

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI**

REGIONAL BENCH - COURT NO. I

CUSTOMS APPEAL No. 87524 of 2024

[Arising out of Order-in-Original CAO No. CC-GSS/46/2023-24 Adj.(I) ACC dated 28.02.2024 passed by the Commissioner of Customs (Import), Air Cargo Complex (ACC), Sahar, Andheri (East), Mumbai.]

Smith & Nephew Healthcare Private Limited

.... Appellants

B 501-509, Dynasty Business Park,
Andheri-Kurla Road, Andheri East,
Mumbai – 400 059, Maharashtra.

VERSUS

Commissioner of Customs (Import)

.... Respondent

Mumbai Customs Zone-III
Air Cargo Complex (ACC),
Sahar, Andheri (East),
Mumbai – 400 099, Maharashtra.

APPEARANCE:

Shri Rohan Shah Senior Advocate, along with Shri Shivam Garg, Ms Ankita Vashistha, Ms Rupal Dugar & Ms. Mansi Chheda, Advocates for the Appellants

Shri Shambhoo Nath, Special Counsel for the Respondent

CORAM:

HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)

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

FINAL ORDER NO. A/86115/2025

Date of Hearing: 13.02.2025

Date of Decision: 21.07.2025

Per: M.M. PARTHIBAN

This appeal has been filed by M/s Smith & Nephew Healthcare Private Limited, Mumbai (herein after, referred to as "the appellants", for short) assailing the Order-in-Original No. CAO No. CC-GSS/46/2023-24 Adj.(I) ACC dated 28.02.2024 (herein after, referred to as "the impugned order") passed by the Commissioner of Customs (Import), Air Cargo Complex (ACC), Sahar, Andheri (East), Mumbai.

2.1 Brief facts of the case, leading to this appeals, are summarized herein below:

2.2. The appellants herein is engaged in the business of supplying orthopaedic and medical appliances, implants which are used for knee, hip replacement surgeries; implants for repair of joints, shoulder and various other parts of the body; repair of soft tissue injuries and degenerative

conditions of the shoulder, knee, hip and small joints. For this purpose the appellants have *inter alia*, imported and supplied knee, hip implants such as 'Screw Biosure, Regenesorb, Legion etc.," by classifying the same under Customs Tariff Item (CTI) 9021 3100 and 'Bioraptor, Ultratape Suture etc.,' under CTI 9021 1000 of the First Schedule to the Customs Tariff Act, 1975, both as 'orthopaedic or fracture appliances, artificial joints' claiming customs duty exemption benefits vide Serial No.578 of the Notification No.50/2017-Customs dated 30.06.2017 [List 30, Sl. No. E(9)] read with Notification No.01/2017-Integrated Tax (Rate) dated 28.06.2017 [Serial No.257 of Schedule-I, List 3, Sl. No. E(9)]. The appellants have also filed various Bills of Entries from time to time covering import of the above goods by claiming customs duty concessions during the disputed period from 01.04.2018 to 31.01.2023, and after payment of applicable duty, the goods were cleared out of customs control. These imported goods were further distributed by the appellants across the nation through their distributors who supply the goods to hospitals, patients.

2.3 Directorate of Revenue Intelligence, Lucknow Zonal Unit (DRI) had developed an intelligence that certain importers are wrongly availing the customs duty notification benefits in respect of imported goods, which are being used in orthopaedic surgeries of trauma injuries occurring during day-to-day activities of a normal person and not being used for disabled persons, for which the exemption was intended to. On the above basis, the Special Intelligence & Investigation Branch-Imports (SIIB) of the Air Cargo Complex Customs Commissionerate had undertaken detailed further investigation of the imports made by the appellants-importer. Samples of imported goods were taken under Panchnama proceedings dated 08.12.2021; and searches were also conducted at the office premises of the appellants on 09.12.2021. Further statements were also recorded by SIIB from various persons concerned with such imports.

2.4 Upon completion of the investigation, Show Cause Notice (SCN) dated 01.04.2013 was issued proposing for denial of Customs duty exemption claimed by the appellants in various imports covered during the period 01.04.2018 to 31.01.2023 and for demand of differential duty in respect of such imports invoking extended period under Section 28(4) of the Customs Act, 1962 along with interest, confiscation of goods under sub-sections (m), (o) of Section 111 *ibid* and for imposition of penalty under Section 114A *ibid* on the appellants. In adjudication of the above SCN, learned Commissioner of Customs had confirmed the entire differential

duty of Rs.210,56,61,310/- by invoking extended period under Section 28(4) *ibid* along with interest and imposed equal amount of penalty under Section 114A *ibid* on the appellants vide Order-in-Original dated 28.02.2024. Besides, he also imposed redemption fine of Rs.72 crores in lieu of confiscation of imported goods under Section 125(1) *ibid*. Feeling aggrieved with the impugned order, the appellants have filed this appeal before the Tribunal.

2.5 While hearing the appeal, it was also noted that the appellants had initially filed a Writ Petition No.3404 of 2024 before the Hon'ble High Court of Bombay by e-filing their petition on 24.06.2024. After hearing the parties, the Hon'ble High Court had disposed of the matter vide order dated 10.09.2024 in the following manner, the extract of which is given below:

"1. After the petition was heard, keeping open the rights and contentions of the parties, the following order is passed:-

(a) Petitioner would file an appeal challenging Order-in-Original within four weeks from today.

(b) If the appeal is so filed within four weeks from today, the delay, if any, in filing appeal shall be considered to have been condoned.

(c) In view of the recurring nature of this issue, the Tribunal is requested to dispose the appeal as early as possible preferably on or before 31st December, 2024...."

Further, the Hon'ble High Court had directed the Department for clearance of Bill of Entry No. 3168173 dated 23.04.2024 and the future imports under provisional assessment subject to usual terms and conditions in accordance with the law, upon considering the fact that the appellants had been importing and clearing the goods under classification 9021 since 2012, and that such imported goods are not prohibited.

2.6 When this appeal was filed by the appellants before the Tribunal on 30.09.2024, the matter was listed for hearing on 20.12.2024, and on the basis of appellants' Miscellaneous Application No. 86767 of 2024, the case was allowed for early hearing, and the matter was listed for hearing on 28.01.2025 which got adjourned on 04.02.2025. However, the Co-ordinate Bench of this Tribunal while hearing the matter on 04.02.2025, it appeared to them that both sides might not have informed the Bench about the deadline fixed as 31.12.2024 by the Hon'ble High Court of Bombay in their order dated 10.09.2024. Therefore, the said Bench had adjourned the hearing of this matter further to 07.02.2025, since regular bench is not available on that day, and they have been assigned with the matter for a day and learned counsel for the appellants is also not ready for the argument. Accordingly, in the interim order dated 04.02.2025, it was

stated by the said Co-ordinate Bench that they are also of the view that when a deadline is given by Hon'ble Bombay High Court for disposal of the appeal as early as possible and earliest by 31.12.2024, assessee-appellant herein, who was writ petitioner there, is requested to seek an extension of time since appeal has not been disposed of within the stipulated deadline, that may make the Tribunal *functus officio* to deal with such matter.

2.7 On the above basis, the appellants had taken up this matter before the Hon'ble High Court of Bombay, who vide Order dated 05.02.2025 had observed that in their earlier Order dated 10.09.2024, one of the directions given by them was that the Tribunal was requested to dispose of the Appeal of the Petitioner as early as possible and preferably on or before 31st December, 2024. This Order of the High Court is being construed by the CESTAT that since the time period of 31st December, 2024 has expired, the Tribunal may not be in a position to take up the appeal unless an extension is granted by the High Court. Accordingly, the Hon'ble High Court gave further directions as follows:

"3. On reading the Order dated 10th September, 2024 (passed by this Court), it is clear that the directions given to the Tribunal was to dispose of the Appeal as early as possible and preferably by 31st December, 2024. This does not mean that if the Tribunal takes up the matter after 31st December, 2024 it would be in violation of the Order passed by this Court. In other words, the date of the 31st December, 2024 is not sacrosanct after which the Tribunal cannot act.

4. Be that as it may, if this is the confusion in mind of the Tribunal, we request the Tribunal to dispose of the Appeal as early as possible and preferably by 31st March, 2025"

2.8 On the basis of the aforesaid clarificatory order issued by the Hon'ble High Court of Bombay, we had taken up this case for hearing and disposal of the appeal filed before this Tribunal.

3.1 Learned Advocate appearing for the appellants had submitted as per plain language of the exemption entry provided in the notification No. 50/ 2017-Customs dated 30.06.2017 (Sl. No.578) read with List 30, and Notification No.01/ 2017-Integrated Tax (Rate) dated 28.06.2017 (Serial No.257) of Schedule-I, List 3, any goods forming part of 'List 30/List3' appended to such notification(s) would get covered by the scope of the said duty exemption. As per the said exemption entry, three distinct categories of goods i.e., (i) assistive devices, (ii) rehabilitation aids, (iii) devices for the disabled, are covered. Further, the list of goods which are eligible for exemption have also been provided in an exhaustive manner under List 30/

List 3. Hence, he submitted that it is evident that the description of the goods in the exemption entry and the list of goods in the appended list, are to be read in the conjoint and harmonious manner, to determine the availability of the exemption under the said notification.

3.2 The various type of goods imported by the appellants include knee/hip implants for knee/hip replacement surgeries; implants for repair of joints, shoulder and various other parts of the body; implants for repair of soft tissue injuries and degenerative conditions of the shoulder, knee, hip and other small joints. These implants are required to correct disabilities or serious bodily disfunctions due to accidents, injuries or degeneration of body parts. These implants aid and assist in the treatment and removal of physical deformities and disabilities caused to patients due to limited functioning or failure of certain body parts. Therefore, he submitted that the impugned goods are squarely covered under the category of 'assistive devices' mentioned in the exemption entry of the notification.

3.3 Further, learned Advocate also submitted that Note 6 Chapter 90 of the Customs Tariff provide the meaning of the expression 'orthopaedic appliances' and such definition include the appliances used for preventing or correcting bodily deformities. The product 'Legion' imported by appellants is a total knee replacement system for arthritis or other bodily deformities, musculoskeletal disorders, which through surgical procedure is used for replacing damaged knee joint and implanting it as new artificial knee joint (Legion) and similarly other implants such as thigh bone, shin bone deformities. Therefore, he submitted that the impugned goods, alternatively, can also be covered under item B(1) of List 30, in order to avail the customs duty exemption under the said notification dated 30.06.2017. Further, he stated that the intended use of these products is explicitly outlined by the medical licenses that have been awarded to the appellants under Medical Devices Rules, 2017 issued by the Central Drugs Standard Control Organisation, Directorate General of Health Services, Ministry of Health and Family Welfare. Thus, he submitted that the use of the imported goods as assistive devices, rehabilitation aids, devices for the disabled are evidentially proved and therefore they are eligible to claim the customs duty exemption and CVD exemption.

3.4 He further submitted that the adjudicating authority had incorrectly assumed that the crux of the issue in extending the exemption is meaning of the term 'disabled' and that goods not for disabled, should not be entitled

to any customs duty exemption. He also stated that in case the government wanted to include all the items under List 31 only for the use of 'disabled' as held by the adjudicating authority, then the description provided in the exemption in the could be 'goods for disabled' and not the three distinct categories of goods mentioned therein. He further submitted that by providing list of goods which are eligible for exemption under List 30/List3, the relevant issue is to examine whether the imported goods are covered by any of the category of goods itemized in such list for extending the customs duty exemption. The definition for the term 'disability' given in other acts viz., Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation), 1995; Rights of Persons with Disabilities Act, 2016 cannot be relied upon for deciding on the exemption provided under the Customs Act, 1962, particularly when the statute does not provide for the same.

3.5 Furthermore, learned Advocate submitted that the dispute is fully covered by the Final Orders of the Tribunal in the case of *Sandor Medicaids Private Limited Vs. Commissioner of Customs, Hyderabad* – 2019 (367) E.L.T. 486 (Tri. Hyd.) and in the case of *Centerpulse India Limited Vs. Commissioner of Customs, Chennai* - 2013 (296) E.L.T. 44 (Tri.-Mad). He further stated that it is a settled law that exemption issue in public interest is required to be interpreted purposively, by relying on the order of the Hon'ble High Court of Kerala vide judgement delivered in the case of *Government of Kerala & Anr. Vs. Mother Superior Adoration Convent* - 2021 (3) TMI 93. With the above submissions and those made in the grounds of appeal, learned Advocate prayed for allowing the appeal, with consequential relief.

4.1 Learned Special Counsel appearing for Revenue, reiterated the findings made by the Commissioner of Customs in the impugned order and submitted that in view of the specific mention in the exemption entry as 'the specified goods for disabled', it is not permissible to use the general meaning in order to extend the customs duty exemption to the impugned goods imported by the appellants. He further submitted that in the absence of any definition provided under the customs tariff, popular meaning in commercial parlance should be used. By relying on the order of the Hon'ble Supreme Court in the case of *Shah & Shah Vs. CCE, Calcutta* – 1999 (114) E.L.T. 722 (Tri.-Cal)/ 1999 (08) LCX 0254, he submitted that extended meaning of the term handicapped under disabled category cannot be applied and therefore the imported goods are not eligible for customs duty

exemption. Thus, he claimed that the impugned order in denying the exemption is proper.

4.2 Further, learned Special Counsel also stated that in view of the various statements given by the medical professionals of the hospital, and in the absence of appellants proving that the impugned goods have been used for disabled persons, the customs duty exemption is not available in the present case. Accordingly, he submitted that the impugned order is sustainable in law and prayed for rejection of the appeal filed by the appellants.

5. Heard both sides and carefully examined the case records. The additional submissions made in the form of written paper books in this case by both sides were also perused carefully.

6. The short issue for determination before the Tribunal is that, in the facts and circumstances of the present case, __

(i) whether the impugned goods imported by the appellants during the period 01.04.2018 to 31.01.2023, are eligible for exemption from payment of Customs duty vide Serial No. 578 of the Notification No.50/2017-Customs dated 30.06.2017 [List 30, Sl. No. B(1), E(9)] read with Notification No.01/2017-Integrated Tax (Rate) dated 28.06.2017 [Serial No.257 of Schedule-I, List 3, Sl. No. B(1), E(9)] or Otherwise?

(ii) whether imposition of redemption of fine and penalty on the appellants, under Sections 125(1) and 114A ibid is legally sustainable or not?

7. In order to appreciate the issues under dispute, the specific legal provisions of the Customs Act, 1962; and the relevant exemption entries of the exemption notifications relating to the dispute are extracted and herein given below for ease of reference:

Customs Act, 1962

Power to grant exemption from duty.

Section 25. (1) *If the Central Government is satisfied that it is necessary in the public interest so to do, it may, by notification in the Official Gazette, exempt generally either absolutely or subject to such conditions (to be fulfilled before or after clearance) as may be specified in the notification goods of any specified description from the whole or any part of duty of customs leviable thereon.*

(2) *If the Central Government is satisfied that it is necessary in the public interest so to do, it may, by special order in each case, exempt from the payment of duty, under circumstances of an exceptional nature to be stated in such order, any goods on which duty is leviable.]*

(2A) The Central Government may, if it considers it necessary or expedient so to do for the purpose of clarifying the scope or applicability of any notification issued under sub-section (1) or order issued under sub-section (2), insert an explanation in such notification or order, as the case may be, by notification in the Official Gazette, at any time within one year of issue of the notification under sub-section (1) or order under sub-section (2), and every such explanation shall have effect as if it had always been the part of the first such notification or order, as the case may be.....

Confiscation of improperly imported goods, etc.

Section 111. The following goods brought from a place outside India shall be liable to confiscation :—

- | | | | |
|-----|-----|-----|-----|
| xxx | xxx | xxx | xxx |
|-----|-----|-----|-----|
- (m) any goods which do not correspond in respect of value or in any other particular with the entry made under this Act or in the case of baggage with the declaration made under section 77 ¹⁶[in respect thereof, or in the case of goods under transshipment, with the declaration for transshipment referred to in the proviso to sub-section (1) of section 54:
- (o) any goods exempted, subject to any condition, from duty or any prohibition in respect of the import thereof under this Act or any other law for the time being in force, in respect of which the condition is not observed unless the non-observance of the condition was sanctioned by the proper officer;...”

Notification issued under Section 25(1) of the Customs Act, 1962

“TO BE PUBLISHED IN THE GAZETTE OF INDIA, EXTRAORDINARY,
PART II, SECTION 3, SUB-SECTION (i)]

GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

Notification No. 50/2017-Customs

New Delhi, the 30th June, 2017

G.S.R. (E).- In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962) and sub-section (12) of section 3, of Customs Tariff Act, 1975 (51 of 1975), and in supersession of the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 12/2012 -Customs, dated the 17th March, 2017 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 185 (E) dated the 17th March, 2017, except as respects things done or omitted to be done before such supersession, the **Central Government, on being satisfied that it is necessary in the public interest so to do, hereby exempts the goods of the description specified in column (3) of the Table below or column (3) of the said Table read with the relevant List appended hereto**, as the case may be, and falling within the Chapter, heading, sub-heading or tariff item of the First Schedule to the said Customs Tariff Act, as are specified in the corresponding entry in column (2) of the said Table, when imported into India,-

(a) from so much of the duty of customs leviable thereon under the said First Schedule as is in excess of the amount calculated at the standard rate specified in the corresponding entry in column (4) of the said Table; and

(b) from so much of integrated tax leviable thereon under sub-section (7) of section 3 of said Customs Tariff Act, read with section 5 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017) as is in excess of the amount calculated at the rate specified in the corresponding entry in column (5) of the said Table,

subject to any of the conditions, specified in the Annexure to this notification, the condition number of which is mentioned in the corresponding entry in column (6) of the said Table:

Table

S. No.	Chapter or Heading or sub-heading or tariff item	Description of goods	Standard rate	Integrated Goods and Services Tax	Condition No.
(1)	(2)	(3)	(4)	(5)	(6)
1	1	Animals and birds imported by zoo	Nil	-	-
578	90 or any other Chapter	Assistive devices, rehabilitation aids and other goods for disabled, specified in List 30	Nil	-	-

xxx xxx xxx xxx

Explanation.- (1) For the purposes of this notification, the rate specified in column (4) or column (5) of the said Table is ad valorem rate, unless otherwise specified; (II) For the removal of doubts,-

- (a) "~" appearing in column (4) means basic customs duty leviable on the goods as per the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) read with any other notifications issued under sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962), for the time being in force.
- (b) "-" appearing in column (5) means Integrated Goods and Services Tax leviable on the goods as per the Integrated Goods and Services Tax Act, 2017 (13 of 2017) read with any other notifications issued under the said Act, for the time being in force

xxx xxx xxx xxx

List 30 (See S. No. 578 of the Table)

- A. (1) Braille writers and braille writing instruments
- (2) Hand writing equipment Braille Frames, Slates, Writing Guides, Script Writing Guides, Styli, Braille Erasers
- (3) Canes, Electronic aids like the Sonic Guide
- (4) Optical, Environmental Sensors
- (5) Arithmetic aids like the Taylor Frame (arithmetic and algebra types), Cubarythm, Speaking or Braille calculator
- (6) Geometrical aids like combined Graph and Mathematical Demonstration Board, Braille Protractors, Scales, Compasses and Spar Wheels
- (7) Electronic measuring equipment, such as calipers, micrometers, comparators, gauges, gauge blocks Levels, Rules, Rulers and Yardsticks
- (8) Drafting, Drawing aids, tactile displays

(9) *Specially adapted clocks and watches*

B. (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*

C. *Artificial electronic larynx and spares thereof*

D. *Artificial electronic ear (Cochlear implant)*

E. (1) *Talking books (in the form of cassettes, discs or other sound reproductions) and large- print books, braille embossers, talking calculators, talking thermometers*

(2) *Equipment for the mechanical or the computerized production of braille and recorded material such as braille computer terminals and displays, electronic braille, transfer and pressing machines and stereo typing machines*

(3) *Braille paper*

(4) *All tangible appliances including articles, instruments, apparatus, specially designed for use by the blind*

(5) *Aids for improving mobility of the blind such as electronic orientation and obstacle detection appliance and white canes*

(6) *Technical aids for education, rehabilitation, vocational training and employment of the blind such as braille typewriters, braille watches, teaching and learning aids, games and other instruments and vocational aids specifically adapted for use of the blind*

(7) *Assistive listening devices, audiometers*

(8) *External catheters, special jelly cushions to prevent bed sores, stair lift, urine collection bags*

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

Notification No. 1/2017-Integrated Tax (Rate)

Dated 28-6-2017, as amended

"In exercise of the powers conferred by sub-section (1) of section 5 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017) read with sub-section (5) of section 15 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on the recommendations of the Council, hereby notifies the rate of the integrated tax of—

(i)	5 per cent in respect of goods specified in Schedule I,
(ii)	12 per cent in respect of goods specified in Schedule II,
(iii)	18 per cent in respect of goods specified in Schedule III,
(iv)	28 per cent in respect of goods specified in Schedule IV,
(v)	3 per cent in respect of goods specified in Schedule V,
(vi)	0.25 per cent in respect of goods specified in Schedule VI, and
(vii)	1.50 per cent in respect of goods specified in Schedule VII

appended to this notification (hereinafter referred to as the said Schedules), that shall be levied on inter-State supplies of goods, the description of which is specified in the corresponding entry in column (3) of the said Schedules, falling under the tariff item, sub-heading, heading or Chapter, as the case may be, as specified in the corresponding entry in column (2) of the said Schedules.

SCHEDULE I - 5%

Sl. No.	Chapter/Heading/ Sub-heading/ Tariff item	Description of Goods
(1)	(2)	(3)
xxx	xxx	xxx
257	90 or any other Chapter	Assistive devices, rehabilitation aids and other goods for disabled, specified in List 3 appended to this Schedule
xxx	xxx	xxx

List 3 [See S. No. 257 of the Schedule I]

- (A) (1) Braille writers and braille writing instruments
(2) Hand writing equipment Braille Frames, Slates, Writing Guides, Script Writing Guides, Styli, Braille Erasers
(3) Canes, Electronic aids like the Sonic Guide
(4) Optical, Environmental Sensors
(5) Arithmetic aids like the Taylor Frame (arithmetic and algebra types), Cubarythm, Speaking or Braille calculator
(6) Geometrical aids like combined Graph and Mathematical Demonstration Board, Braille Protractors, Scales, Compasses and Spar Wheels
(7) Electronic measuring equipment, such as calipers, micrometers, comparators, gauges, gauge blocks Levels, Rules, Rulers and Yardsticks
(8) Drafting, Drawing aids, tactile displays
(9) Specially adapted clocks and watches
- (B)
(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
(3) Retro fitment kits for vehicles used by the disabled
- (C) Artificial electronic larynx and spares thereof
- (D) Artificial electronic ear (Cochlear implant)
- (E)(1) Talking books (in the form of cassettes, discs or other sound reproductions) and large-print books, braille embossers, talking calculators, talking thermometers
(2) Equipment for the mechanical or the computerized production of braille and recorded material such as braille computer terminals and displays, electronic braille, transfer and pressing machines and stereo typing machines
(3) Braille paper
(4) All tangible appliances including articles, instruments, apparatus, specially designed for use by the blind
(5) Aids for improving mobility of the blind such as electronic orientation and obstacle detection appliance and white canes
(6) Technical aids for education, rehabilitation, vocational training and employment of the blind such as Braille typewriters, braille watches, teaching and learning aids, games and other instruments and vocational aids specifically adapted for use of the blind
(7) Assistive listening devices, audiometers
(8) External catheters, special jelly cushions to prevent bed sores, stair lift, urine collection bags
(9) Instruments and implants for severely physically handicapped patients and joints replacement and spinal instruments and implants including bone cement."

8. In respect of the above issue of dispute, learned Commissioner of Customs has held that the impugned goods are not eligible for customs duty exemption and therefore denied the duty exemption under Notifications dated 30.06.2017 & 28.06.2017 (supra) and demanded the differential duty along with interest, confiscated the goods and imposed redemption fine and penalty on the appellants, on the following grounds. The relevant paragraphs in the said impugned order wherein such findings have been made are extracted and given below:

"73. I find that the crux of the issue is to decide what does the term "disabled" used in the BCD Exemption Notification No 50/2017 Customs dated 30.06.2017 under SI no 578 means.

74. I find that the departments views has been elaborated in the SCN based on the detailed investigation and I also find that the defence submission has been elaborately brought out in the paras above and hence for the sake of brevity I restrain from reproducing the same.

75. On going through the facts of the case and submission by noticee, I find that it has not been disputed by the noticee that the imported impugned goods have been used for the treatment of injured persons.

76. Hence, having the facts on hand that the impugned goods have been used for treatment of injured person I find that it is very crucial to decide whether the term "disabled" and the term 'injured' are one and the same or not. I would like to discuss whether Injury and disability are same or different. I find that while the terms "disability" and "injured" can sometimes overlap in certain contexts, they generally refer to different concepts. "Injured" typically refers to a temporary state resulting from physical harm or trauma. It suggests a condition that is expected to improve with time and appropriate medical treatment. For example, someone might be injured in a car accident and need time to recover before returning to their normal activities. On the other hand, "disability" often refers to a more permanent or long-term condition that impairs one or more aspects of a person's life, such as mobility, sensory perception, or cognitive function. Disabilities can result from various causes, including injury, illness, congenital conditions, or developmental disorders. Unlike being injured, a disability may not necessarily improve over time or with treatment and may require accommodations or support for the individual to fully participate in society. In summary, while an injury can lead to a disability, not all injuries result in disabilities, and disabilities can arise from factors other than injury.

77. I find that the term 'disabled' as per common parlance refers to a state of person where he has already achieved disability/whereas the term injured' as per common parlance refers to a state of person who has not yet achieved disability but is injured which may be severe and may or may not lead to disability.....

xxx

xxx

xxx

xxx

80. I find that after having held that the impugned goods are not for disabled person, it is out of question to consider extending BCD exemption benefit of notification at Si no 578 of Notification No 50/2017-Cus dated 30.06.2017 since the notification benefit is available only to the goods for disabled.

XXX

XXX

XXX

XXX

87. As regards IGST, having established that the impugned goods were not meant/utilised for disabled person, I find that IGST @5% under SI no 257 of Schedule 1 of the Notfn No 01/2017 IGST was not available to the impugned goods as SI No 257 of Schedule I was meant for disabled only. I also find that from the description of goods mentioned in Sr. No. 221 of Notfn No 01/2017, it is evident that Splints and other fracture appliances; Artificial parts of the body; Other appliances which are worn or carried, or implanted in the body to, to compensate for a defect or disability; Intraocular lens; are leviable to GST @ 12% (6%CGST+6%SGST) & orthopaedic appliances, such as crutches, surgical belts, and trusses, hearing aids are not leviable to GST @ 12% (6%CGST + 6%SGST). The above description of goods mentioned in Sr. No. 221 clearly implies that everything other than the exceptions provided in brackets, [i.e. orthopaedic appliances, such as crutches, surgical belts, and trusses, hearing aids], which gets covered under Heading 9021 of Harmonized System of Nomenclature (HSN) should be classified under Sr. No. 221 of Schedule-II. Since the products imported are not orthopaedic appliances, such as crutches, surgical belts, and trusses, hearing aids, thus I find that they are covered under Sr.No. 221 of Schedule-II of the Notification No. 01/2017-Central Tax (Rate) dated 28.06.2017 as amended.

88. I find that the impugned goods are appropriately covered under Sr no 221 of Schedule II of the Notfn no 01/2017 IGST. I find that the SCN proposes IGST duty @12%, however as submitted by the importer, the CBIC vide circular No 200/12/2023-GST dated 01.08.2023 has clarified that the IGST rate for all goods covered under CTH 9021 (except hearing aid) attract IGST @5% even for period prior to 18.07.2022. Thus I find that the IGST rate applicable on the impugned goods imported for the period 01.03.2018 till 31.01.2023 is 5%....."

9.1 On plain reading of the legal provision under Section 25 of the Customs Act, 1962, it transpires that sub-section (1) of said Section provides that the Central Government has powers for issue of duty exemption notification(s) in public interest so as to prescribe duty rates lower than the tariff rates prescribed in the Schedule to the Customs Tariff Act, by providing either partial or full exemption from payment of such duties, either absolutely or subject to certain conditions to be fulfilled. These are called 'general exemption' which are applicable to all persons or importers/exporters as they are issued in public interest in general and not restricted to individual person specific. Further, under the provisions of Section 25(2) of the Act of 1962, for exemption from Customs duty specifically applicable under circumstances of exceptional nature to be specified therein, the Central Government has also powers for issue of ad-hoc duty exemption by way of issue of special order, which are of provided by extant guidelines as limited to goods, which are of secret or strategic nature or are meant for being used for charitable purposes. Such exemptions are called 'Ad-hoc exemption' and the Government has prescribed the specific guidelines for examining such ad-hoc exemption requests and even when such ad-hoc exemption is issued, these are subjected to the conditions that the imported goods will not be put to any commercial use and will not be sold, gifted or parted by the importer in any manner without the prior permission of the Central Board of Indirect Taxes & Customs (CBIC). It is a fact on record that the notifications under which exemption is claimed and in which the department had raised the dispute had been issued under Section 25(1) *ibid*. Therefore, it transpires that the exemption is applicable subject to the conditions, if any, specified in the said notifications and is not subjected to any general conditions of ad-hoc exemption issued under Section 25(2) *ibid* or the condition that it should be for use by 'disabled'. It also transpires from plain reading of the exemption entry at Serial No.578 of Notification No. 50/2017-Customs (*supra*), that there is no condition prescribed by the government in availing the said exemption, as the respective column(5) indicate 'Nil' by mentioning " – " therein.

9.2 Further, on reading of the above legal provisions contained in the Customs Tariff Act, 1975 along with the General Rules for the interpretation of import tariff, it transpires that in order to determine the appropriate duties of customs payable on any imported goods one has to make an assessment of the imported goods for its correct classification under the First Schedule to Customs Tariff Act, 1975 in accordance with the provisions of the Customs Tariff Act by duly following the General Rules for Interpretation (GIR) and the General Explanatory notes (GEN) contained therein. Further, appropriate classification of the goods also aid in understanding the scope of goods, covered under the exemption notification, in particular the issue of dispute in the present case, where the scope of goods covered by specific description and specified heading/sub-heading/ tariff item is required to be determined. The First Schedule to the Customs Tariff Act, 1975 specifies the various categories of imported goods in a systematic and well-considered manner, in accordance with an international scheme of classification of internationally traded goods, i.e., 'Harmonized Commodity Description and Coding System' (HS). Accordingly, goods are to be classified taking into consideration the scope of headings / sub-headings, related Section Notes, Chapter Notes and the General Rules for the Interpretation (GIR) of the First Schedule to the Customs Tariff Act, 1975. Rule 1 of the GIR provides that the classification of goods shall be determined according to the terms of the headings of the tariff and any relative Section notes or Chapter notes and thus, gives precedence to this while classifying a product. Rules 2 to 6 provide the general guidelines for classification of goods under the appropriate sub-heading. In the event of the goods cannot be classified solely on the basis of GIR 1, and if the headings and legal notes do not otherwise require, the remaining Rules 2 to 6 may then be applied in sequential order. Further, while classifying goods, the foremost consideration is the 'statutory definition', if any, provided in the Customs Tariff Act. In the absence of any statutory definition, explanation or any guideline provided by HS explanatory notes or customs tariff or in the notification, the trade parlance theory is to be adopted for ascertaining as to how the goods are known in the common trade parlance for the purpose of dealing between the parties.

9.3 In the impugned order learned Commissioner of Customs had stated that the crux of the issue is to decide the scope of the term "disabled" used in the exemption entry in the Notification No. 50/2017-Customs (supra).

For this, he had referred to the Department's contention elaborated in the SCN on the basis of detailed investigation, to state that in respect of the said exemption entry the issue is to decide whether the goods covered under Serial No.578 should be read in order to cover the following at (i), (ii) and (iii) only or otherwise:

(i) assistive devices **for disabled;**

(ii) Rehabilitation aids and other goods **for disabled;**

(iii) implants was severely physically handicapped patients and joints replacement and spinal instruments and implants including bone cement (Sl. No.E-9 of List 30 of Notification No. 50/2017-Customs dated 30.06.2017 & List 3 of Schedule – I of Notification No. 01/2017-Integrated Tax (Rate) dated 28.06.2017) **for disabled:**

Further, it is the Revenue's contention that the said exemption entry does not cover such goods mentioned that (i) to (iii) above, if for **other than disabled persons**. The learned adjudicating authority had examined these aspects and concluded that the impugned goods are used for treatment of general injury, accidental injury, traumatic injury, sports injury and thus these cannot be considered as goods used for removing disability of disabled persons.

9.4 We find that in the matter of interpretation of exemption notification, CBIC had issued Circular No.9/96-Customs dated 13.02.1996 clarifying that when the description specified under the Notification do not fall in the Chapters/ Heading/ Sub-heading Nos. mentioned in the Notification, then such mention of specified tariff references incorrectly may be due to inadvertence and therefore it should not be a basis of the denial of exemption. Reference was also made to Circular No. 60/95 dated 05.06.1995 issued from F.No. 354/31/95-TRU in the context of applicability of Sr. No. (ix) of Notification No. 28/94-Cus., 01.03.1994 to 'Ovaprim' imported prior to 16-3-1995, wherein it was clarified that in view of the law laid down by the Supreme Court in matter of *Jain Engineering v. Collector of Customs* - [1987 (32) E.L.T. 3 S.C.] concessional rate of Customs duty was available to 'Ovaprim' even though it was classifiable in a Chapter other than that mentioned in the Notification No. 28/94-Cus. (supra). It was further clarified in the said circular, by reiterating that the benefit of exemption will be available to these goods even though the articles mentioned in the Notification are not covered by the Chapter/Heading Nos./ Sub-heading Nos. mentioned in the Notifications. However, it was also clarified that such liberal interpretation was not applicable, where among

the various tariff references that may be attracted by the broad description of the goods in the Notification, only one or few tariff references have been mentioned. In such cases mention of only selected tariff headings/ references should be treated as deliberate restriction of the scope of the exemption. Accordingly, the exemption should be restricted only to those goods which would fall under the tariff references specified in the Notification. In the present case before us, there is no dispute in respect of the Chapter/ Heading/ Sub-heading/ Tariff item mentioned in the Notification, as the goods covered could be classifiable under 'Chapter 90 or Any Other Chapter(s)'. In other words, classification under any Chapter would not restrict the exemption. Therefore, the dispute lies in the narrow compass of analysing the scope of coverage of goods in terms of 'description of goods' provided under column (3) of the notification.

9.5 In order to examine the above, we have carefully perused the entire exemption Notification No. 50/2017-Customs (supra) and specifically at entry at Serial No.578 of Notification No. 50/2017-Customs (supra) and the similar entry at Serial No.257 of Notification No.01/2017-Integrated Tax (Rate) [supra]. Firstly, it is seen that in respect of the present entry in dispute, exemption has been given for the goods of the description specified in column (3) of the Table, read with the List-30 appended thereto, and falling within the specified Chapter of the First Schedule to the said Customs Tariff Act, 1975. Since there is no dispute with respect to classification, as all chapters have been covered by stating that 'Chapter 90 or any other chapter', we need to closely look at the description of the goods given under column (3) of the Table read with the list of goods mentioned in List-30, for arriving at proper conclusion on the applicability of exemption on the impugned goods.

9.6 In this regard, we find that there are different types of expressions used to indicate the scope of coverage of goods under Notification No. 50/2017-Customs (supra) covering more than 500 exemption entries. Some of such expressions used indicate that the scope of coverage of goods is very broad and extensive; However, some other expressions used also indicate that the coverage of goods is specific and limited by certain explanation or by laid down standards. These different types of exemption entries indicating the scope of coverage of goods in varying manner are explained in the following paragraphs:

Sl. No.	Chapter/ Heading/ Sub-heading/ Tariff item	Description of Goods
(1)	(2)	(3)
39.	1005 10 00, 1007 or 1008 21, 1008 29	All goods
174.	2801 20 00	Iodine
59.	15	Vegetable oils of edible grade, in loose or bulk form (other than those specified against S. No. 58 and those falling under heading 1511), imported for the manufacture of oil commonly known as "Vanaspati" or for refining. Explanation.-The expression " Vegetable oil " means- (a) in the case of cottonseed oil, oil having a free fatty acid content of at least 0.2%; and (b) in the case of any other vegetable oil, oil with free fatty acid content of at least 0.5%.
126.	2518	Dolomite for metallurgical use conforming to IS:10346-2004
149.	2710	Naphtha, when imported for generation of electrical energy by a generating company as defined in section 2(28) of the Electricity Act, 2003 (36 of 2003) to supply electrical energy or to engage in the business of supplying electrical energy: Provided that the exemption shall not be available if such naphtha is used for generation of electrical energy by captive generating plant as defined in section 2(8) of the Electricity Act, 2003 (36 of 2003).
427.	84, 85 or 90	The goods specified in List 20
439.	84, 85 or 90	Goods specified in List 27, designed for use in the leather industry or the footwear industry
578.	90 or any other Chapter	Assistive devices, rehabilitation aids and other goods for disabled, specified in List 30

(i) In respect of Serial No. 39, by means of an expression "all goods", it transpires that goods of any kind which can be classified under specified Chapter Heading No. 1007; Sub-heading Nos. 1008 21, 1008 29; Tariff Item No. 1005 1000 are eligible for exemption under the said notification. Here the scope of coverage of goods is wide by description, but specific in terms of Chapter Heading/Sub-heading/Tariff item.

(ii) Serial No. 174, the expression used for the goods is specific as 'iodine' and covered under single tariff item, and thus the scope of coverage of goods is specific and limited/restricted.

(iii) In Serial No. 59 & 126, the description of the goods given as 'vegetable oils of edible grade' though have wide scope by coverage in general, however only when such goods meet BIS standard specified therein or when they fit within the meaning given in the explanation clause i.e., in

terms of specified percentage of the constituent material, then these goods would be eligible for exemption.

(iv) In Serial No. 149, though the exemption has been given to 'naphtha', it has been restricted by prescribing a condition of usage that such exemption would be extended only when 'naphtha' is used for generation of electrical energy by captive generating plant. Further, such 'captive generating plant' is also should be as per the definition given under Section 2(8) of the Electricity Act, 2003 (36 of 2003). Here the scope of coverage of goods is restrictive and the meaning of the term 'captive generating plant' is required to be interpreted as provided under the referred Act.

(v) In respect of goods under Serial No. 427, all goods covered under List-20 are eligible to be considered for the exemption. However, in respect of goods under Serial No. 439, besides identifying whether the goods are as covered under List-27, additional condition has been imposed that such goods should be 'designed for use in the leather industry'. Hence, the only requirement is to go through the list of goods itemized under the List(s) appended to the notification for its coverage and use.

9.7 In respect of the disputed exemption entry under Serial No. 578 the description of goods covered are given as "Assistive devices, rehabilitation aids and other goods for disabled, specified in List 30". As discussed above, if it has to be understood that the scope of coverage of goods is restricted to only those goods specified in List 30, then the use of the expression 'Assistive devices, rehabilitation aids and other goods for disabled' becomes otiose; and as seen above, the appropriate expression in such case would be "goods specified in List 30". Further, if it has to be understood that the scope of coverage of goods is restricted to only those goods specified in List 30 which are used for disabled, then also the use of the expression 'Assistive devices, rehabilitation aids and other goods' becomes ineffective; and as seen above, the appropriate expression in such case would be "goods specified in List 30 for use of disabled". Furthermore, if the entire description is to be read together, by ignoring the punctuation mark i.e., "[comma]," then it would give absurd meaning, as can be seen from an illustrative item under (E)(7) of the List-30 'Assistive listening devices, audiometers which is assistive devices/rehabilitation aids for disabled'; Therefore, proper construction of the description under column (3) for the exemption entries at Serial No. 578/Serial No.257 would be (i) assistive devices covered under Chapter 90 or any other chapter; (ii) rehabilitation

aids covered under Chapter 90 or any other chapter; (iii) other goods for disabled which are specified under List-30 covered under Chapter 90 or any other chapter. Thus, it would appear that the punctuation mark 'comma' in the exemption entry under Serial No. 578 of the Notification No. 50/2017-Customs (supra) and similarly for Serial No.257 of the Notification No. 01/2017-Integrated Tax (Rate) [supra], having been used to carefully specify the scope of coverage of goods under specific three categories of goods, though it may be a minor element, should be resorted to for arriving at a correct understanding on the scope of goods covered under the exemption. Further, the use of the word 'disabled' have to be understood in its plain grammatical meaning. The meaning of the word 'disabled' cannot be understood differently by restricting the meaning given under Section 2(s) of The Rights of Persons with Disabilities Act, 2016 or Persons With Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1985 or any other Act, particularly when there is no such specific meaning or explanation provided under the exemption entry, for arriving at the construction of the meaning 'disabled' in the exemption entry.

9.8 We also find that the matter of interpretation of the exemption notification, the Hon'ble Supreme Court in the case of *Commissioner of Customs (Import), Mumbai Vs. Dilip Kumar & Company* - 2018 (361) E.L.T. 577 (S.C.), have held that the exemption notification should be interpreted strictly; that the burden of proving applicability of exemption would be on the assessee to show that his case comes within the parameters of the exemption clause or exemption notification. In the present case, imports of impugned goods made by the appellants were duly assessed by the jurisdictional customs authorities in extending the customs duty exemption to such goods and upon clearance of the imported goods from the customs control, these were used for the purpose of assistive devices, rehabilitation aids, implants for repair of knee, hip and other joints, shoulder and various other parts of the body; repair of soft tissue injuries and degenerative conditions of the shoulder. Therefore, the appellants have submitted sufficient evidence before the jurisdictional customs authorities for assessment and clearance of the goods by availing the custom exemption. It is only when the exemption entry was interpreted by the DRI/SIIB investigation in a different manner, subsequent to clearance of the goods, the entire show cause proceedings were initiated by the Department. Thus, we are of the considered view, that in terms of strict construction of the exemption notification, the impugned goods are eligible for the customs

duty exemption and the findings of the learned Commissioner of Customs by restricting the goods to the word 'disabled' as used in a particular enactment i.e., The Rights of Persons with Disabilities Act, 2016 and on the basis of the statements recorded during investigation from certain persons, is not legally sustainable.

9.9 We also find that the goods itemized under the List-30 of Serial No. 578 of the Notification No. 50/2017-Customs (supra)/List-3 of Serial No.257 to Schedule-I of Notification No.01/2017-Integrated Tax (Rate) [supra] *inter alia* cover Orthopaedic appliances falling under heading No.90.21 of the First Schedule in (B)(1); Instruments and implants for severely physically handicapped patients and joints replacement and spinal instruments and implants including bone cement in (E)(9). Since, the implants such as repair of knee, hip and other joints, shoulder and various other parts of the body; repair of soft tissue injuries and degenerative conditions of the shoulder etc., are in the nature of instruments/implants described in item (B)(1), the impugned goods are also specifically covered under the List-30 and List-3 of the notifications No. 50/2017-Customs and No.01/2017-Integrated Tax (Rate) [supra].

Further, in terms of Note 6 to Chapter 90 of the First Schedule to the Customs Tariff, the meaning of 'orthopaedic appliances' has been given in the First Schedule to the Customs Tariff Act, 1975 as extracted below:

"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. Orthopedic 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."

Therefore, the orthopaedic and fracture appliances are also specifically covered in terms of the above chapter note 6 under sub-heading 9021. Being assistive devices or as rehabilitation aids, such goods are also specifically covered under the exemption entries at Serial No. 578 and 257 of notifications No. 50/2017-Customs and No.01/2017-Integrated Tax (Rate) [supra], respectively. Hence, the impugned goods either used as implants or as external assistive devices, rehabilitation aids are covered under the scope of the aforesaid exemption entries.

On the basis of above discussion and analysis, we are of the considered view that the impugned goods are eligible for customs duty exemption vide Serial No. 578 of the Notification No.50/2017-Customs dated 30.06.2017 and Notification No.01/2017-Integrated Tax (Rate) dated 28.06.2017 under Serial No.257 of Schedule-I.

10. We find that in the case of *Centerpulse India Limited* (supra), the Tribunal have examined the issue of exemption available to 'tibial insert' (implants) classified under Heading 90.21 and have held that since the imported goods are being implants meant for joint replacement for persons requiring such replacement, these are clearly exempted under the List 41 referred against Sl. No. 370 Notification No. 21/2002, being "instruments and implants for severely physically handicapped patients and joint replacement and spinal instruments and implants including bone cement."

11. We also find that in the case of *Sandor Medicaids Private Limited* (supra), the Co-ordinate Bench of the Tribunal have examined the issue regarding classification of "SYNVISC HYLAN G-F 20 medical device in sterile solution form for treatment of Osteoarthritis", where the importer had claimed classification of these as medical devices under Customs Tariff Item No. 9021 40 90 and claimed the benefit of exemption Notification No. 21/2002 (S. No. 370) and cleared the goods at nil rate of duty as applicable. It was held by the Tribunal that once the appellant has declared what is being imported in the invoice and the Bill of Entry, they cannot be faulted for claiming a classification which, according to them is correct. Further, it was also held by the Tribunal in that case, that the product is correctly classifiable under Customs Tariff Heading 9021 as an implantable medical device and the adjudged demands confirmed in the adjudication proceedings were set aside.

12. We further find that the case law of *Shah & Shah* (supra) relied upon by the learned Special Counsel, have dealt with the goods of description 'Contact lenses and inter-ocular lenses' which are entirely different from the impugned goods which are used as implants for repair of knee, hip and other joints, shoulder and various other parts of the body. therefore,, the said decision in the above case, where such 'Contact lenses and inter-ocular lenses' were held as neither artificial limbs nor rehabilitation aids for the handicapped, is distinguishable from the facts of the present case and therefore, cannot be applied to the present case for denying the duty exemption benefits.

13. In view of the foregoing discussions and analysis, and on the basis of the orders passed by the Tribunal, we are of the considered view that the impugned order dated 28.02.2024 in confirmation of the adjudged demands by invoking the extended period of limitation under Section 28(4) of the Customs Act, 1962 and consequent confiscation of imported goods, imposition of redemption fine, penalties on the appellants is not legally sustainable.

14. In the result, the impugned order dated 28.02.2024 passed by the learned adjudicating authority is set aside and the appeal filed by the appellants are allowed in their favour, with consequential relief, if any, as per law.

(Order pronounced in open court on 21.07.2025)

(S.K. Mohanty)
Member (Judicial)

(M.M. Parthiban)
Member (Technical)