

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL**  
**NEW DELHI**

PRINCIPAL BENCH – COURT NO. – I

**Customs Appeal No. 51525 of 2022**

[Arising out of Order-in-Appeal No. CC(A)CUS/D-II/ICD-TKD/IMP/1546/2021-22 dated 13.01.2022 passed by the Commissioner of Customs (Appeals), New Delhi]

**M/s. Aspen Diagnostics Pvt Ltd**

B-82, GT Karnal Road Industrial Area,  
Delhi – 110 033

**...Appellant**

*VERSUS*

**Commissioner of Customs –  
New Delhi (ICD TKD)**

Inland Container Depot, Tughlakabad,  
New Delhi - 110020

**...Respondent**

**APPEARANCE:**

Shri B L Narasimhan, Shri Anurag Kapur and Shri Kausal Jaisalmeria,  
Advocates for the Appellant

Shri Nikhil Mohan Goyal, Authorized Representative for the Respondent

**CORAM:**

**HON'BLE MR JUSTICE DILIP GUPTA, PRESIDENT**  
**HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)**

DATE OF HEARING: 09.12.2025  
DATE OF DECISION: 19.01.2026

**FINAL ORDER No. 50074/2026**

**C J MATHEW**

In this dispute, carried by M/s Aspen Diagnostics Pvt Ltd from order<sup>1</sup> of Commissioner of Customs (Appeals), New Delhi rejecting their claim for entitlement to notification extending benefit of 'nil' rate of duties of customs and affirming denial, in the first instance, by the 'proper officer' under section 17 of Customs Act, 1962, we are required to consider the contention of the appellant that 'artificial respiration or other therapeutic respiration apparatus (ventilators)' is

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<sup>1</sup>[order-in-appeal no. CC(A)CUS/D-II/ICD-TKD/IMP/1546/2021-22 dated 13<sup>th</sup> January 2022]

not limited to conventionally known 'ventilators' but encompasses all, and every, apparatus performing the described function. This is antipodal to the position adopted by the lower authorities, and, in particular, the enunciation by first appellate authority, and now canvassed by Learned Authorized Representative, to the effect that, from the deployment in description corresponding to claimed item<sup>2</sup> in the notification and as demonstrated by the evolving trend of exemptions for like goods since then, the benefit is limited to the parenthetical exposition therein. On this distinguishment was erected the differential duty of ₹ 36,66,035 held leviable on 'oxygen concentrator', imported *vide* bill of entry no. 7630674/11.05.2020, at the rate applicable to tariff item 9019 2010 of First Schedule to Customs Tariff Act, 1975.

2. Learned Counsel for appellant informed that the classification declared by them is not in dispute and the indicated intent of assessing authority to deny benefit of exemption had been countered with 'protest' and insistence on 'speaking order' which, he intimated, could not be pressed before payment of duty and clearance owing to the troubled times of the pandemic not affording the luxury of patient continuance. He contended that, in the absence of any material justifying ineligibility to the exemption, other than queries that were responded to in ICES, the appellant had, perforce, no option but to challenge the 'unreasoned and unreasonable' assessment before the first appellate authority.

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<sup>2</sup> [notification 20/2020-Cus dated 9<sup>th</sup> April 2020 (serial no. 1)]

3. In the impugned order, the expression 'artificial respiration' was discoursed upon at length with reference to a particular lexicon<sup>3</sup>, of popular usage among some of the English-speaking populace of the world and of unknown vintage, and emphasis placed on the particularity, bracketed as it was, as intended object of exemption. It was also observed that the impugned goods are used for concentrating oxygen for inhalation without having to 'assist respiration' through external source which, according to him, was the essence of 'ventilator' from the expressions deployed in the elaboration preceding and concluded that

***'5.4..... It needs to be noted that during the second wave in March-April 2021, the government again issued notification no. 28/2021-Cus dated 24.04.2021. This notification specifically mentioned Ventilators and Oxygen Concentrators separately. My view that notification 20/2020-Cus dated 09.04.2020 covered 'Ventilators' only find support from the press release dated 09.04.2020 issued by Ministry of Finance when the notification 20/2020-Cus dated 09.04.2020 was issued. Thus, the impugned goods are not eligible for the benefit of Sl. No. 1 of Notification No. 20/2020-Cus dated 09.06 4.2020.'***

4. According to Learned Counsel, the notification, designed for expedient relief at the onset of the pandemic, was not intended to be interpreted in such narrow confine and, more especially, from a particular expression deployed, significantly and independent of, at the end of one of the descriptions of entitled goods; he contended that, had it been so, there was no need for inclusion of the long

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<sup>3</sup> [Collin's Dictionary]

description when the expression in brackets sufficed for the purpose. He was critical of the reliance placed on the chronologically subsequent notification which, while segregating 'oxygen concentrator' and 'ventilators', was not restricted to the apparatus but expanded to accessories and attachments and, therefore, not credible instrument for interpreting the intent in the earlier notification. He also contended that the dictionary relied upon by the first appellate authority was not comparable with the medical dictionaries, such as Oxford Concise Medical Dictionary<sup>4</sup>, and other sources such as the entry in Encyclopedia Britannica as well as an article on 'oxygen therapy' from the same publisher, for elaboration as well as endorsement from professional bodies. He relied upon decisions of the Tribunal, in **Commissioner of Customs (Preventive), Jodhpur v. Shiv Ganesh Exim**<sup>5</sup>, in **Rays Engineering Works v. Commissioner of Customs, New Delhi (ICD TKD)**<sup>6</sup> and in **Trina Steelcarb Pvt Ltd v. Commissioner of Customs, New Delhi (ICD TKD)**<sup>7</sup>, to point out the infirmity in the assessment by the original authority.

5. Learned Counsel drew attention to the exposition by the Hon'ble High Court of Bombay, rejecting the proposition that specificity of parenthetically enclosed expression in a broader description overrides the generality of the latter, in **Zamil Steel Buildings India Pvt Ltd and another v. State of Maharashtra**<sup>8</sup> that was echoed in **Shrikishan & Company v. Addl.**

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<sup>4</sup> [Fourth Edition and described as 'splendid' by the Journal of the Institute of Health Education]

<sup>5</sup> [final order no. 58539-58544/2024 dated 2<sup>nd</sup> September 2024]

<sup>6</sup> [final order no. 50542/2025 dated 30<sup>th</sup> April 2025]

<sup>7</sup> [final order no. 50544/2025 dated 30<sup>th</sup> April 2025]

<sup>8</sup> [(2017) 98 VST 172 (Bom)]

**Commissioner of Commercial Tax, Raipur**<sup>9</sup> by the Hon'ble High Court of Chhatisgarh.

6. We take note that, though rendered in the context of Maharashtra VAT Act, 2002, the decision in **re Zamil Steel Buildings Pvt Ltd** is authoritative guide to interpretation of scope of description in enumeration of taxable commodities and, particularly so, in the absence of any other parameter for ascertaining intent. The substantive difference lies only in the distinction between lack of, and reference to, internationally acknowledged construct of consolidated tariff, proffering its own explanation of clusters, that informs tax policy formulation. We may draw upon the authority of these judicial pronouncements should there be any ambiguity that remains unresolved after dealing with submissions in support of impugned order.

7. Learned Authorized Representative, in addition to drawing attention to the specifics in the impugned order and the technical distinction between 'ventilators' and 'oxygen concentrators', pressed for drawing upon the press-release issued concurrently with the relevant notification, along with subsequent notification, unarguably pointing to 'ventilators' as intended object of exemption, as contemporaneous record affording interpretation of intent of earlier notification. Conceding that the decision of the Hon'ble High Court of Delhi in **Gurcharan Singh v. Ministry of Finance (Department of Revenue)** <sup>10</sup> pertained to purportedly discriminatory levy of 'integrated tax' on import of 'oxygen concentrator' by a class of

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<sup>9</sup> [2019 (28) GSTL 406 (Chhatisgarh)]

<sup>10</sup> [2021 (49) GSTL 113 (Del.)]

persons, he did submit that the lack of challenge to 'integrated tax' leviable on 'oxygen concentrator' at the time of import of impugned goods, just as for the subsequent period it had been before the Hon'ble High Court, was abundant demonstration of popular understanding of the restricted scope of exemption in notification of April 2020. He also relied upon the distinction drawn by the supplier of the impugned goods in their web-site.

8. Before proceeding to resolution of the dispute put forth in this appeal, it is necessary to set out the backdrop as the impugned order has, and unusually so, relied upon subsequent developments as the foundation for interpretation of intent. Those were troubling times and societies beleaguered by the lack of wherewithal to handle the attrition engendered by acute respiratory distress; the reliefs proffered by the jurisdictional governments could not be perceived as anything other than in the broadest of terms covering any available external source of palliative and, more especially, as public health institutions were not geared to give care to all the affected population prompting alternatives for prolongation of life till medical intervention was accessed. Only those who have lived through that apocalyptic phase of human history can appreciate the desperation of governing institutions to aid its dependents but, constrained by the frailty of conventional instruments – drawing upon technical inputs and characterized by impersonal style – that could hardly be re-oriented immediately for catering to the crisis situation, unable to communicate beyond a norm not befitting abnormal times. To persist in strict application, that other times may warrant, is insensitivity to 'humankind crisis' confronting society then.

9. Such peremptoriness would not have been forthcoming had the first appellate authority been cognizant of limitations in discharging role assigned by section 128 of Customs Act, 1962 – both by lack of justification possible within the confines of a bill of entry as well as by overlooking of obligation to place the importer on notice of reasons to deny benefit of exemption – and required the assessing authority to be compliant with section 17(5) of Customs Act, 1962. Not only was the authority derelict on that count but also compounded injury with hindsight, permitted only to those of us who survived that onslaught of the unknown, to justify action that the original authority chose to disengage itself from in assessment that was neither responsible nor responsive. That act of affirmation is as symbolic as washing ones' hands off secure in the conviction of having survived. We have logical, legal and cogent reasons for this acerbic expression of repugnance to the response to appeal.

10. As pointed out by Learned Counsel, referring to the decisions cited in his submissions, it was incumbent upon the first appellate authority to require the assessing authority to be in conformity with obligation under section 17(5) of Customs Act, 1962. That a higher, and immediate appellate authority, chose to overlook the mandate of law without even a perfunctory addressing of that ground preferred in appeal is travesty of appellate scheme enshrined in the statute. In the normal course, that lack should be remedied in second appeal but sheer elapse of time bears its own poison of self-destruction. It may be technically defensible, but practically an impossibility, for that initial want to be made good a full five years after by a successor in office. We are, therefore and willy nilly, to consider, and by

doctrine of merger, the order of first appellate authority as surrogate for 'speaking order' obligated upon assessing authority to dispose off this appeal on merit.

11. We cannot but fail to note that a notification, under section 25 of Customs Act, 1962, is to be read holistically and across all the columns. This promises the optimal method of interpretation of intent; the description is contextual to the range that the immediately preceding column - setting out the chapter, heading, sub-heading or tariff item, as the case may be - ensconces it within. Revenue, and its representative as well as delegate, have no qualms in urging us to read the description as 'ventilator' to affirm denial of exemption to any other goods. However, 'ventilator' is not enumerated, at any level, in the First Schedule to Customs Tariff Act, 1975 and the presence of two headings from First Schedule to Customs Tariff Act, 1975 corresponding to the impugned description in the notification is adequate for inferring that 'ventilator', which, in terms of General Rules for Interpretation of the Import Tariff appended to Customs Tariff Act, 1975, must fall within one or the other, does not control the reach and extent of the impugned description in the notification. Consequently, any apparatus conforming to the elaborated description merits intended exemption and the lower authorities are in error for attempting such narrow and revenue-centric circumscribing in the face of the design of the notification. It only requires us now to ascertain the intent of the parenthetical ensconcing for which the sources cited by Learned Counsel and Learned Authorized Representative in their respective arguments may be of use.

12. 'Oxygen concentrator' is an apparatus that, in a manner of speaking, pedestrianized 'respirators' by substituting the compressed and bottled 'oxygen' with perennial source of 'clean oxygen'; the convenience of the former for public health institutions in administrative aspects, such as accountal, storage and patient billing, is no cause for linking source of oxygen with delivery system as prophylactic, palliative or therapeutic. Both from physiological perspective and from the descriptions in the First Schedule to Customs Tariff Act, 1975 can it hardly be averred that source of supply of oxygen determines 'apparatus for artificial respiration or therapeutic respiration' to affirm that constricted view in the impugned order. Had it been the intent of government to isolate 'respiratory apparatus' – for artificial respiration or for therapeutic respiration –to 'ventilators', the common parlance usage did not merit parenthetical exposition as posited by representative and delegate of Revenue in support of their stand. Every person concerned would not be unaware that 'ventilator' is apparatus for assisted breathing and parenthetical emphasis nothing but superfluous. There was no call for the policy formulators to dally with a generic description when the specific was the answer to the intent canvassed by the lower authorities.

13. Not only does technology evolve but the history of human resourcefulness also chronicles invention as the offspring of necessity. Not only the shortage of 'ventilator' as specific apparatus much in need at public health care facilities– existing as well as proposed – but also, confronted with 'end of times', policy formulators may have been influenced and inspired to adopt

description covering technologies of past, present and potential in one phrase and deployment of 'ventilator', for ensuring that no confusion, from lack of particularity in specially crafted concatenation of words, remained about the then presently known apparatus, is not to be inferred, particularly from subordination of parenthetical framing, as legislative intent to restrict. We find no reason to interpret the broad framework of description in the notification as restricted to only the parenthetical emplacement. No evidence has been put forth in support of the only ground for denial of exemption, viz., not being apparatus for therapeutic respiration, that is touted as essence of eligibility.

14. In the light of the above, the impugned order has erred in restricting the benefit of notification only to 'ventilator' and, owing to which, we have no hesitation in setting aside the impugned order to allow the appeal.

[Order pronounced in the open court on **19<sup>th</sup> January 2026**]

**(JUSTICE DILIP GUPTA)**  
**PRESIDENT**

**(C.J. MATHEW)**  
**MEMBER (TECHNICAL)**

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