CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
CHENNAI

REGIONAL BENCH - COURT No. III

(1) Customs Appeal No. 40621 of 2024

(Arising out of Order-in-Original No.2296/2024 dated 06.07.2024 passed by Principal Commissioner of Customs (Air Cargo), Chennai-VII Commissionerate, New Custom House, Meenambakkam, Chennai 600 016)

M/s. Avana Surgical Private Ltd. **.... Appellant**
No.91, 2nd Floor, Sundar nagar,
4th Avenue, Nandambakkam,
Chennai 600 032.

VERSUS

The Principal Commissioner of Customs (Air Cargo) **... Respondent**
Chennai VII Commissionerate,
New Custom House,
Meenambakkam,
Chennai 600 016.

WITH

(2) Customs Appeal No. 40051 of 2025

(Arising out of Order-in-Original No.2296/2024 dated 06.07.2024 passed by Principal Commissioner of Customs (Air Cargo), Chennai-VII Commissionerate, New Custom House, Meenambakkam, Chennai 600 016)

The Principal Commissioner of Customs (Air Cargo) **... Appellant**
Chennai VII Commissionerate,
New Custom House,
Meenambakkam,
Chennai 600 016.

VERSUS

M/s. Avana Surgical Pvt. Ltd. **.... Respondent**
No.91, 2nd Floor, Sundar Nagar,
4th Avenue, Nandambakkam,
Chennai 600 032.

APPEARANCE :

Shri J.V. Niranjan, Advocate for the Assessee
Smt. Anandalakshmi Ganeshram, Authorized Representative for the Revenue

CORAM :

HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)
HON'BLE MR. M. AJIT KUMAR, MEMBER (TECHNICAL)

FINAL ORDER Nos.41059-41060/2026

DATE OF HEARING : 30.03.2026
DATE OF DECISION :25.09.2026

Per: Shri P. Dinesha

M/s. Avana Surgical Private Limited, who is the Appellant-Assessee in Appeal No. C/40621/2024, has questioned the legality of the impugned Order-in-Original No.2296/2024 dated 06.07.2024 passed by the Principal Commissioner of Customs (Air Cargo), Chennai-VII whereby the Principal Commissioner has reclassified the goods imported by the Assessee and consequently has demanded the differential duty by denying the benefit of Notification No.50/2017-Customs dated 30.06.2017.

2. Facts are not in dispute: The Appellant-Assessee had imported certain items and sought for clearance of the same *vide* Bill of Entry No.6564645 dated 07.12.2021, by declaring the goods imported as 'Orthopaedic Appliances' which were classified under CTH 90211100. The above classification attracted 'Nil' Basic Customs Duty (BCD) and also entitled the Assessee to the benefit of Notification No.50/2017-Cus. (*supra*).

3. SIIB, Air Cargo, Chennai after analysis of certain items viz. 'Power Drive Art1', 'Power Stick M5/0 Handpiece', 'Art1 Footswitch' declared in the said Bill of Entry, appears to have entertained a doubt as to the classification, based also on the similar earlier imports which were classified under CTH 9018 and accordingly, visited supplier's website. Consequently, a Show Cause Notice dated 07.07.2023 was issued proposing *inter alia* to reclassify the imported goods under CTH 9018 thereby denying the benefit of Notification *supra,* apart from demanding differential duty along with interest and penalty.

4. It appears that the Assessee filed a detailed reply by explaining the reasons for changing the classification from its earlier imports and also trying to justify the

declared items of the present import, but however not satisfied with the explanation, the Principal Commissioner *vide* impugned Order-in-Original No. No.2296/2024 dated 06.07.2024 confirmed the proposed demands which has led to the present *lis* before us.

5. Against the very same impugned order, Revenue also has come in Appeal No. **C/40051/2025** *inter alia* on the grounds of erroneous extension of Notification benefits for certain periods as also non-imposition of redemption fine by the Principal Commissioner.

6. Heard Shri J.V. Niranjan, Ld. Advocate for the Assessee and Smt. Anandalakshmi Ganeshram, Ld. Authorized Representative for the Revenue; we have carefully perused the SCN, impugned order and other relevant documents placed on record and we have gone through the judicial precedents relied upon by both the parties during the course of arguments before us. On hearing both sides, the following issues arise for our consideration :

i. Whether the reclassification proposed and confirmed under CTH 9018 in the impugned order as against the declared classification by the Assessee under CTH 9021 is correct?

ii. Whether the penalty under Section 114A of Customs Act, 1962 is justified?

iii. Whether the Adjudicating Authority was correct in extending the benefit of Notification for the period 16.07.2018 to 12.12.2019 and

iv. Whether non-imposition of redemption fine was in order?

I.(A) It is the case of the Revenue that during the earlier period [i.e. 16.07.2018 to 12.12.2019], the Appellant-Assessee had self-assessed and classified the goods declared as 'Orthopaedic Instruments' under TI 90189023 and TI 90189029; during the period 27.02.2021 to 10.12.2022 the Assessee had self-assessed the same goods under TI 90211000 by declaring them as 'Orthopaedic Appliances' and on these goods the Assessee availed the benefit of Notification No.50/2017 (*supra*), apart from full exemption from BCD. Annexure-I to the SCN indicates that the Assessee had imported wide range of goods which even the Assessee did not dispute and it is also an equally undisputed fact that the imports made during 16.07.2018 to 12.02.2019 wherein each of the different types of goods imported were declared in the Bill

of Entry as 'Orthopedic Instrument', had been self-assessed either under TI 90189023 or under TI 90189029, as the case may be.

(B). It is the case of the Assessee that there is no *res judicata* applicable to the tax dispute and hence, the past declaration which was subject to review, was not adopted for the present imports since CTH 9021 contained a specific entry for 'Orthopedic Devices and Appliances'. It is the case of the Ld. Advocate that as per Rule 3 of General Rules for Interpretation, when by application of Rule 2 (b) or for any other reason goods could be classified under two or more Headings, then such goods shall be classified under the Heading which provides the most specific description and if by any chance the goods cannot be classified under any of the conditions (a) or (b) under Rule 2(b), then they shall be classified under the Heading which occurs last in numerical order. It was thus contended that while there is a specific entry for the goods in question in entry 9021, there was no need to opt for general entry in 9018 by virtue of legal maxim *'Generalia specialibus non derogant'.* Explaining the nature of the goods imported, it was contended that the usage of goods by a patient directly in order to qualify as

'Orthopedic Appliance' has never been discussed by the Principal Commissioner and nor has the Revenue led in any evidence in this regard. It is thus his case that the goods in question were rightly classifiable under CTH 9018. Having disputed that the goods are not 'Orthopedic Appliance' however, Revenue has not at all justified its stand while denying the above classification as 'Orthopedic Appliance' under CTH 9021. In case of any dispute, ideally the Revenue should have sought for an opinion from an expert in the field, which having not been done, the allegation of the Revenue and the re-classification does not stand to reasons. He would further submit that the Revenue cannot approbate and reprobate in as much as Revenue approbates the classification as correct when used by patients while reprobates when used by doctors or in hospitals, by relying on Sl.No.E (9) in List 30 read with Sl.No.257 of Notification No. 01/2017 (IGST) dated 28.06.2017 which reads as below :

257	*90 or any other Chapter*	*Assistive devices, rehabilitation aids and other goods for disabled, specified in List 3 appended to this Schedule*

E (9) Instruments and implants for severely physically handicapped patients and joints replacement and spinal instruments and implants including bone cement.

In support, Ld. Advocate has relied on the following decisions :

(i) **CC Madras Vs Vishal Surgical Equipment** [1996 (88) ELT 655 (Tribunal)]

(ii) **Instruments Orthopedics Vs CCE Bombay** [1998 (99) ELT 60 (Tribunal)]

7. *Per contra,* Smt. Anandalakshmi Ganeshram, Ld. D.R. supported the findings of the Principal Commissioner. She made oral / written submissions as under :

(I):

i. As regards BCD exemption, in terms of Notification No. 50/2017-Cus. dated 30.06.2017, Serial No. 578, "*Assistive devices, rehabilitation aids and other goods for disabled, specified in List 30*" were eligible for benefit of 'Nil' BCD exemption. Item E9 of List 30 covers "*Instruments and implants for severely physically handicapped patients and joints replacement and spinal instruments and implants including bone cement*".

ii. Similarly, as regards IGST exemption, in terms of Notification No. 01/2017(IGST) dated 28.06.2017, Serial No. 257 of Schedule-I, "*Assistive devices,*

rehabilitation aids and other goods for disabled, specified in List 3 appended to this Schedule" were eligible for benefit of 5% IGST. Item E9 of List 3 covers "*Instruments and implants for severely physically handicapped patients and joints replacement and spinal instruments and implants including bone cement".*

iii. Amendment was made to CN 50/2017-Cus. dated 30.06.2017 with effect from 02/02/2020 *vide* CN No. 01/2020 dated 02/02/2020, whereby the following changes were made to the existing CN 50/2017-Cus. dated 30.06.2017. The Item E9 of List 30 was amended as "*Instruments and implants for severely physically handicapped patients and joints replacement and spinal instruments and implants-including bone cement*" effectively changing it to "*Implants for severely physically handicapped patients including bone cement*". However, no amendments were made in the IGST Notification No. 01/2017 dated 28.06.2017 in respect of Serial No. 257 of Schedule-I.

iv. Subsequent to the amendment of CN 50/2017-Cus dated 30.06.2017 with effect from 02/02/2020 *vide* CN 01/2020 dated 02/02/2020, the imported goods were cleared from 27.02.2021 to 10.12.2022 by the importer by mis-declaring the description as "*Orthopaedic appliances*" and mis-classifying the goods under heading 9021 in order to avail ineligible benefit of 'Nil' BCD exemption.

v. The BCD exemption, in terms of CN 50/2017-Cus dated 30.06.2017, Serial No. 578, item B1 of List 30 covers "*Orthopaedic appliances falling under heading No. 9021 of the First Schedule*", IGST exemption, in terms of Notification No. 01/2017(IGST) dated 28.06.2017, Serial No. 257, item B1 of List 3 covers "*Orthopaedic appliances falling under heading No. 9021 of the First Schedule*".

vi. From the above, it was noticed that the benefit of Sl. No. 578 of CN 50/2017-Customs dated 30.06.2017 and Sl. No.257 of Schedule-I of CN 01/2017 (IGST) dated 28.06.2017 is only available for assistive devices/aids/appliances that help or assist disabled persons, whereas the investigation

revealed that, as per the catalogues, the impugned goods are instruments/ equipments used in performing diagnosis/surgery by doctors. Hence, the impugned goods are not eligible for BCD and IGST exemption benefit. Further, being surgical instruments, the goods are appropriately classifiable under CTI 9018 1019 with BCD @ 7.5% and IGST @ 12% which is meant for "*Instruments and appliances used in medical, surgical, dental or veterinary sciences*....".

vii. It was also submitted on functionality of certain items imported as under :

- '**Power Drive ART 1'** functions as the power console and handpiece driver for arthroscopic shaver systems. In orthopaedic surgery, it is primarily used to :
  - **Debride and Shave Tissue**: Remove damaged cartilage, inflamed joint lining (synovium), or soft tissue during minimally invasive arthroscopy.
  - **Bone Resection**: Smooth out rough bone surfaces or remove bone spurs within a joint.
  - **Joint Procedures**: Facilitate surgeries on the knee, shoulder, hip, elbow and wrist by allowing the

surgeon to cut and extract tissue with high precision.

➢ **The Power Stick M5/0** is an **orthopaedic instrument** (a surgical power tool/motor handle), rather than an orthopaedic appliance (which refers to a wearable brace or implant). It is a high-speed, reusable motorized handpiece manufactured by Richard Wolf primarily for arthroscopy and spinal surgery. It is primarily used in minimally invasive orthopaedic, arthroscopic and spinal procedures. Its core functions include:

□ Resect Soft Tissue: Shave, cut, and remove unwanted or damaged soft tissue (e.g. torn cartilage or ligaments in the knee or shoulder).

□ Bone Shaping: Efficiently remove and shape hard tissues or bone during minimally invasive procedures**.**

□ Fluid Management: Often paired with fluid control pumps, the hand piece allows surgeons to irrigate and clear the joint space while simultaneously removing debris; Any orthopaedic set of instruments that utilizes external sources of power

or energy for its operation is known as a surgical power tool.

➢ An **Art Footswitch** is an **accessory or control device** for medical and dental equipment. It is not classified as an orthopaedic appliance (like a brace or prosthesis) nor an orthopaedic instrument (like a bone clamp, retractor, or saw). It is commonly used for the following applications :

- **Electro surgery**: It allows surgeons to switch between cutting and coagulation modes.
- **Dental Equipment**: It activates dental scalers, polishers, and curing lights.
- **Minimally Invasive Surgery**: It operates tools like surgical lasers or irrigation pumps without breaking sterility or taking the surgeon's hands off the patient.
- **Medical Imaging**. It controls the capture and recording of images (such as in X-ray or ultrasound units).

➢ **PERCULINE nucleo** is an **orthopaedic instrument system** rather than orthopaedic appliance (appliances are typically external braces or permanent implants). It is a specialized, minimally

invasive surgical tool set used primarily in the spine for percutaneous nucleoplasty and interventional pain therapy.

- The instrument system is designed to treat chronic back pain, discogenic pain syndrome and contained disc herniations using 4 MHz radio frequency technology. Its primary applications include:
- **Percutaneous Access**: Safely accessing intervertebral discs with minimal disruption to surrounding tissues.
- **Tissue preparation**: Utilizing manual instruments for tissue preparation and dissection.
- **Decompression and Ablation**: Using radiofrequency (RF) current to coagulate, reduce, and ablate disc tissue. This reduces the volume of the disc taking the pressure off affected nerve roots.

➢ **Vertebris lumbar** is a full-endoscopic **orthopaedic instrument** system used by surgeons to perform minimally invasive spine procedures. It provides high-definition visualization and precise tools to access and treat the lumbar and thoracic spine while minimizing damage to surrounding

tissues. It is classified as a comprehensive set of surgical **instruments**, rather than a permanent orthopaedic "appliance" (such as a brace, artificial disc, or implant). It is primarily used for minimally invasive, full endoscopic spinal decompression and targeted procedures including *Spinal Decompression, Herniated Discs, Spinal Stenosis, Spinal Cysts.*

- **The VERTEBRIS stenosis** system is a set of **orthopaedic and neurosurgical instruments**. It is not an orthopaedic appliance (such as a brace) or a permanent implant; instead, it is a specialized, minimally invasive surgical tool system used by surgeons to perform spinal procedures. It is used for full-endoscopic spinal decompression and its applications include *Decompression, Treating Spinal Stenosis, Treating Associated Conditions.*
- **The VERTEBRIS cervical** is an advanced **orthopaedic** and **neurosurgical instrumentation system** (specifically a full-endoscopic surgical system by RIWOspine) used by surgeons to perform minimally invasive procedures on the cervical spine (the neck). It is not a wearable brace or long-term

appliance, but rather a set of specialized surgical tools and endoscopes. It is used to treat degenerative conditions of the neck with minimal trauma to surrounding tissues and its primary applications include *Herniated Discs, Spinal Stenosis & Decompression, Foraminotomy.*

- **The VERTEBRIS foraminotomy** system is a **surgical instrument set** (a universal manual drilling and access system). It is **not** an orthopaedic appliance which generally refers to a device implanted in the body or worn externally (like a brace or joint implant). It is primarily utilized in full-**endoscopic or endoscopically assisted spine surgery** to relieve pressure on compressed spinal nerves. Its specific include *Creating Surgical Access, Foraminotomy Procedures, Tissue Resection, Nerve Protection.*

II**.** Regarding Revenue's Appeal, Ld. D.R submitted that**:**

(A) **E*rroneous extension of Notification Benefit of BCD exemption for the period from 16.07.2018 to 12.12.2019***: The Lower Adjudicating Authority has held that the impugned goods are "*spinal instruments*" and extended the benefit of Sl. No. 578

of CN 50/2017- Customs [Sl. No. E(9), List 30] for the period from 16.07.2018 to 12.12.2019. The above benefit extended by Lower Adjudicating Authority is grossly erroneous on the following grounds:

(i) Sl. No. 578 of CN 50/2017 dated 30.06.2017 reads as:

> *Chapter 90 or any other chapter- "Assistive Devices, rehabilitation aids and other goods for disabled, specified in List 30",*

(ii) Sl. No. E(9) of List 30 of the said notification till01.02.2020 reads as:

> *"Instruments and implants for severely physically handicapped patients and joints replacement and spinal instruments and implants including bone cement"*

(iii) The above entry was amended vide CN 01/2020-Customs dated 02-02- 2020 and the amended entry reads as:

> *'Implants for severely physically handicapped patients including bone cement'*

(B) The Lower Adjudicating Authority has completely failed to appreciate that in the Sl. No. 578 the entry reads "*Assistive Devices*", "*rehabilitation aids*" and "*other goods for disabled*" specified in List 30. The terms used in the entry for Sl. No. 578 are "*all devices/aids/goods used for disabled persons for*

their aid/assistance". All the entries in the List 30 too are aids or equipment that help or assist the disabled. None of the items mentioned in the List 30 are instruments used in diagnosis or performing surgery on the disabled. This is further corroborated by the amendment to entry at the S. No. E(9) of the List 30 to the CN 50/2017-Cus *vide* the CN 01/2020-Cus. dated 02.02.2020 wherein the term "*instruments*" was removed. Hence, the benefit of the said notification is available only for "*Assistive devices, rehabilitation aids and other goods for disabled, specified in list 30*". However, Lower Adjudicating Authority has completely mis-construed the scope of the entry at Serial No. 578 and has failed to appreciate that in the Sl. No. 578, the entry is meant for "*disabled persons*" and interpreted the notification wrongly.

(C) Lower Adjudicating Authority has also completely failed to appreciate that the Tax Research Unit (TRU) *vide* their DO letter Ref No.D.O.F.No.334/2/2020-TRU dated 01.02.2020 has provided the clarification for bringing out the amendment to the subject entry in the List 30. It reads as follows: "(2) S.No.578 of

the CN 50/2017-Customs, dated 30th June, 2017 provides BCD exemption on assistive devices, rehabilitation aids and other goods for disabled as mentioned in List 30 to the said notification. The item at S. No. E (9) in this list is being amended to remove ambiguity about its scope. The intention has been to cover only such items which are for use by the disabled. This is a clarificatory in nature".

From the TRU clarification, it is quite clear that it was never the intention of the Government to provide duty exemption to instruments/equipment used in the diagnosis/surgery, however, Lower Adjudicating Authority has erroneously extended the benefit of S.No. 578 of the Notification No.50/2017-Customs [Sl. No. E(9), List 30) to the importer for the period from 16.07.2018 to 12.12.2019 by wrongly interpreting it as against the true intention of the Notification.

Extract of TRU D.O. letter D.O.F. No.334/2/2020 TRU dated 01.02.2020 is given below:

> *Chapter 90*
>
> *(1) Health Cess is being levied on all medical devices falling under headings 9018 to 9022 with effect from 2" February, 2020. [Clause 139 and Fourth Schedule of the Finance Bill, 2020 refers]. By virtue of declaration under the Provisional Collection of Taxes Act, 1931, this*

levy will come into force with immediate effect. However, this Cess is being exempted on medical devices which are exempt from BCD including under FTA notifications. Further, inputs/parts used in the manufacture of medical devices is also being exempted from Health Cess. [New notification No.8/2020, dated the 2nd February, 2020 refers).

(2) S.No. 578 of the notification No. 50/2017-Customs, dated 30th June, 2017 provides BCD exemption on assistive devices, rehabilitation aids and other goods for disabled as mentioned in List 30 to the said notification. The item at S. No. E (9) in this list is being amended to remove ambiguity about its scope. The intention has been to cover only such items which are for use of the disabled. This is a clarificatory in nature [notification No. 50/2017-Customs, dated 30th June, 2017, as amended vide notification No. 1/2020, dated 2nd February, 2020 refers].

(3) Notification No. 11/2018-Custom, dated the 2nd February, 2018 provided exemption from Social Welfare surcharge (SWS) on specified items of Chapter 90 under entries at S. No. 1, 9 and 46 to 49 of the said notification. The exemption from SWS on the said items is being withdrawn by omitting said entries. [Notification No. 11/2018-Customs, dated 2nd February, 2018, as amended vide notification No.9/2020-Customs, dated 2nd February, 2020 refers]. Consequently, all items of Chapter 90 will attract SWS at the rate of 10% of BCD payable. [For details refer Annexure-B]

TRU's circular referred above has not been issued contrary to statutory provisions or in defiance of the interpretation of such provisions by a judicial forum and is clarificatory in nature, hence it is binding on the department officers. Reliance is placed on **UOI Vs Arviva Industries** [2007-TMI-1095-SC] wherein it has been held that circulars issued by CBIC are binding on the Department.

(D) Even though the TRU clarification was mentioned at para 7.2 of the SCN, Lower Adjudicating Authority has completely ignored it without any discussion on the legislative intent of the Government. Lower Adjudicating Authority had, without examining the scope of the entry and without considering the clarification given by TRU, had proceeded to erroneously extend the benefit.

(E) SCN also proposed that the goods are eligible to the benefit of Sl. No. 563A of CN 50/2017-Customs and BCD is payable at the concessional rate of 7.5%. Lower Adjudicating Authority has grossly erred in this regard as there are no discussions in the impugned order on the eligibility of Sl. No. 563A of CN 50/2017-Customs. SCN has clearly mentioned that the impugned goods are chargeable to the concessional rate of BCD @ 7.5% for the period under Sl. No. 563A of CN 50/2017-Customs. However, Lower Adjudicating Authority has, without denying the proposal made under SCN regarding the eligibility of the impugned goods under Sl. No. 563A of CN 50/2017-Customs, extended the benefit to the impugned goods.

III. Regarding the other ground as to granting IGST exemption, in the Revenue's Appeal, it was submitted that :

(A) **Erroneous extension of Notification Benefit of IGST exemption for the period from 16.07.2018 to 12.12.2019**: Lower Adjudicating Authority has dropped the proposal to levy IGST @12% and the demand of differential IGST and has held that IGST is to be paid @ 5% for the entire period of the Show Cause Notice. Lower Adjudicating Authority's decision to extend the benefit of Notification No. 01/2017(IGST), Schedule-I, Serial No. 257, List 3, E9 is grossly erroneous on the following grounds:

a) Lower Adjudicating Authority has wrongly assumed that the benefit of IGST exemption was claimed *vide* Sl. No. 257 [Sl. No. E (9), List 3] of SCH- I of CN 01/2017- Integrated Tax (Rate) dated 28.06.2017 for the entire period of SCN. It has been clearly mentioned at para 6 of SCN that for the period from 16.07.2018 to 12.12.2019, the IGST benefit was claimed under Sl. No. 257 [Sl. No. E (9), List 3] of SCH-I of Notification 01/2017- Integrated Tax (Rate) dated 28.06.2017 and for the period 27.02.2021 to 10.12.2022 the IGST benefit was claimed under

Sl. No. 257 [Sl. No. B (1), List 3] of SCH-I of Notification 01/2017- Integrated Tax (Rate) dated 28.06.2017.

b) Sl. No.257 of Schedule I of Notification No. 1/2017 (IGST) dated 28.06.2017 reads as:

> *"Assistive Devices, rehabilitation aids and other goods for disabled, specified in List 3 appended to this schedule*".

c) Sl. No. E(9) of List 3 of the said notification reads as:

> "*Instruments and implants for severely physically handicapped patients and joints replacement and spinal instruments and implants including bone cement"*

d) Sl. No. 257, the entry reads: "*Assistive Devices*", "*rehabilitation aids*" and "*other goods for disabled*" specified in List 3. The terms used in the entry for Sl. No. 257 are all devices/aids/goods used for disabled persons for their aid/assistance. All the entries in List 3 too are aids or equipment that help or assist the disabled. None of the items mentioned in List 3 are instruments used in diagnosis or performing surgery on the disabled. Hence, the scope of the above entry is limited to the devices/aids/goods used for disabled persons for their aid/assistance and it cannot be read in a different way to extend benefit to any other goods. Hence, Lower Adjudicating Authority's

contention that no amendment was made to Entry E (9) of List 3 of the IGST Notification does not hold good as without any amendment also the intention of the Notification is very clear as to include only devices/aids/goods used for disabled persons for their aid/assistance and not any other goods.

It is submitted that while determining the applicability of Notification benefit it was explained that the impugned goods are not assistive devices/aids for the disabled but are instruments/equipment used in performing diagnosis/surgery and hence, are not covered under Schedule-I of IGST Notification.

e) CN 01/2017-Integrated Tax (Rate) dated 28.06.2017, Point (iv) of the Explanation given there under reads as:

> *"(iv) The rules for the interpretation of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), including the Section and Chapter Notes and the General Explanatory Notes of the First Schedule shall, so far as may be, apply to the interpretation of this notification."*

The IGST notification states that the rules of interpretation while determining classification of an item stands equally good in determining the IGST schedule of an item. The IGST Notification states that the rules of interpretation while determining classification of an item stands equally good in determining the IGST schedule of an item.

f) By virtue of the above explanation, clarification by the Tax Research Unit (TRU) *vide* their DO letter Ref No.D.O.F.No.334/2/2020-TRU dated 01.02.2020, with regard Sl. No. 578 [Sl. No. E (9), List 30] of CN 50/2017-Cus dated 30.06.2017, that "*the said Entry covers only such items which are for use of the disabled*" is equally applicable for Entry E (9) of List 3 of SCH-I of the IGST Notification No. 01/2017 dated 28.06.2017. Hence, Lower Adjudicating Authority has completely failed to appreciate the above explanation while extending IGST benefit to the importer.

g) SCN has clearly mentioned in para 7.3 that since the impugned goods are classifiable under 9018 9019, the same are appropriately covered under S. No. 218 of Schedule II of the IGST No. 01/2017 dated 28.06.2017 which has the most specific description, attracting 12% IGST. Lower Adjudicating Authority has completely failed to note in the impugned Order-in-Original regarding possibility of classification of the impugned goods under S. No. 218 of Schedule II of the IGST Notification, despite Lower Adjudicating Authority acknowledged in the impugned order that the impugned goods are instruments / surgical tools used by doctors/health care professionals during surgery or treatments of patients. Since, the Entry at S. No. 218 of Schedule-II has a more specific description for the impugned goods, the

goods appropriately fall under this Schedule attracting IGST @ 12%.

IV. Wrongful extension of Notification Benefit of IGST for the period from 27.02.2021 to 10.12.2022: Similarly, Lower Adjudicating Authority's decision to extend the benefit of Serial. No. 257 of Notification No. 01/2017 dated 28.06.2017 [Sl. No. E(9), List 3] for the period from 27.02.2021 to 10.12.2022 is erroneous on the following grounds:

a. From 27-02-2021 importer has classified the goods under TI 9021 1000 and claimed the benefit of Sl. No. 257 of Notification 01/2017-Integrated Tax (Rate) dated 28.06.2017 on the grounds that the impugned goods are 'Orthopaedic Appliances' covered under Sl. No. B (1) of List 3 of SCH-I of the said Notification. Till 17.07.2022, the benefit of this entry was available to:

    1. *Orthopaedic appliances falling under heading No. 90.21 of the First Schedule*

    2. *Wheel chairs falling under heading No. 87.13 of the First Schedule*

b. There is no ambiguity that this entry is available to goods of a specific description falling under a

specific heading of the Tariff. The impugned goods are neither orthopaedic appliances, nor do they fall under Heading 9021 of the First Schedule and they most certainly are not wheelchairs. Since the impugned goods are not goods listed in the Entry B (1), they are not eligible to the benefit of Sl. No. 257 of Notification 01/2017-Integrated Tax (Rate) dated 28.06.2017 [List 3, Sl. No. B (1)]. However, Lower Adjudicating Authority had proceeded to erroneously extend the benefit of Notification No. 01/2017(IGST), Serial No. 257, List 3, E9 @ 5% IGST, which was not at all claimed by the importer.

c. Further, w.e.f. 18.07.2022, Entry at Sl. No. B1, List 3 of SCH-I of Notification No. 01/2017-Integrated Tax (Rate) dated 28.06.2017 was omitted vide the Notification No. 06/2022-IT (Rate) dated 13.07.2022 which implies that for the period from 18.07.2022 to 10.12.2022 benefit of the above Sl. No. was not available to the importer however, they wilfully wrongly claimed the said benefit for the above period.

However, Lower Adjudicating Authority had proceeded to erroneously extend the benefit of Notification No. 01/2017(IGST), Serial No. 257, List 3, E9 @ 5% IGST for the period from 18.07.2022 to 10.12.2022 which was not at all claimed by the importer.

d. It has been clearly mentioned at para 7.3 of the Show Cause Notice that since the impugned goods are classifiable under 9018 9019, the same are appropriately covered under S.No. 218 of Schedule II of the Notfn. No.01/2017-Integrated Tax (Rate) dated 28.06.2017 which has the most specific description, attracting 12% IGST. Lower Adjudicating Authority has completely failed to bring this in the impugned order, as no discussions has been made by him regarding the possibility of classification of the impugned goods under S. No. 218 of Schedule II of the IGST notification, despite Lower Adjudicating Authority acknowledged that the impugned goods are instruments / surgical tools used by doctors/health care professionals during surgery or treatments of patients. Since, the

entry at S. No. 218 of Schedule-II has a more specific description for the impugned goods, the goods appropriately fall under this Schedule attracting IGST @ 12%.

e. Hence, Lower Adjudicating Authority has failed to appreciate that for the period 27.02.2021 to 10.12.2022 the IGST benefit was claimed under Sl. No. 257 (Sl. No. B (1), List 3] of SCH- I of N 01/2017- Integrated Tax (Rate) dated 28.06.2017 and the SCN has proposed for extension of benefit @ 12% IGST under Serial No. 218, Schedule II of the IGST Notification, despite Lower Adjudicating Authority acknowledged that the impugned goods are instruments/surgical tools used by doctors/health care professionals during surgery or treatments of patients. Since, the entry at S. No. 218 of Schedule-II has a more specific description for the impugned goods, the goods appropriately fall under this Schedule attracting IGST @ 12%.

f. Hence, Lower Adjudicating Authority has failed to appreciate that for the period 27.02.2021 to 10.12.2022 the IGST benefit was claimed under

Sl. No. 257 [Sl. No. B (1), List 3] of SCH- I of N 01/2017-Integrated Tax (Rate) dated 28.06.2017 and the SCN has proposed for extension of benefit @ 12% IGST under Serial No. 218, Schedule-II of N 01/2017-Integrated Tax (Rate) dated 28.06.2017.

V. Non-imposition of Redemption fine by Lower Adjudicating Authority after holding that the goods are liable to confiscation under Section 111(m) of Customs Act, 1962 is not legal and proper.

Lower Adjudicating Authority's decision to drop the demand of differential duty (BCD and IGST) completely for the period from 16.07.2018 to 12.12.2019 has resulted in non-confiscation of the goods imported during this period and thereby non-imposition of redemption fine under Section 125 and non-imposition of mandatory penalty under Section 114A of Customs Act, 1962, is not proper in view of the facts and the circumstances of the case.

Lower Adjudicating Authority's decision to drop the demand of differential IGST for the period from

27.02.2021 to 10.12.2022 which has resulted in non-imposition of mandatory penalty under Section 114A of Customs Act, 1962 for this period, is not proper in view of the facts and the circumstances of the case.

(a) Reliance is placed on judgement in **Oswal Agro Mills Ltd Vs CCE** [1993 (66) ELT 37 (SC)] wherein it has been held that the classification of goods to be governed by terms of headings read with relevant provisions or statutory rules or interpretation put up thereon, there is no room for intendment, assumption or presumptions and nothing to be added and no word to be rendered otiose.

(b) Reliance is placed on judgement in **UOI Vs Bharat Forge** [2022 (64) G.S.T.L. 3 (SC)] wherein it has been held that it is the responsibility of the importer to quote the correct HSN code and applicable tax rate for the purpose of preventing revenue loss.

(c) Reliance is placed on the judgement in **A. Raghavamma & Anr. Vs. Chenchamma & Anr.** [1963 (4) TMI 67-SC] holding that there is an essential distinction between burden of proof and onus of proof. The burden of proof lies upon a person who has to prove the fact and which never shifts.

Onus of proof shifts. Such a shifting of onus is a continuous process in the evaluation of evidence.

8. The Ld. A.R. prayed that Appeal filed by the Department may be allowed, and the Appeal filed by the Assessee may be dismissed.

9. We have heard the rival contentions and perused the documents and judgements relied upon carefully.

10. Upon hearing both sides, we find that the case of the Appellant-Assessee is that the goods imported *vide* disputed Bill of Entry are only 'Orthopaedic Appliances' and are hence, rightly classifiable under CTH 9021 and therefore, the benefit of Notification No.50 (*supra*) availed was in order.

11. The Revenue in the impugned order has disputed the above classification since, according to the Revenue, 'Orthopaedic Instruments' are different from 'Orthopaedic Appliances' and since the disputed items are only 'Orthopaedic Instruments', hence they could only be classified under CTH 9018 which, according to the Revenue, contains a specific entry.

12. Relevant Customs Tariff Entries read as under :

9018 *Instruments and Appliances used in Medical, Surgical, Dental or Veterinary Sciences, including Scientigraphic Apparatus, other Electromedical Apparatus and Sight-Testing Instruments*

9018 90 - Other instruments and appliances

--- Diagnostic Instruments and apparatus

9018 9011---- Instruments and apparatus for measuring blood pressure

9018 9012 ---- Stethoscopes

9018 9019 ---- Other

--- ***Surgical Tools***

9018 9021 ---- Bone saws, drills and trephines
9018 9022 ---- Knives, scissors and blades

9018 9023 ---- Forceps, forcep clamps, clips, needle holders, introducers, cephalotribe bone holding and other holding instruments'

9018 9024 ---- Chisel, gauges, elevators, raspatones, osteotome, craniotome, bone cutters

9018 9025 ---- Retractors, spatulaprobes, hooks dialators, sounds, mallets

9018 9029 ---- Others

9021 **-** *Orthopaedic Appliances, Including Crutches, Surgical Belts and Trusses; Splints and Other Fracture Appliances; Artificial Parts of the Body; Hearing Aids and Other*

Appliances which are worn or carried, or Implanted in the Body, to Compensate for a Defect or Disability

9021 10 00 - Orthopaedic or fracture appliances

12.1 Chapter Note 6 to Chapter 90 defines the expression 'Orthopaedic Appliances' as under:

'6. For the purpose of heading 9021, the expression "orthopaedic appliances" means appliances for :

(i) preventing or correcting bodily deformities; or

ii) supporting or holding parts of the body following an illness, operation or injury.

Orthopaedic appliances include footwear and special insoles designed to correct orthopaedic conditions, provided that they are either (1) made to measure, or (2) mass produced, presented singly and not in pairs and designed to fit either foot equally.'

12.2 Preamble to the HSN Explanatory Notes of Heading 9018 is as under :

'This heading covers a very wide range of instruments and appliances which, in the vast majority of cases, are used only in professional practice (e.g., by doctors, surgeons, dentists, veterinary surgeons, midwives), either to make a

diagnosis, to prevent or treat an illness or to operate, etc. Instruments and appliances for anatomical or autoptic work, dissection, etc., are also included, as are, under certain conditions, instruments and appliances for dental laboratories (see Part (II) below). The instruments of the heading may be made of any material (including precious metals).'

A conjoint reading of Heading 9021 and Chapter Note 6 makes it clear that Tariff item 90211000 covers goods that are actually used by patients suffering from orthopaedic disease or illness, which are either implanted or strapped to their body.

13. We agree that 'Orthopaedic Instruments' are different from 'Orthopaedic Appliances' in as much as each has specific role; instruments are those which are used during any surgery / operation by surgeons. The Assessee also does not dispute the fact of its earlier declaration as to the classification under CTH 9018 of the very same items in dispute during its earlier imports and there is no appreciable explanation offered for changing the classification for the imports in dispute. Further, we find that the Original Authority has specifically gone into the sellers' website, verified the usage of each and every item imported by the Assessee and then arrived at the

conclusion that the goods in question are only 'Orthopaedic Instruments' classifiable under CTH 9018. We find that the impugned order is in order and the Assessee has been other than repeatedly claiming that 'Orthopaedic Instruments' are covered under CTH 9021, has not bothered to shake the well-founded impugned order. Factually, the decisions relied upon by the Assessee are thus distinguishable as we do not find any such thorough investigation in the said cases. Moreover, CTH 9021 clearly does not cover any surgical tools or instruments used by doctors or health professional and the same are not implanted or strapped.

14. The Principal Commissioner's order is therefore well-founded and the Assessee has not made any attempt to dislodge the reasoning given in the impugned order, nor is there any attempt made by the Assessee to justify its claim as to classification; rather, the Assessee has only contended without any basis that the items under dispute are classifiable only under CTH 9021. In view of the above, we do not find any merit in the Appeal filed by Assessee and hence, we dismiss the same.

15. In the Revenue's Appeal, firstly it has been questioned as to the erroneous extension of Notification benefit of BCD for the period 16.07.2018 to 12.12.2019 since, the Adjudicating Authority having held the impugned goods as 'spinal instruments', the same would not justify in being treated as 'appliance'. Sl.No.578 of Notification No.50/2017 dt. 30.06.2017 applicable for the period under dispute refers to '*Assistive Devices, rehabilitation aids and other goods for disabled, specified in List 30'* ; and List 30 at Sl.No.E(9) reads: '*Instruments and implants for severely physically handicapped patients and joints replacement and spinal instruments and implants including bone cement*'. The above entry apparently stood amended by Notification No.1/2020-Cus. dt. 02.02.2020 which read as : '*Implants for severely physically handicapped patients including bone cement'*.

16. It was thus contended that all the entries in List 30 are aids or equipment that help or assist the disabled and none of these is used in diagnosis or performing surgery on the disabled. Thus, even the Notification No.1/2020 (*supra*) finds no place of the word 'instruments' which means the benefit of the said Notification is available only

for '*Assistive devices, rehabilitation aids and other goods for disabled specified in List 30'*.

17. We find that the goods in question are specifically designed as surgical tools which are used in various spinal surgeries and hence, they are only 'spinal instruments' and hence, the Adjudicating Authority is correct in extending the benefit of Customs Notification No.50/2017-Cus. [Sl.No.578] and hence, this issue is decided against the Revenue.

18. In so far as the next issue with regard to rate of IGST on the impugned goods is concerned, we find that the Assessee had assessed the goods to IGST under Sl.No.257 of Schedule-I of Notification No.1/2017-Integrated Tax (Rate) dated 28.06.2017. It is the case of the Assessee that the goods specified in List 3 of Schedule-I are eligible and that impugned items are covered under Sl. No.E (9) of List 3 which reads thus: '*Instruments and implants for severely physically handicapped patients and joints replacement and spinal instruments and implants including bone cement*'. The above is identical to Sl. No.E (9) of List 30 of Notification No. 50/2017 (*supra*). In the earlier paragraphs, we have

observed that the goods imported during this particular period i.e. 16.07.2018 to 12.12.2019 were eligible for the benefit of Customs Notification and hence, we do not find any difficulty in extending the benefit of IGST notification as well, since both are identical. Further, since the scope of entry at Sl.No.E (9) of Notification No.50/2017 was restricted w.e.f. 02.02.2020 perhaps the benefit of Customs Notification may not be available to the Assessee post-02.02.2020. Ironically, however, no such amendment appears to have been made in Entry E (9) of List 30 (*supra*) which means that the items continue to enjoy the benefit of classification under Schedule-I during the entire period of Notification.

19. In view of the above, we do not find any case made out for our interference with the order of the Principal Commissioner in this regard and this issue is also decided against the Revenue. Resultantly, the Appeal filed by Revenue is rejected.

(Order pronounced in open court on 25.09.2026)

sd/-

(M. AJIT KUMAR)
Member (Technical)

sd/-

(P. DINESHA)
Member (Judicial)

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