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CESTAT Hyderabad- Carbon & Sulphur Analyzer Not Classifiable as Gas Analysis Apparatus



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In a significant ruling, the Customs, Excise, and Service Tax Appellate Tribunal (CESTAT) Regional Bench at Hyderabad has resolved a long-standing classification dispute concerning the import of the 'Carbon and Sulphur Analyzer CS-800' by Verder Scientific Pvt Ltd. The case revolved around whether the apparatus should be classified under Customs Tariff Heading (CTH) 90271000 as a 'Gas or Smoke Analysis Apparatus' or under a different heading. The Tribunal's decision has set a precedent for similar classification disputes in the future.

Background of the Case

The appellant, Verder Scientific Pvt Ltd, challenged the classification of their imported analyzer under CTH 90271000, as upheld by the Commissioner of Customs (Appeals). The apparatus in question is used to determine the presence of carbon and sulphur elements in solid metal samples. The Commissioner (Appeals) had classified the product as a 'Gas or Smoke Analysis Apparatus,' arguing that the apparatus analyzes gases released during the combustion of metal samples.

Arguments Presented

The appellant contended that the apparatus does not analyze the gas content of combustible gases or combustion by-products but instead determines the elemental content of carbon and sulphur in solid metal

samples. They argued that the apparatus should not fall under CTH 90271000 but under a residuary heading within CTH 9027, as no specific heading in the Harmonized System of Nomenclature (HSN) accurately describes their product.

On the other hand, the respondent relied on the Supreme Court judgment in *Dunlop India Ltd & Madras Rubber Factory Ltd Vs Union of India and others*, which emphasized that when a specific heading is available, reliance on a residuary heading is untenable. The respondent also pointed out that the appellant had started classifying the product under CTH 90271000 for subsequent imports, suggesting acceptance of the classification.

Tribunal's Observations and Decision

After hearing both sides and reviewing the records, the Tribunal focused on the technical functionality of the apparatus. It noted that CTH 90271000 specifically covers apparatus used to analyze combustible gases or combustion by-products, such as carbon dioxide, carbon monoxide, and sulphur dioxide. However, the Carbon and Sulphur Analyzer CS-800 is designed to measure the elemental presence of carbon and sulphur in solid metal samples, not the content of gases like carbon dioxide or sulphur dioxide.

The Tribunal also observed that similar analyzers imported through other ports had been classified under headings like CTH 90278090 and CTH 90279090, which are more appropriate for apparatus not specifically analyzing gases. It ruled that the appellant's apparatus does not fall under CTH 90271000 and set aside the Commissioner (Appeals)' order.

Key Takeaways from the Judgment

- 1. Technical Functionality Matters:** The classification of goods under the Customs Tariff must align with their actual functionality and purpose. Apparatus designed to analyze solid elements cannot be classified under headings meant for gas or smoke analysis.
- 2. No Estoppel in Classification Disputes:** The Tribunal clarified that an importer is not barred from challenging a classification even if they have adopted a different classification for subsequent imports.
- 3. Importance of HSN Interpretation:** The Harmonized System of Nomenclature plays a crucial role in determining the correct classification, and its plain reading must be applied to resolve disputes.

Conclusion

The Tribunal's decision in favor of Verder Scientific Pvt Ltd underscores the importance of accurate classification based on the technical functionality of imported goods. This ruling not only provides relief to the appellant but also serves as a guiding principle for future classification disputes involving specialized scientific equipment. Importers and legal practitioners must carefully analyze the HSN and the functionality of goods to ensure compliance with customs regulations.

Source: CESTAT Hyderabad

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**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH AT HYDERABAD**

Regional Bench - Court No. - I

Customs Appeal No. 30256 of 2019

(Arising out of Order-in-Appeal No.HYD-CUS-000-APP-074-18-19 dt.30.11.2018 passed by
Commissioner of Customs & Central Tax (Appeals-I), Hyderabad)

Verder Scientific Pvt Ltd

1-2-45,1, 2nd floor, Street No.2, Kakateeya Nagar
Colony, Habsiguda, Hyderabad - 500 047

.....Appellant

VERSUS

Commissioner of Customs

Hyderabad - Customs

Kendriya Shulk Bhavan, LB Stadium Road,
Basheerbagh, Hyderabad - 500 004

.....Respondent

Appearance:-

Shri Y. Sreenivasa Reddy, Advocate for the Appellant.

Shri K. Sreenivasa Reddy, AR for the Respondent.

**Coram: HON'BLE MR. A.K. JYOTISHI, MEMBER (TECHNICAL)
HON'BLE MR. ANGAD PRASAD, MEMBER (JUDICIAL)**

FINAL ORDER No. A/30117/2025

Date of Hearing: 08.04.2025

Date of Decision: 08.04.2025

[Order per: A.K. JYOTISHI]

M/s Verder Scientific Pvt Ltd (hereinafter referred to as the appellant) are in appeal against the Order of the Commissioner (Appeals) dt.30.11.2018, whereby, the Commissioner (Appeals) has upheld the classification of 'Carbon and Sulphur Analyzer CS-800', imported by the appellant, under CTH 90271000 by treating it as 'Gas or Smoke analysis apparatus'. The Commissioner (Appeals) has examined the findings of the Original Adjudicating Authority and held that it is primarily a gas analyzer because when the metal samples are burnt in the apparatus, it releases gas, which is captured by the sensors and thereafter, they analyze the same. Therefore, it is akin to 'gas or smoke analysis apparatus'.

2. Learned Advocate is mainly contesting its classification on the ground that the product is not analyzing the gas content of various combustible gases, etc., and in fact, it is determining the element content like Carbon and Sulphur, which is present in the metal for which this apparatus is used. Therefore, its classification would not be under CTH 90271000. Further, he submits that on going through the HSN, there is no specific apparatus which is akin to their apparatus and therefore, it would fall under the residuary heading, as broadly it would fall within the overall heading of 9027. He has relied on certain case laws in support of his contention.

3. On the other hand, learned AR is relying on the judgment of Hon'ble Supreme Court in the case of Dunlop India Ltd & Madras Rubber Factory Ltd Vs Union of India and others [1983 (13) ELT 1566 (SC)], wherein, it was held that when a specific heading is available, reliance placed on residuary heading is not tenable. He is also submitting that for the subsequent period to the demand, the appellants themselves have started claiming the classification under CTH 90271000 and that there is no record that this classification or payment of duty subsequent thereto, is under protest, as intimated by the Department, who has checked their record.

4. Heard both sides and perused the records.

5. The short question for determination is whether the product would squarely fall within the CTH 90271000 or otherwise. Clearly, CTH 9027 is the heading which covers 'Instruments and apparatus for physical or chemical analysis (for example, polarimeters, refractometers, spectrometers, gas or smoke analysis apparatus); Instruments and apparatus for measuring or checking viscosity, porosity, expansion, surface tension or the like; instruments and apparatus for measuring or checking quantities of heat, sound or light (including exposure meters); microtomes'. CTH 9027.10 specifically covers 'Gas or smoke analysis apparatus'. In the HSN, the gas or smoke analysis apparatus has been described as under:-

"(8) Gas or smoke analysis apparatus - These are used to analyse combustible gases or combustion by-products (burnt gases) in coke ovens, gas producers, blast furnaces, etc., in particular, for determining their content of carbon dioxide, carbon monoxide, oxygen, hydrogen, nitrogen or hydrocarbons. Electrical gas or smoke analysis apparatus are mainly for determining and measuring the content of the following gases: carbon dioxide, carbon monoxide and hydrogen, oxygen, hydrogen, sulphur dioxide, ammonia."

6. A plain reading of the coverage, as per HSN, would indicate that the kind of gas or smoke analysis apparatus, which is specifically covered under CTH 90271000, are the one where the apparatus is used to analyze combustible gases or combustion by-products (burnt gases) and especially in coke ovens, gas producers, blast furnaces, etc., for determining their content of carbon dioxide, carbon monoxide, oxygen, hydrogen, nitrogen or hydrocarbons. Essentially, these apparatus are mainly for determining and measuring content of gases like carbon dioxide, carbon monoxide and hydrogen, oxygen, hydrogen, sulphur dioxide, ammonia. Therefore, what is emerging from the plain reading is that the input which this apparatus takes has to be in the form of combustible gas or smoke and the same is analyzed and the end result is percentage of different types of gases present in the said input gas or smoke. On the other hand, the impugned apparatus is essentially meant for measuring the range of presence of carbon and sulphur only in a particular sample. Therefore, it is not meant for measuring carbon dioxide gas or sulphur dioxide gas in the metal and it is meant for determining only carbon and sulphur content/ element in the solid metal. The technology it is using requires creation of fume or gas only with intent to ultimately test the presence of carbon or sulphur element in the metal and not the presence of carbon dioxide or sulphur dioxide gas in the metal. Therefore, we find this particular equipment is not classifiable under CTH 90271000. We also note that different types of analysers have been imported through different ports and they have been classified under many headings including CTH 90279090 & 90278090. From perusal of the same, we also notice that those equipments, which are specifically meant for analysing gases like SOX/NOX i.e., sulphur dioxide and nitrous oxide, etc., are getting classified under CTH 90271000, whereas, other kinds of analysers are getting classified under CTH 90278090.

7. As far as the argument that appellants themselves have started classifying the product under CTH 90271000 and therefore, now they cannot go back and claim that it is not classifiable is concerned, we find that there is no estoppel on the appellant to challenge the classification even if they have started paying the duty under different heading during subsequent period. As far as the issue of payment under protest is concerned, it has got no relevance for the present appeal as during the material period, they had

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contested the classification and the said classification is being examined and not for the future classification practice adopted by them.

8. Therefore, in the given factual matrix, we find that the order of the Commissioner (Appeals) is not tenable and therefore, liable to be set aside and accordingly, we do so.

9. Appeal allowed.

(Dictated and pronounced in the Open Court)

(A.K. JYOTISHI)
MEMBER (TECHNICAL)

(ANGAD PRASAD)
MEMBER (JUDICIAL)

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