

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
EASTERN ZONAL BENCH: KOLKATA**

REGIONAL BENCH – COURT NO. 2

Customs Appeal No. 75317 of 2023

(Arising out of Order-in-Original No. Kol/Cus/Commissioner/Port/03/2023 dated 24.03.2023 passed by the Commissioner of Customs (Port) Custom House,15/1, Strand Road, Kolkata-700 001)

M/s. B. M. Jain & Sons Pvt. Ltd.

3, Surendra Mohan Ghosh Sarani
1st Floor, Kolkata-700001

: Appellant

VERSUS

Commissioner of Customs (Port)

Custom House,15/1, Strand Road, Kolkata-700 001

: Respondent

APPEARANCE:

Shri Aditya Dutta, Advocate for the Appellant
Shri Faiz Ahmed, Authorized Representative for the Respondent

CORAM:

HON'BLE SHRI R. MURALIDHAR, MEMBER (JUDICIAL)
HON'BLE SHRI K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO. 77718/ 2025

DATE OF HEARING: 12.12.2025

DATE OF PRONOUNCEMENT: 14.11.2025

ORDER: [PER SHRI K. ANPAZHAKAN]

B.M. Jain & Sons Pvt. Ltd.(herein after referred as the appellant) have been engaged in the business of import of Diocetyl Phthalate. During the period between **12th May,2018 and 11th August, 2019**, the Appellant imported the said goods i.e. Diocetyl Phthalate by classifying the said goods under the CTH **29173920**, vide 10 Bills of Entry and cleared the same availing concessional rate of duty available under N.F. No. 152/2009-CUS dated 31.12.2009.

1.1. The DRI, New Delhi initiated an investigation against the Appellant on the allegation that the Appellant had imported Dioctyl Ortho Phthalate (Ortho DOP), classifiable under the CTH 29173200, by mis-declaring the same as Dioctyl Phthalate (DOP) and classified it under the CTH **29173920** and thereby availed benefit of concessional rate of duty as provided under the Notification No. 152/2009-CUS dated 31.12.2009, which is not available to Dioctyl Ortho Phthalate. Accordingly, Summons dated 12.09.2019 were issued to the Director Sh. Mahendra Bhanmal Jain, and his statement was recorded.

1.2. On completion of the investigation, the Principal Additional Director General, DRI, New Delhi issued the SCN dated **25.06.2020** demanding differential duty amounting to Rs. 56,71,510/- on the ground that the goods imported by the Appellant were mis-declared as 'Dioctyl Phthalate (DOP), and classified the same under the CTH 29173920, whereas the goods should be treated as "Dioctyl Ortho Phthalate (Ortho DOP) classifiable under the CTH 29173200.

1.3. The said Notice was adjudicated by the Commissioner of Customs (Port) vide Order No. KOL/CUS/COMMISSIONER/PORT/03/2023 dated 24.03.2023, wherein he has ordered as under:-

(i) The goods imported by the Appellant are Dioctyl Orthophthalate, appropriately classified under CTH 29173200 instead of CTH 29173920 as declared by the Appellant.

(ii) Confirmed the demand of differential duty amounting to Rs. 56,71,510/- under Section 28(8) of

the Customs Act, 1962 and ordered for appropriation of the amount of Rs. 56,71,510/- already paid by them during investigation, against the said demand.

(iii) Confirmed the demand of interest of Rs. 6,23,399/- on the differential duty under Section 28AA of the Customs Act, 1962

1.4. Aggrieved against the confirmation of the differential customs duty along with interest and penalty, the appellant has filed this appeal.

2. The Appellant submits that they have been importing the same goods for many years and clearing the same by declaring it with the description "Diocetyl Phthalate" and classifying the same under the CTH 29173920. They have been availing concessional rate of duty available under N.F. No. 152/2009-CUS dated 31.12.2009 and no objection was raised by the Customs department while clearing the consignments on the earlier occasions.

2.1. The Appellant submits that Prior to Budget 2018, there was a specific entry available in the Customs Tariff, with the description "Diocetyl Phthalate" under CTH 29173920. Post Budget 2018, the Tariff entry "Diocetyl Phthalate" under the CTH 29173920 was deleted and a new entry covering the goods **Diocetyl isophthalate and Diocetyl terephthalate** has been introduced. Post budget 2018 also, they continued to import the same goods and cleared the same under the CTH 29173920, by availing the benefit under Notification No. 152/2009-CUS dated 31.12.2009, without realizing that the said Tariff Entry has been deleted. However, SCN has been issued proposing reclassification of the said goods under the CTH 29173200, on the allegation

that the goods imported were Dioctyl Orthophthalate classifiable under CTH 29173200. In this regard, the Appellant submits that the department has not drawn any samples and conducted any test to substantiate the allegation that the goods imported were Dioctyl Orthophthalate.

2.2. The Appellant submits that the Ld. adjudicating authority has relied upon the decision of the Hon'ble Supreme Court in the case of *Akbar Badruddin Jiwani v Collector of Customs, Bombay [1990(47) ELT 161(SC)]* wherein it has been held that in commercial or market parlance understanding 'Dioctyl Phthalate' and 'Dioctyl Orthophthalate' were considered as similar products. Accordingly, the Ld. adjudicating authority concluded that the goods imported by them under the 10 Bills of Entry were 'Dioctyl Orthophthalate', for which the benefit of concessional rate of duty available under Notification No. 152/2009-CUS dated 31.12.2009 is not available. In this regard, the Appellant submits that for classifying an item, its scientific and technical name has to be considered and not commercial or market parlance understanding. As the department has not drawn any samples and conducted any tests, there is no evidence available on record to substantiate the allegation that the goods imported by them under the 10 Bills of Entry were 'Dioctyl Orthophthalate'.

2.3. The Appellant further submits that deletion of the Tariff Entry of Dioctyl Phthalate under CTH 29173920 post Budget, 2018 does not ipso facto imply that the said item would be classifiable under the CTH 29173200, rather it implies that the same item should now find place under residual entry CTH

29173990 or under the new entry introduced in the Tariff with the description **Diethyl isophthalate and Diethyl terephthalate** .

2.4. The Appellant submits that in view of the Explanatory Notes, read with the Chapter Notes, Heading etc, Diethyl Phthalate is correctly classifiable under CTH 29173990. Even Standard Input Output Norms (SION) notified by DGFT treats Diethyl Phthalate and Diethyl Orthophthalate as two different products.

2.5. Accordingly, the Appellant submits that the demand of differential duty amounting to Rs. 56,71,510/-confirmed in the impugned order along with interest and penalty is not sustainable and prayed for setting aside the same.

3. The Ld. A.R. reiterated the findings in the impugned order. He submits that structure wise Diethyl Orthophthalate and Diethyl Phthalate are similar in nature and hence the revenue has correctly classified the impugned goods under the CTH 29173200. Thus, he justified the differential customs duty, along with interest and penalty confirmed in the impugned order.

4. Heard both sides and perused the appeal documents.

5. We observe that the issue involved in the present appeal is classification of the goods Diethyl Phthalate imported by the appellant. The Appellant classified the said goods under the CTH **29173920**, and cleared the goods imported vide 10 Bills of Entry by availing concessional rate of duty available under N.F. No. 152/2009-CUS dated 31.12.2009. Revenue is of the view that the goods imported by the

Appellant is classifiable under the CTH 29173200 and the said goods are not eligible for the concessional rate of duty available under N.F. No. 152/2009-CUS dated 31.12.2009.

5.2. In this regard, we observe that CBEC has issued Instruction No. 07/2017-CUS dated 06.06.2017, with regard to classification of Dioctyl Phthalate. For ready reference, the said clarification is reproduced below:

*INSTRUCTION NO.07/2017-CUSTOMS
[(F.NO.528/07/2017- STO (TU))]*

*CLASSIFICATION OF DIOCTYL ORTHOPHTHALATE
(DEPH)*

*INSTRUCTION NO.07/2017-CUSTOMS [(F.NO.528/07/2017-STO (TU)),
DATED 6-6-2017*

References have been received in the Board from field and Trade regarding the correct classification of Dioctyl orthophthalate (DEPH). A doubt has been expressed whether the said goods are classifiable under tariff item '2917 32 00..... Dioctyl orthophthalate' or under tariff item '2917 39 20Dioctyl phthalate'.

2. Trade is of the view that Dioctyl Orthophthalate (DEPH) is also known as Dioctyl Phthalate (DOP). Although both terms refer to single product but in the Customs Tariff, there are two classifications for the same product i.e. 2917 32 00 & 2917 39 20. Therefore, in terms of chapter Note 3 to the chapter 29, goods which could be included in two or more of the headings of this Chapter are to be classified in that one of those headings which occurs last in numerical order. According to this view the product merits classification under CTH 2917 39 20. This view is controverted by field formations who are of the opinion that DEPH is classifiable under tariff item - -2917 32 00.

3. Board examined the issue and in this regard it is clarified that:

a. The product under examination is Dioctyl orthophthalate (DEPH) which may be referred by a common name [i.e. Dioctyl phthalate (DOP) or

IUPAC name [bis(2-ethylhexyl) benzene- 1,2-dicarboxylate] or by any other name in chemistry or in trade parlance.

b. Chapter Note 3 of Chapter 29 provided that goods which could be included in two or more of the headings of chapter 29, are to be classified in one of those headings which occurs last in numerical order. The said chapter note 3 reads as:

"Goods which could be included in two or more of the headings of this Chapter are to be classified in that one of those headings which occurs last in numerical order."

However, sub-heading note 2 of the chapter 29 further states that "Note 3 to this chapter shall not be applicable to the sub-headings of this Chapter." Therefore, by virtue of sub-heading Note 2, the classification principle in Note 3 is not applicable to the item under consideration because the competing sub-headings are "2917 32" [converted into tariff Line 2917 32 00] and "2917 39" [one of the tariff line of the sub-heading is 2917 39 20]. Further, the dispute in this case is not between two headings (the competing tariff items are both within CTH 2917), therefore, chapter Note 3 would not be available in deciding the classification.

c. HSN provides a specific entry for the ortho variety of dioctyl-phthalate in 2917.32 which upon conversion to 8-digit entry (Indian Tariff) finds mention as '2977 32 00--Dioctyl orthophthalate". The other competing sub-heading is 2917 39 mentioned as Other. This sub-heading has been further sub-divided at the 8-digit level from 2917 39 10 to 2917 39 90. Since for Dioctyl orthophthalate there is a specific sub-heading i.e. 2917 32 Dioctyl orthophthalate, it shall therefore take precedence over the residual sub-heading i.e. 2917 39 Other. This further clearly implies that the other varieties i.e. meta (also known as iso) and para (also known as tere) would be covered under the residuary entry 2917.39 (2917 39 20) and not under 2917 32 00.

d. Seemingly, it appears that an entry in the tariff [2917 39 20, dioctyl-phthalate] would appear to cover all three isomers of dioctyl-phthalate as contended by the trade. However, such an interpretation would be erroneous as DEPH (ortho isomer) is already figuring at [2917 32 00] and it is inconceivable that DEPH

would also be classifiable under [2917 39 20] in the same heading under residuary entry 'other'.

e. Lastly, in the EN to HSN, there is a mention that phthalic acid is also known as orthophthalic acid, therefore, by this analogy Dioctyl orthophthalate would be same as Dioctyl phthalate and thus tariff item 2917 39 20 should prevail as far as classification of DEPH is concerned. It is clarified that the HSN does not contain the entry 2917 39 20 Dioctyl phthalate. Therefore, this definition shall not be applicable to tariff item 2917 39 20. Classification of DEPH shall remain under tariff item-2917 32 00.

f. Board is therefore, of the view that meta and para variety alone of dioctyl-phthalate shall be classified under tariff item 2917 39 20. Dioctyl orthophthalate (DEPH) shall continue to be classified under tariff item-2917 32 00.

4. All pending assessments, if any, may be finalized accordingly.

5.3. From the clarification reproduced above, we observe that the category of goods namely, "phthalate" are primarily of three types:-

Dioctyl orthophthalate (DEHP) 'ortho' variety.

Dioctyl isophthalate 'meta' variety.

Dioctyl terephthalate (DOTP) 'para' variety'

5.4. Prior to Budget 2018, in the Customs Tariff the goods with the description Dioctyl orthophthalate has a specific entry under the CTH 2917 32 00. There is no separate tariff entry available for the other two items namely Dioctyl isophthalate ('meta' variety) and Dioctyl terephthalate (DOTP) ('para' variety'). Thus, if these two items are imported they have to be classified under the general entry available in the tariff with the description Dioctyl Phthalate, under the CTH 29173920. We find that prior to deletion of the general entry Dioctyl Phthalate, under the CTH

29173920 in Budget 2018, the Appellant have been importing the goods Dioctyl Phthalate under 10 Bills of Entry, classifying the same under CTH **29173920** and cleared the same by availing concessional rate of duty available under Notification No. 152/2009-CUS dated 31.12.2009. The department has not raised any objection. During this period prior to Budget 2018 also, we find that Dioctyl orthophthalate has a specific entry under the CTH 2917 32 00 in the Tariff, but the department has not proposed the classification of the said goods imported by the appellant under the CTH 2917 32 00, as Dioctyl orthophthalate. Thus, it is evident that the said goods imported by the Appellant prior to budget 2018 were not considered by the department as Dioctyl orthophthalate classifiable under the CTH 2917 32 00. We observe that there is no dispute that the appellant continued to import the same goods even after budget 2018, when the Tariff entry "Dioctyl Phthalate" under the CTH 29173920 was deleted. We observe that after deletion of this tariff Entry, a new entry covering the goods **Dioctyl isophthalate and Dioctyl terephthalate** has been introduced under the same CTH 29173920. Comparison of the changes brought in from pre-budget to post-budget of 2018 are reproduced below for ready reference:

- Aromatic polycarboxylic acids, their anhydrides, halides, peroxides, peroxyacids and their derivatives

2917 32 00 -- **Dioctyl Orthophthalates**

2917 33 00 -- Dinonyl or dodecylorthophthalates

2917 34 00 -- Other esters of orthophthalic acid

- 2917 39 30 --- **Phthalic acid**
- 2917 39 40 --- Dimethyl phthalate
- 2917 39 50 --- Trimellitic anhydride
- 2917 39 60 --- Isophthalic acid
- 2917 39 90 --- Other

5.5. Thus, we observe that post budget, when the Appellant continued to import the same goods, the said goods should be classifiable only under the new entry under the CTH 29173920, which replaced the earlier description Dioctyl Phthalate and not under 2917 32 00 as Dioctyl orthophthalate. We observe that the benefit under Notification No. 152/2009-CUS dated 31.12.2009 is available to the goods falling under the CTH 29173920. Thus, we find that the deletion of the Tariff entry with the description Dioctyl Phthalate, would not have the effect of denying the benefit of the Notification No. 152/2009-CUS dated 31.12.2009, as the appellant continued to import the same goods, from the same supplier before and after the Budget 2018.

5.6. We find that the Ld. adjudicating authority has relied upon the decision of the Hon'ble Supreme Court in the case of *Akbar Badruddin Jiwani v Collector of Customs, Bombay [1990(47) ELT 161(SC)]* wherein it has been held that in commercial or market parlance understanding 'Dioctyl Phthalate' and 'Dioctyl Orthophthalate' were considered as similar products. Accordingly, the Ld. adjudicating authority concluded that the goods imported by them was 'Dioctyl Orthophthalate'. In this regard, we observe that for classifying an item, its scientific and technical name has to be considered and not commercial or market parlance understanding. We

observe that the department has not drawn any samples and conducted any test to ascertain whether the goods imported by the Appellant confirms to the scientific and technical description of the goods Dioctyl orthophthalate under the CTH 2917 32 00. In the absence of any evidence to substantiate the allegation that the goods imported by the appellant were Dioctyl orthophthalate, we observe that the said goods cannot be classified under the CTH 29173200 with the description Dioctyl orthophthalate, just because the general entry Dioctyl Phthalate, under the CTH 29173920 was deleted in the Budget 2018.

5.7. Accordingly, we hold that the goods Dioctyl Phthalate imported by the Appellant under the 10 Bills of Entry, are rightly classifiable under the CTH **29173920** and the Appellant are eligible to the concessional rate of duty available under Notification No. 152/2009-CUS dated 31.12.2009. Hence, we hold that the differential customs duty amounting to Rs. 56,71,510/-confirmed in the impugned order along with interest is not sustainable and hence we set aside the same. As mis-declaration of the goods by the appellant is not established, we hold that no penalty imposable on the Appellant and hence the penalty imposed are set aside.

6. We also find that all the Bills of Entry in the instant case were self-assessed and goods were cleared under customs supervision and the Department did not file any appeal against the final assessment of the Bills of Entry. Thus, the assessments became final. Therefore, we observe that without filing appeal against the said Bills of Entry, the instant proceedings issued by means of

the instant SCN is non-est. We find that the aforesaid view is supported by the judgment of the Hon'ble Supreme Court in the case of *ITC Limited v CCE, Kolkata-IV [2019(368) E.L.T. 216(SC)]*. Thus, we hold that the demand of differential customs duty along with interest and penalty confirmed in the impugned order is not sustainable on this ground also.

7. In view of the above findings, we set aside the impugned order and allow the appeal filed by the appellant with consequential relief, if any, as per law.

(Order Pronounced in Open court on 14.11.2025)

(R. MURALIDHAR)
MEMBER (JUDICIAL)

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

RKP