessarily encompass such devices. Therefore, classification under Heading 9008 is not tenable.

26. The product catalogues and technical literature placed on record constitute crucial evidence in determining classification. The Hon'ble Supreme Court in Business Forms Ltd. (supra) and Wockhardt Life Sciences Ltd. (supra) has recognized that technical specifications and functional characteristics are decisive factors. In the present case, the catalogues clearly establish that all the goods are specialized ophthalmic instruments used in diagnosis and surgery.

27. The evidentiary value of the Bills of Entry further supports the appellant's case. The records show that the appellant imported similar goods over several years and classified them under Heading 9018, and such classification was accepted by the department after due assessment. Multiple consignments were assessed without objection, thereby demonstrating a consistent pattern of acceptance by the department.

It is further observed from the examination reports available at pages 148 to 152 of the Appeal Paper Book that in several instances the goods were physically opened and examined by the Customs authorities. The reports record that the officers verified the description of goods with reference to import documents, including model numbers and specifications, and identified the goods as ophthalmic equipment such as computerized lensmeters, auto refractometers and slit lamps. The examination was thus not a routine or mechanical exercise but involved active verification of the nature and characteristics of the goods prior to assessment.

In spite of such detailed examination, the department accepted the classification declared by the appellant under Heading 9018 without raising any objection. This clearly establishes that the department was fully aware of the nature, description and use of the goods at the time of clearance.

28. The appellant has also placed reliance on Bills of Entry pertaining to another importer at Chennai, along with corresponding product catalogues, to demonstrate that identical goods, namely OM-6 / OM-9 Operating Microscopes and related accessories, have been treated as ophthalmic surgical instruments. A careful examination of these documents reveals that the goods are described as "OM-6 / OM-9 Operating Microscopes" along with accessories, which are identical in nature and function to the goods imported by the appellant. The accompanying product catalogues further describe these as operating microscopes designed for ophthalmic surgery and highlight features such as stereoscopic observation, depth of focus, LED illumination and suitability for cataract and vitreoretinal procedures.

These characteristics clearly establish that the goods are specialized surgical instruments for ophthalmic care and not general-purpose microscopes.

29. From the Bill of Entry No. 6018590 dated 03.12.2025 and Bill of Entry No. 6015786 dated 01.12.2025, it is observed that the goods imported consist of operating microscopes, beam splitter microscopes, co-observer microscopes and accessories specifically designed for ophthalmic surgical procedures. The accompanying product catalogues further confirm that these devices are used in clinical and surgical environments for procedures such as cataract and vitreoretinal surgery.

30. However, it is also to be noted that the aforesaid imports pertain to the year 2025 and are therefore subsequent to the period involved in the present dispute. Accordingly, they cannot strictly be regarded as contemporaneous imports so as to independently determine classification for the period under consideration. Nevertheless, these subsequent assessments cannot be disregarded altogether. They indicate the continued and consistent understanding of the department regarding the nature and classification of similar / identical goods. Such subsequent practice, though not determinative, has

persuasive value, particularly when it is in conformity with the statutory framework and HSN Explanatory Notes. In this context, it is also pertinent to note that there has been no change in the tariff structure, Chapter Notes, Section Notes or HSN Explanatory Notes governing Chapter 90 during the intervening period between the imports made by the appellant and the subsequent imports referred to above. The scope of Headings 9011, 9018, 9031 and 9008 has remained unchanged. In the absence of any statutory change, the classification of identical goods cannot vary across different periods based on mere interpretational shifts. Though principles of res judicata do not strictly apply to customs classification, consistency assumes significance where there is no change either in the tariff or in the nature of the goods.

31. Therefore, the subsequent classification of identical goods under Heading 9018, though not contemporaneous, reinforces the correct legal position and lends corroborative support to the classification adopted by the appellant. It also weakens the Revenue's attempt to classify the same goods differently for the earlier period without any change in law or factual distinction. The evidentiary value of such imports cannot be ignored. The Hon'ble Supreme Court in *CCE vs. Connaught Plaza Restaurant (P) Ltd. [2012 (286) E.L.T. 321 (S.C.)]* has held

that trade understanding and market practice are relevant considerations in classification. This aspect, when read in conjunction with the HSN Explanatory Notes, product catalogues, functional characteristics of the goods, and consistent assessment practice in respect of the appellant's own imports, leads to a coherent and consistent conclusion that the goods in question are specialized ophthalmic instruments used in medical and surgical practice.

32. It is also evident that the Bills of Entry filed by the appellant contained full disclosure of the nature, description and use of the goods, supported by product catalogues, and the goods were examined and assessed on few occasions by the Departmental officers.

33. The argument of the Revenue that classification must be based on isolated functional attributes cannot be accepted. The goods form part of an integrated ophthalmic system used in medical practice, and their classification must reflect their actual use and commercial identity.

34. The consistent acceptance of classification under Heading 9018 over a long period, coupled with absence of contrary evidence, reinforces the correctness of the appellant's classification. The Hon'ble Supreme Court in

Radhasoami Satsang vs. CIT [1992 (193) ITR 321 (S.C.)] has recognized the importance of consistency in Tax assessments where the fundamental facts remain the same.

35. The appellant has placed reliance on the decision of the Hon'ble Supreme Court in *Collector of Central Excise vs. Wood Craft Products Ltd. [1995 (77) E.L.T. 23 (S.C.)]* to contend that the Harmonised System of Nomenclature (HSN) provides a reliable and persuasive guide for classification under the Customs Tariff. It is the appellant's submission that once the HSN Explanatory Notes specifically exclude ophthalmic microscopes from Heading 9011 and include such instruments under Heading 9018, the classification must necessarily follow the HSN scheme. The appellant has therefore contended that the department's attempt to classify the goods under Heading 9011 is contrary to the statutory framework.

36. The appellant has further relied upon the judgment of the Hon'ble Supreme Court in Akbar Badruddin Jiwani vs. Collector of Customs [1990 (47) E.L.T. 161 (S.C.)] to submit that classification cannot be determined on the basis of general or commercial perception divorced from the tariff structure. It is argued that the Revenue has sought to classify the goods based on broad functionality and possible

alternate uses, whereas the correct approach is to determine classification based on the specific description in the tariff read with HSN Explanatory Notes.

37. From the above decisions, the appellant has submitted that classification must be based on the Tariff structure, HSN scheme, specific description and intended use, and not on generalized or hypothetical assumptions. It was also contended that once the goods are shown to be specialized ophthalmic surgical instruments through product catalogues and supplier certification, they cannot be treated as general-purpose microscopes merely because of incidental capability of use in other medical procedures.

38. We find that these submissions of the appellant merit acceptance. The HSN Explanatory Notes clearly support classification under Heading 9018, and the reliance placed by the appellant on the above judgments correctly reflects the settled principles governing classification. The department's approach, which seeks to rely on generalized functionality and alternate usage, is inconsistent with the statutory scheme and cannot be sustained.

39. We note that the reclassification in the present case appears to have been triggered by an audit objection

without any new material or change in law. Such reinterpretation of the same set of facts cannot override the combined weight of Tariff entries, HSN explanatory notes, product catalogues and consistent assessment practice. In view of the detailed analysis of the Tariff Headings, HSN Explanatory Notes, General Rules for Interpretation, product catalogues and judicial precedents, it is held that the goods in question are specialized ophthalmic instruments used in medical and surgical practice.

40. Accordingly, the goods are correctly classifiable under Heading 9018 of the Customs Tariff, and the classification adopted by the appellant is legally sustainable. Thus, the issue of classification is decided in favor of the appellant.

Invoking extended period and imposition of penalties: -

41. Having held that the imported goods in question are correctly classifiable under Heading 9018 of the Customs Tariff, the very foundation of the demand raised in the impugned order, which is premised entirely on reclassification, stands vitiated. Consequently, the demand of differential duty is liable to be set aside on merits itself. However, in view of the elaborate submissions advanced by both sides on limitation, confiscation, redemption fine and

penalties, and considering that these issues carry independent legal consequences, the same are examined in detail.

42. We note that the demand has been raised under Section 28(4) of the Customs Act, 1962 by invoking the extended period of limitation on the allegation that the appellant has intentionally misclassified the goods and thereby short-paid the duty. The invocation of extended limitation is contingent upon the existence of collusion, wilful misstatement or suppression of facts with intent to evade payment of duty. It is well settled that the burden to establish these elements lies squarely upon the Revenue.

43. A perusal of the records reveals that the appellant imported the goods over a prolonged period from April 2018 to March 2023 and consistently declared the goods as ophthalmic instruments under Heading 9018 in the Bills of Entry. The declarations were supported by detailed product catalogues and technical literature, which were furnished at the time of assessment and were available to the department. The goods were subjected to examination and assessment by Customs officers, and the classification adopted by the appellant was accepted in multiple consignments. The appellant has submitted that in respect of

15 Bills of Entry filed on 15.06.2018, 16.07.2018, 13.11.2018, 23.02.2019, 20.05.2019, 18.07.2019, 15.10.2019, 29.10.2019, 25.08.2020, 05.02.2021, 23.04.2022, 23.07.2022, 13.08.2022, 17.02.2023 and 25.02.2023, the assessing officers have asked for product catalogues before assessment and clearance of the goods. It is further evident that the assessment was not a mere mechanical acceptance of self-assessment. The records show that the assessing officers raised queries, called for product catalogues and technical details, and thereafter assessed the goods. Therefore, the department was fully aware of the nature, description and use of the goods at the time of clearance.

44.1 The appellant has relied upon the decision of the Hon'ble Karnataka High Court in *Sony Sales Corporation vs. Commissioner of Customs [2021 (376) E.L.T. 472 (Kar.)]*, and has distinguished the same by submitting that the said decision applies to cases involving misdeclaration or suppression, whereas the present case involves a bona fide classification dispute with full disclosure of facts. It is therefore contended that the ratio of the said judgment does not support the case of the Revenue.

44.2 Further, reliance has been placed on the judgment of the Hon'ble Gujarat High Court in *Bimal P. Shah vs. Union of India [2015 (320) E.L.T. 497 (Guj.)]*, wherein it has been held that under the regime of self-assessment, an error in classification by itself does not justify invocation of extended limitation or penal provisions in the absence of any suppression or intent to evade duty. The appellant has drawn the inference that mere difference of opinion on classification cannot be equated with wilful misstatement or suppression.

44.3 From the above decisions, the appellant has contended that (i) concluded assessments cannot be reopened through Section 28 proceedings, (ii) extended limitation cannot be invoked in classification disputes without suppression, and (iii) penalties are not sustainable in the absence of *mens rea*. We find that these submissions are well-founded. In the present case, the goods were examined, documents were verified and classification was accepted by the department, and the dispute is purely interpretational in nature. Therefore, the reliance placed by the appellant on the above judgments is appropriate, and the demand, as well as the consequential confiscation and penalties, cannot be sustained.

45. The Revenue has contended that the appellant has misclassified the goods despite being aware of their nature, relying upon product catalogues and common parlance understanding, relying upon the decisions such as *Inter Globe Aviation Ltd.,2022(379)ELT 235 (Tri-Bang)* and *Eastern Silk Industries Ltd. Vs CC Kolkota and Kandla vs. Essar Oil Ltd 2004 (172) ELT 433 SC*. to argue that self-assessment places greater responsibility on the importer. It is further contended that the classification adopted by the appellant under Heading 9018 is contrary to the actual nature and use of the goods. We find that this contention is not borne out from the facts on record. The appellant has consistently declared the goods with full description and has furnished product catalogues whenever called for at the time of assessment. The goods were examined and assessed by the department, and the classification was accepted. The dispute, therefore, is purely interpretational. The judgments relied upon by the Revenue relate to cases involving misdeclaration or suppression of facts, which is not the situation in the present case, and are therefore distinguishable.

46. The reliance placed by the Revenue on the principle that self-assessment casts responsibility on the importer cannot override the statutory requirement of

establishing suppression or wilful misstatement for invoking extended limitation or imposing penalties. In the absence of any evidence of intent to evade duty, the extended period and penal provisions cannot be invoked. The consistent conduct of the appellant, coupled with acceptance of classification by the department over a period of time, clearly negates any allegation of intentional misdeclaration or suppression of facts with an intend to evade.

47. Whereas, the appellant has also relied upon the decision of the Tribunal in *New India Shipping Services vs. Commissioner of Customs, Bangalore [2016 (333) E.L.T. 70 (Tri.-Bang.)]* to contend that where goods are examined and assessed by the department, the allegation of suppression cannot be sustained. The relevant para reads as under: -

> *"7.13…………….all the relevant documents for clearance of goods were filed with the authorities, at the time of clearance of goods; which was accepted by the department, hence they permitted clearance on final assessment by extending benefit of notification. In our view Revenue cannot today say that appellant had suppressed the facts with intention to avail ineligible benefit of Notification. It was for the Assessing Officers to seek further clarification on the matter, if they find that the appellant had claimed ineligible benefit of Notification. In all probability the Assessing Officers when they cleared the consignments were of the view that the appellant is eligible for the benefit of Notification as the goods imported were Pharmaceutical Reference Standard."*

The appellant has further relied upon the decision in *KMS Medisurgi Pvt. Ltd. vs. Commissioner of Customs (Import),* *Mumbai [2022 (379) E.L.T. 214 (Tri.-Mumbai)],* wherein it was held that

> *"12. Coming to the issue of limitation, we find that the appellants have successfully demonstrated that the imports have been taken place over the years and Department has been allowing the same after examination at least in respect of few consignments even after the introduction of self-assessment regime. Under these circumstances, it cannot be held that the appellants have suppressed or misrepresented any material fact so as to warrant the invocation of extended period. For this reason, we find that impugned orders are not maintainable as far as the limitation is concerned. Accordingly, we hold that penalty cannot be imposed on the appellants."*

48. The Ld. Authorized Representative has contended that proceedings under Section 28 are independent of assessment under Section 17 and can be invoked without reopening the assessment, relying upon the decision of the Hon'ble Madras High Court in *M/s. Huawei Telecommunications India Co. Pvt. Ltd. vs. Commissioner of Customs, Chennai [2024 (111) TMI 142 – Madras High Court].* While it is not disputed that Section 28 is an independent provision, the issue in the present case is not mere jurisdiction but the legality of invoking extended limitation and reopening concluded assessments on identical facts.

49. The appellant has also pointed out that a similar audit objection regarding classification was raised in the year 2015 and was examined and closed by the department. This fact is not disputed by the Revenue. The earlier closure of

the issue demonstrates that the department was aware of the nature of goods and had accepted the classification under Heading 9018.We find that the Hon'ble Supreme Court in *CCE vs. Nizam Sugar Factory [2006 (197) E.L.T. 465 (S.C.)]* has held that where an issue has been previously examined and accepted by the department, the extended period of limitation cannot be invoked on the same set of facts.

50. A crucial aspect which goes to the root of the matter is the existence of contemporaneous examination reports forming part of the Appeal Paper Book at pages 148 to 152. A perusal of these reports clearly reveals that in several consignments, the imported goods were physically opened and examined by the Customs authorities in the presence of the Customs House Agent, and the description of the goods was verified with reference to import documents, including model numbers and specifications. The reports record the goods as ophthalmic equipment such as computerized lensmeters, auto refractometers and slit lamps, and the examination was carried out prior to assessment. The significance of such examination cannot be understated, as it establishes that the department was fully aware of the nature and characteristics of the goods at the time of clearance. In this factual background, the allegation

of suppression or wilful misstatement is wholly unsustainable.

51. The examination reports also assume relevance in the context of penalties. Penalty under Section 114A requires proof of wilful misstatement or suppression with an intent to evade duty. In the present case, the contemporaneous records clearly demonstrate that the appellant had disclosed all relevant particulars and the goods were verified by the department. The essential ingredient of mens rea is thus completely absent. The appellant has also relied upon a certificate issued by the foreign supplier clarifying that the goods are specifically designed for ophthalmic use and are intended for medical and surgical purposes. This certificate, when read along with product catalogues, reinforces the appellant’s classification and bona fides.

52. The appellant has further placed reliance on Bills of Entry pertaining to another importer at Chennai along with corresponding product catalogues to demonstrate that identical goods, namely OM-6 / OM-9 Operating Microscopes and related accessories, have been consistently treated as ophthalmic surgical instruments. It is observed that the goods imported under Bill of Entry No. 6018590 dated

03.12.2025 and Bill of Entry No. 6015786 dated 01.12.2025 consist of operating microscopes and accessories designed for ophthalmic surgical procedures, and the classification adopted therein is consistent with Heading 9018. Though these imports pertain to a subsequent period and are not strictly contemporaneous, they indicate the continued understanding of the department regarding classification.

53. It is also pertinent to note that there has been no change in the tariff structure, Chapter Notes, Section Notes or HSN Explanatory Notes governing Chapter 90 during the intervening period. In the absence of any statutory change, identical goods cannot be classified differently across periods based on interpretational variation. The subsequent classification under Heading 9018 therefore reinforces the correctness of the appellant's classification.

54. Coming to the issue of confiscation under Section 111(m) of the Customs Act, the impugned order proceeds on the premise that misclassification amounts to misdeclaration. This proposition is legally untenable. Misdeclaration requires incorrect declaration of value, quantity or description of goods, and in the present case, the description of goods is not disputed. The Hon'ble Bombay High Court in *Commissioner of Customs vs. Finesse Creation*

Inc. [2009 (248) E.L.T. 122 (Bom.)], affirmed by the Hon'ble Supreme Court *[2010 (255) E.L.T. A120 (S.C.)],* has held that: -

> *"5. In our opinion, the concept of redemption fine arises in the event the goods are available and are to be redeemed. If the goods are not available, there is no question of redemption of the goods. Under Section 125 a power is conferred on the Customs Authorities in case import of goods becoming prohibited on account of breach of the provisions of the Act, rules or notification, to order confiscation of the goods with a discretion in the authorities on passing the order of confiscation, to release the goods on payment of redemption fine. Such an order can only be passed if the goods are available, for redemption. The question of confiscating the goods would not arise if there are no goods available for confiscation nor consequently redemption. Once goods cannot be redeemed no fine can be imposed. The fine is in the nature of computation to the state for the wrong done by the importer/exporter."*

The Hon'ble High Court, while considering the scope of Section 125, has also taken note of the decision of the Hon'ble Supreme Court in *Weston Components Ltd. vs. Commissioner of Customs [2000 (115) E.L.T. 278 (S.C.)],* wherein it was observed that redemption fine can be imposed even when the goods are not physically available when provisionally released on execute of a Bond. However, the High Court distinguished the said decision on facts and held that the power to impose redemption fine is not automatic and must be exercised judiciously, keeping in view the factual matrix of each case, particularly the availability of goods and the nature of the alleged contravention.

In the present case, the goods are not available for confiscation and the dispute is purely one of classification without any misdeclaration of description. In such circumstances, following the ratio of Finesse Creation Inc., and considering the applicability of Weston Components is clearly distinguishable, confiscation under Section 111(m) and the consequential imposition of redemption fine under Section 125 are not sustainable. Even otherwise, in the absence of any intent to evade duty and considering the bona fide conduct of the appellant, confiscation and imposition of redemption fine is not legally tenable.

55. Coming to the issue of penalty under Sections 114A, it is evident that this provision requires the presence of *mens rea*. Section 114A is attracted only when duty has not been levied or short-levied by reason of collusion, wilful misstatement or suppression of facts. The Hon'ble Supreme Court in Union of *India vs. Rajasthan Spinning & Weaving Mills [2009 (238) E.L.T. 3 (S.C.)]* and *Hindustan Steel Ltd. vs. State of Orissa [1978 (2) E.L.T. (J159) (S.C.)]* has held that penalty cannot be imposed in the absence of deliberate default. The Tribunal in KMS Medisurgi Pvt. Ltd. (Supra) has also held that penalties are not sustainable in classification disputes where goods were assessed and cleared by the department.

56. In view of the foregoing analysis, it is held that the demand is not sustainable on limitation too. The goods are not liable for confiscation under Section 111(m), redemption fine under Section 125 is not imposable, and penalty under Sections 114A is so liable to be set aside.

57. In view of the findings recorded as above, it is held that the imported goods, namely Operation Microscopes, Lensmeters/Focimeters and Chart Projectors, are specialized ophthalmic instruments classifiable under Heading 9018 of the Customs Tariff, and the reclassification proposed under Headings 9011, 9031 and 9008 is unsustainable. Consequently, the demand of differential duty under Section 28(4) along with interest under Section 28AA is not sustainable and is set aside. Even otherwise, the demand is barred by limitation, as the appellant had disclosed all material particulars, and the goods were examined and assessed by the customs officers on certain occasions, with no evidence of suppression or wilful misstatement to justify invocation of the extended period. As such, confiscation under Section 111(m) is not sustainable in the absence of misdeclaration, and consequently, the redemption fine imposed under Section 125 is ordered to be set aside. Penalty imposed under Section 114A is also not

sustainable in the absence of suppression or intent to evade duty.

58. Accordingly, the impugned Order-in-Original No. 104282/2024 dated 03.01.2024 is set aside in its entirety and the appeal is allowed with consequential relief, if any, in accordance with the slaw.

(Order pronounced in open court on 13.07.2026)

Sd/-
(AJAYAN T.V.)
MEMBER (JUDICIAL)

Sd/-
(VASA SESHAGIRI RAO)
MEMBER (TECHNICAL)

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