Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench at Ahmedabad

REGIONAL BENCH-COURT NO. 1

CUSTOMS APPEAL NO. 10987 of 2025- DB

[Arising out of Order in Appeal AHD-CUSTM-000-APP-237-21-22 dated 30/06/2021 passed by the Commissioner, Customs (Appeals), Ahmedabad]

EL PE ENGINEERS LLP **.....Appellant**
201, Sahyog Complex, Nr. Deluxe Cross Roads,
Nuzampura, Vadodara, Gujarat -390002,

VERSUS

COMMISSIONER OF CUSTOMS – AHMEDABAD **.....Respondent**
1st Floor, Custom House,
Opposite Old High Court,
Navrangpura, Ahmedabad, Gujarat -380009

APPEARANCE:
Shri Anil Balani, Advocate for the Appellant
Shri Aakash Singh, Superintendent (AR) for the Respondent

CORAM:
HON'BLE MR. SOMESH ARORA, MEMBER (JUDICIAL)
HON'BLE MR. SATENDRA VIKRAM SINGH, MEMBER (TECHNICAL)

Final Order No. 10897/2026

DATE OF HEARING: 10.09.2026
DATE OF DECISION: 26.11.2026

SATENDRA VIKRAM SINGH

M/s EL PE Engineers LLP (Appellant) have filed the present appeal against the order-in-appeal dated 30th June, 2021 passed by the learned Commissioner of Customs (Appeals), Ahmedabad. The dispute arose as the appellant had filed bill of entry No. 6343469 dated 03.01.2020 for import of "Myrkos Portable Gas Chromatography analyser" by declaring the same under CTH 90272000 which the department wanted to classify under CTH 90271000. The goods falling under CTH 90272000 attract BCD @ 0% under Customs Notification No. 24/2015 (Sr. No. 32). From perusal of the invoice and technical write up, revenue authorities felt that the imported item was not a Chromatography system, but was a diagnostic gas analyser working on the principles of gas chromatography and hence, it was correctly classifiable under CTH 90271000 and leviable to appropriate rate of customs duty.

1.1 Aggrieved by the above decision, appellant filed appeal before learned Commissioner (Appeals) who vide impugned order upheld the Order-in-Original No. 36/AC/ACC/ADJ/20019-20 dated 16.01.2020 read with corrigendum dated 16.03.2020 by observing that the product imported by the appellant is correctly classified under CTH 90271000 as "Gas or smoke analysis operator". Aggrieved with the impugned order, appellant filed the present appeal.

2. In their appeal, appellant mentioned that the issue of classification of subject goods i.e. "Myrkos Portable Gas Chromatography analyser" is settled in their favour by the final order No. 10260/2024 dated 29.01.2024 of this Tribunal and therefore, present issue is no more res-integra. The appellant prayed that their appeal be allowed and the impugned order-in-appeal dated 30.06.2021 be set aside. The classification of the imported goods be confirmed under CTH 90272000 and they be granted the consequential benefits.

3. During hearing, learned Advocate pleaded that the issue is already decided in their favour by the order dated 29.01.2024 of this Tribunal which decision may also be followed in the instant case and their appeal be allowed.

4. Opposing the prayer, learned AR mentioned that the bill of entry dated 03.01.2020 filed by the appellant was RMS facilitated but a query was raised "justify CTH and why CTH should not be taken as 90271000". The appellant vide letter dated 07.01.2020, claimed to have correctly classified the product according to functions and the General Rules for interpretation of Customs Tariff. He pleads that the product imported by the appellant is not a full Chromatography system but a diagnostic gas analyser working on the principles of gas chromatography specifically used as a transformer fault gas analyser. He mentions that CTH 90271000 specifically covers "Gas or Smoke Analysis appartus" and therefore, the product is appropriately classified under this heading. He mentions that the importer has wrongly classified their goods to avail undue exemption benefit. The department has correctly re-assessed

the goods and demanded differential duty from appellant which has been paid by them under protest. He pleaded that the impugned order has correctly determined the classification of the imported product which may be upheld and the appeal filed by the party may be rejected.

5. We have heard both sides. We find that the very issue of classification of "Gas Chromatograph used for monitoring dissolved gas in mineral oil", was decided by this Tribunal in party's own case vide final order No. 10260/2024 dated 29.01.2024. Relying on the decision of Hon'ble Delhi High Court in the case of Manisha Pharma Plasto Pvt Ltd Vs. Union of India reported at 1999 (12) ELT 22 (Del), this Tribunal held that the opinion of the HS Committee has a lot of pervasive value and should ordinarily be taken as binding. Based on other decisions in the case of CCE Vs. Telco Ltd reported at 2002 (143) ELT 548, CCE Vs. Abbott Health Care P. Ltd reported at 2015 (328) ELT 129 and Galaxy Organics P. Ltd Vs. CC reported at 1999 (111) ELT 251, the Tribunal ruled in favour of the appellant and classified Gas Chromatograph under CTH 90272000. The relevant findings of the Tribunal are reproduced as under :-

> *"5. We have considered the rival submissions. The imported goods are "Gas chromatograph" used for monitoring dissolved gas in Mineral Oil. The Order-in-Original holds that the product is a Gas Chromatograph for monitoring the gases in mineral Oil and the Order-in-Appeal also accepts that as per the Technical Specifications, the product uses Gas Chromatography Technology. The Show Cause Notice also does not dispute that the said product uses Gas Chromatography Technology. The HSN Explanatory Notes under Heading 90.27 show that "Gas or smoke analysis apparatus" of CTSH 9027 10 00 analyses/ determines the contents of Combustible Gases or Burnt Gases. Such instrument determines the content of carbon dioxide, carbon monoxide, oxygen, nitrogen or hydrocarbons in Combustible gases/ Burnt gases arising in Coke Ovens, gas producers, Blast furnaces, etc. The goods imported by the Appellants do not analyse/ determine the gases contained in Combustible Gases or Burnt Gases, but monitor the nature of gases contained in Mineral Oil. The same are therefore not "Gas or smoke analysis apparatus" of CTSH 9027 10 00 as described in the HSN Notes as it does not examine "Combustible Gases or Burnt Gases". The sample analysed by the instrument imported by the Appellant is of Mineral Oil and it monitors the content of gases in Mineral Oil.*
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> *5.1 The Commissioner (Appeals) has held that CTSH 9027 10 00 covers apparatus/ instruments which analyse combustible gas (i.e. sample to be analysed is Combustible gas). He commits an error by proceeding on the basis that the Appellants' instrument analyses 9 gases and is therefore covered by CTSH 9027 10 00. He failed in appreciating that the sample analysed by the*

Appellants' instrument is not a Combustible gas, but Mineral Oil and it monitors the presence of 9 gases in mineral oil and not in Combustible gases.

5.2 It is clear from the HSN explanatory Notes that the Gas and Smoke Analyser of CTSH 9027 10 analyses Sample, of Combustible/ Burnt Gas by a processes which is not Chromatography/ Gas Chromatography. It can be seen from the HSN Notes and the literature produced that Orsat Gas Analysis Apparatus, which is an example of apparatus given in HSN notes under "Gas or Smoke Analysis apparatus", operates on a principle, which is other than Chromatography. It operates on following principle:-

> *"The Orsat apparatus works using a very simple method. To find the volume of a particular gas within the sample, a fixed volume of the sampled gas is passed through a specific solution which absorbs only the required gas. The remaining volume of the gas can then be re- measured and compared with the original volume to find the proportion of a specific gas within the sample".*

5.3 The other processes/ principles applied by Gas Analysers of CTSH 9027 10 00, as can be seen from the HSN explanatory Notes and from the literature produced, are Infra-Red Sensors, thermal conductivity, heating effect on electrode, etc, all of which are other than Chromatography. This is also evident from the Chartered Engineer's Certificate produced by the Appellants. In a Gas Chromatograph, which the Appellants' goods are, the sample (mineral oil) is injected into the Inlet by a Syringe. The sample is then vaporised by heating. Once vaporised, sample is then carried by a Carrier Gas (Mobile Phase) to the Column (Stationary Phase). In the Column, the different components of the vaporised sample separate from one another based on the strength of their interaction with the stationary phase. It is evident from the literature produced on behalf of the appellants that the word "Gas" in Gas Chromatography does not refer to the type of samples the technique applies to, but rather the fact that a gas carries the sample through the instrument. It would be therefore, wholly misconceived to classify a Gas Chromatograph as a Gas Analyser of CTSH 9027 10 00 because of the word "Gas" in "Gas Chromatograph". As is evident from the literature produced on behalf of the appellants, the word Gas in Gas Chromatograph refers not to the sample being analysed, but to the carrier gas which carries the vaporised sample (Mobile Phase) from the Inlet to the Column. It would be contrary to the HSN explanatory notes to classify Gas Chromatograph as Gas Analyser under CTSH 9027 10 00 instead of classifying the same as Chromatograph under CTSH 9027 20 00 which is more specific description. The HSN Notes while explaining the scope of "Chromatograph" has referred to all kinds of Chromatographs, whether Gas, Liquid, Ion or thin Layer Chromatographs and have not excluded Gas Chromatographs from Chromatographs. The US Customs Tariff, gives 10-digit sub-classification and as per which, Gas Chromatograph appears at Sub-heading 9027. 20.50.50. Foreign manufacturer-supplier's Invoice also mentions the said Sub-heading 9027.20.50.50.

5.4 The Appellant's claim for classification of Gas Chromatograph for monitoring of Dissolved gases in mineral oil, under CTSH 9027 20 00, is also supported by the decision of the HS Committee taken at its 64th Session. The product considered by the HS Committee in the said decision is "Online Dissolved Gas Analysis (DGA) Apparatus" used for monitoring dissolved gases in transformer oil, which consisted of Gas Chromatography System. The HS Committee decision relies on Note 3 of Chapter 90, which provides that Note 3 of Section XVI applies to Chapter 90. Note 3 of Section XVI provides that a composite machine has to be classified according to its principal function. Considering gas chromatography to be the principal function of the Dissolved Gas Analysis Apparatus, the said apparatus is held to be classifiable as Chromatograph under

CTSH 9027 20 as against CTSH 9027 10. The Hon'able High Court of Delhi has in the case of Manisha Pharma Plasto Pvt. Ltd. 1999(112) ELT 22 held that the opinion of the HS Committee has a lot of pervasive value and should ordinarily be taken as binding. The said decision has been followed by the Tribunal in the case of CCE v. Telco Limited 2002(143) E.L.T 548 which has been upheld by the Supreme Court as reported in 2003 (152) E.L.T A259. The said decision has also been followed by the Tribunal in the case CC v Abbott Health Care P. Ltd – 2015(328) E.L.T 129. Reliance is also placed on the Tribunal's decision in the case of Galaxy Organics P. Ltd v CC – 1999 (111) ELT 251, wherein part of the Gas Chromatograph was held classifiable along with the Gas Chromatograph under CTSH 9027.20.

6. In view of above, the subject goods imported by the Appellants are held to be classifiable as Gas Chromatograph under CTSH 9027 20 00. The impugned order is therefore set aside. The appeal is allowed with consequential relief in accordance with law."

6. We find that the issue is no more res-integra and therefore, aggreging with the above finding of the Tribunal, we allow the appeal filed by the party and set aside the impugned order passed by learned Commissioner (Appeals). We also allow consequential benefit, if any, as per law.

7. Appeal allowed.

(Pronounced in the open court on 26.11.2026)

(SOMESH ARORA)
MEMBER (JUDICIAL)

(SATENDRA VIKRAM SINGH)
MEMBER (TECHNICAL)

Raksha