

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI
REGIONAL BENCH, COURT NO. 5**

CUSTOMS APPEAL NO. 87915 OF 2024

(Arising out of Order-in-Original No. 145/2024-25/Commr/NS-V/JNCH dated 12.09.2024 passed by the Commissioner of Customs (NS-V), Nhava Sheva.)

QUALITY SYSTEMS AND EQUIPMENTS P.LTD

Unit No. E-1, 5th Floor, Commerce Centre Bldg.,
Aboves ICICI Bank, Pandit Madan Marg,
Tardeo Road, Mumbai-400034.

Appellant

Vs.

COMMISSIONER OF CUSTOMS-NHAVA SHEVA – V

JNPT, Custom House,
Nhava Sheva, Raigad-400707.

Respondent

Appearance:

Shri J. C. Patel, Advocate with Ms. Shamita J. Patel, Advocate for the Appellant.
Shri Dinesh Nanal, Dy. Commissioner, Authorised Representative for the Respondent.

CORAM:

HON'BLE Dr. SUVENDU KUMAR PATI, MEMBER (JUDICIAL)

HON'BLE MR. M.M.PARTHIBAN, MEMBER (TECHNICAL)

FINAL ORDER NO. A/85278/2026

Date of Hearing: 19.12.2025

Date of Decision:13.02.2026

PER : DR. SUVENDU K. PATI, MEMBER (J)

Confirmation of differential IGST amount of Rs. 63,36,223/- demanded u/s. 28(4) of the Customs Act, 1964 with applicable interest u/s. 28AA and imposition of redemption fined of Rs. 1 crore against confiscation of goods u/s. 111(m) alongwith penalties u/s. 114A, 114AA and u/s. 112(a) of the said Act by the Commissioner of Customs, NS-V, JNCH, is assailed in this appeal.

2. Facts of the case would go to reveal that Appellant Importer M/s. Quality Systems and Equipments P. Ltd had imported "Poultry Keeping Machinery" and "parts /equipments of Poultry Keeping Machinery" during the

period September 2017 to December 2021 classifying the same under CTSH 84362900 & CTSH 84369100 as well as cleared the same upon payment of duties including 12% IGST but on the basis of an alert issued, during post clearance audit, it was observed that appellant had imported parts of poultry-machinery of the heading 8436 and paid lower rate of IGST @ 12% under Serial NO. 199 of Schedule II of the IGST Notification No. 1/2017-IGST (Rate) dated 28.06.2017 instead of clearing of the same under Serial No. 453 of Schedule III of the said Notification which covers goods not specified in schedule I, II, IV, V & VI and attracts IGST @ 18%. Show cause notice was accordingly issued, matter was adjudicated and decided against the appellant in the above noted order, that is assailed before this forum.

3. During the course of hearing of the appeal, Ld. Counsel for the appellant Mr.J. C. Patel, Advocate submitted that they had not attended the final hearing made before the Commissioner as no notice was sent to them for their appearance after they sought for an adjournment through email on 21.08.2024 as the Director was unwell and could not attend the hearing fixed on 20.08.2024, i.e. on the preceding day but in their reply to their show cause, Appellant had informed the Respondent on dated 29.09.2022 that Fitment Committee had recommended to the GST Counsel to cover parts of machinery of CTH 8436 specifically under serial number 199 of Schedule II to Notification NO. 1/2017-CT(Rate) dated 28.06.2017 and by the time hearing had taken place, the recommendations of the GST Counsel was already notified that was further clarified vide CBIC circular No. 229/23-2024/GST on dated 15.07.2024 to the effect that tariff item No. 84369100 would attract GST @ 12% vide serial No. 199 of the Notification dated 28.06.2017, noted above but Ld. Commissioner had not taken note of the said change though retrospective effect was also granted to the past case, which were held to be regularized "as is where is basis" and the said 'as is

where is basis' is further clarified by subsequent Notification issued by the Tax Research unit vide circular No. 236/30/2024-GST dated 11.10.2024 in which it was explained that in case of two competing rates of GST at a higher rate and lower rate, payment at lower rates shall also be treated as tax fully paid for the period that is regularized (Para-5) and therefore, in view of the judgment passed by the Hon'ble Supreme Court in the case of Suchitra Components Ltd. Vs. Commissioner 2008(11) STR 430(SC), and Ranadey Micronutrients Vs. Collector of Central Excise 1996(87)ELT19(SC), such clarification have binding effect on the departmental officers and would have retrospective application when it is favouring the assessee since it is a beneficial circular and not an oppressive one.

4. *Per-contra*, Id. Authorised Representative Mr. Dinesh Nanal has made submission to the effect that Ld. Commissioner had made appropriate legal analysis of the provisions and placed it on record that unlike at serial No. 196 & 197, in which parts are explicitly mentioned, there was no inclusion of parts under serial No. 199 both circular dated 15.07.2024 and circular dated 11.10.2024 being issued much after issue of show-cause notice and passing of the order by the Commissioner, those would have no retrospective application on the issue that has already been adjudicated on the basis of statutory provisions in force then, as has been held by Hon'ble Supreme Court in the case of Union of India Vs. Intercontinental Consultants And Technocrats Private Ltd as reported in 2018(10)GSTL-401 (SC) for which in difference by this Tribunal in the order passed by the Commissioner is uncalled for.

5. We have gone through the Appeal Paper Book, written submissions filed by the adversaries and relied upon case laws. At the outset, it can be said that by the time show case was issued regarding rate of CGST applicable on parts of poultry machinery remained undecided but had the

appellant being provided with an opportunity of being heard, the subsequent developments that occurred post approval of the GST Council followed by issue of clarificatory circular by the CBIC on dated 15.07.2024 would have been brought to the knowledge of the Commissioner, who would have been otherwise in possession of such circular being communicated through the Department for the officials for whom, it was issued. The order passed by the Commissioner does not reveal on which date the appeal was listed for hearing and was heard at least from side of the Department but going by the written submissions of the appellant available on record, it is noticeable that contrary to what is recorded in the Commissioner's order at para 19.2, there were two notices issued to them (not three) out of which hearing on 23.08.2023 could not take place as Commissioner was unavailable on that day and appellant could not attend the hearing on 20.08.2024 but emailed on the next day seeking another date for such hearing and thereafter, order was passed. This being so, it cannot be pleaded by the Department that circular came after issue of show-cause and adjudication since by the time adjudication happened, it was already on place. Further, in the context as to if retrospectively can be attached to the said circular and if it has got binding effect on the officers, it would be worthwhile to refer to the relied upon judgment in the case of *Ranadey Micronutrients Vs. Collector of Central Excise 1996(87)ELT19(SC)*, that dictates that such circulars should have been treated as issued u/s. 37B of the Central Excise Act 1944 (similar to provision contained in Section 151A of the Customs Act.) even though the said provision is not recited in the circular and such circulars are not advisory in nature but binding on the Central Excise officers who can not plead that such circular was not valid. Apart from this, it has also been clearly directed in the other judgments cited by appellant in the case of *Suchitra Components Ltd. Vs. Commissioner 2008(11) STR 430(SC)*, cited

supra, beneficial circular is to be applied retrospectively but when circular is against the assessee, they have a right to claim prospective application but in the instant case, this circular has in clear and unequivocal language has clarified in para 4.3 as to how past cases are to be regularised onward that reads as hereunder:

“ Further, on the basis of recommendations of GST Counsel, in view of prevailing genuine doubts, the issue for the past period are regularized on “as is where is basis” which was further clarified to be proper payment of duty even at the lower rate of 12% vide clarificatory circular dated 11.10.2024. (Underlined to emphasise)

6. Therefore, we are of the considered view that appellant had duly discharged CGST on the parts of Poultry keeping machinery @12% imported during the period between September 2017 and December 2021, for which the order passed by the Commissioner is unsustainable both in law and facts. Hence the order.

The order

7. The appeal is allowed and Order-in-Original No. 145/2024-25/Commr/NS-V/JNCH dated 12.09.2024 passed by the Commissioner is hereby set aside with consequential relief, if any.

(Order pronounced in the open court on 13.02.2026)

(Dr. SUVENDU KUMAR PATI)
MEMBER (JUDICIAL)

(M.M.PARTHIBAN)
MEMBER (TECHNICAL)