

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

REGIONAL BENCH - COURT NO. I

**Customs Early Hearing Application No. 85950 of 2024**  
(On behalf of the respondent)

**In**

**Customs Appeal No. 86944 of 2023**

(Arising out of Order-in-Appeal No. 540 (Arshiya FTWZ)/2023(JNCH)/Appeals dated 24.05.2023 passed by the Commissioner of Customs (Appeals), Mumbai-II)

**Commissioner of Customs (Export), Nhava Sheva** .... **Appellant**  
NS-II, JNCH, Nhava Sheva,  
Uran, Raigad – 400 707

Versus

**M/s Abbott Healthcare Pvt. Ltd.** .... **Respondent**  
3, Corporate Park, Sion-Trombay Road,  
Mumbai - 400 071

Appearance:

Shri Bharat Menon, Advocate for the Appellant

Shri Ram Kumar, Authorized Representative for the Respondent

**CORAM:**

**HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)**  
**HON'BLE MR. M.M. PARTHIBAN, MEMBER (TECHNICAL)**

**FINAL ORDER NO. A/85310/2025**

Date of Hearing: 21.02.2025

Date of Decision: 21.02.2025

**PER: S.K. MOHANTY**

Heard both sides and perused the case records.

2. The applicant-appellant has filed this miscellaneous application, praying for early hearing of appeal on the ground that the issue of classification of the subject goods is settled by the Hon'ble Bombay High Court in the case of *Ascensia Diabetes Care India Pvt. Ltd. Vs. Union of India* – (2023) 3 Centax 248 (Bom.), and that the issue is of recurring in nature. Prayer made by the applicant is considered and accordingly, the present application is allowed. Since the issue lies in a narrow compass, with the consent of both sides, the appeal is taken up for hearing and disposal today.

3. Briefly stated, the facts of the case are that the appellant had imported the goods i.e. "Freestyle Neo Glucose Meter, Freestyle Libre Sj sensor Kits and

Freestyle Libre Pro sensor Kits" and filed the Bills of Entry (B/Es) before the jurisdictional customs authorities for clearance of the said consignments. The appellant had claimed classification of the said goods under CTH 9027 80 90, which attracts 'NIL' rate of BCD under Notification No. 24/2005-Cus., dated 01.03.2005. The B/Es filed by the appellant were re-assessed by the Department in terms of sub-section (4) of Section 17 of the Customs Act, 1962 and the speaking order dated 14.10.2021 was passed by the proper officer under Section 17(5) *ibid*, in changing the classification of the goods from CTH 9027 80 90 to CTH 9018 90 99, which attract BCD @ 5% in terms of Notification No. 15/2017-Cus., dated 30.06.2017. Feeling aggrieved with the order dated 14.10.2021, the appellant had preferred appeal before the learned Commissioner of Customs (Appeals), Mumbai-II, which was disposed of vide the order dated 24.05.2023 (impugned herein), in allowing the appeal in favour of the appellant. The said impugned order was reviewed by the Committee of Commissioners in terms of Section 129A(2) *ibid* and the proper officer was directed to file appeal against the said order before the Tribunal. Accordingly, the present appeal was preferred by Revenue against the impugned order dated 24.05.2023 before the Tribunal.

4. The issue involved in the present appeal relates to classification of the subject goods imported by the appellant. The appellant had contended that the goods in question should be classifiable under CTH 9027 80 90, as against the classification made by the department under CTH 9018 90 99. We find that the issue arising out of the present dispute with regard to classification of the subject goods is no more *res integra* in view of the order passed by this Bench of the Tribunal in the case of *Bayer Pharmaceuticals (P.) Ltd. Vs. Commissioner of Cus., Mumbai – 2016 (331) E.L.T. 317 (Tri-Mumbai)*. In the said order, by relying upon the HSN Explanatory Note appended to the competing headings, the Tribunal has held that the imported goods viz. glucometers are classifiable under heading 90.27 and are eligible for exemption under Notification No. 24/2005-Cus., dated 01.03.2005. The relevant paragraph in the said order are extracted herein below:

**"6.** *For a deeper examination of the issue, we may refer to the HSN Explanatory Notes and the Customs Tariff Act. The General Rules for the Interpretation of the Customs Tariff Act provide that (Rule 1) 'for legal purposes classification shall be determined according to the terms of the Headings and any relative Section or Chapter notes...' We find in this case that heading 90.27 covers instruments for chemical analysis. This heading appears to be more specific than the description of heading 90.18 which covers instruments used in medical, surgical etc. sciences. Thus by virtue of Rule 3 which says that a specific description is to be preferred over a general description, the Heading 90.27 appears more appropriate.*

**6.1** Further, we may refer to the HSN Explanatory Note to Heading 90.18 which states that "This heading covers a very wide range of instruments and appliances which, in the vast majority of cases, are used only in professional practice (for example, by doctors, surgeons, dentists,....) either to make a diagnosis, to prevent or treat an illness or to operate etc. Instruments and appliances for anatomical or autoptic work, dissection etc. are also included..." From the language of this Note it appears that only those instruments fall under Heading 90.18 which are used in professional practice in the vast majority of cases. It is obvious that the Glucose meters are not vastly used only in professional practice. Mostly they are used by individuals at home or in the workplace, that is, by common people other than professional practitioners. Further under paragraph (o) of the same Note it is stated "This heading does not cover, instruments and appliances in laboratories to test blood, tissue fluids, urea etc. whether or not such tests serve in diagnosis (generally Heading 90.27)". It is quite evident that the product in question is not an instrument which is generally used in laboratories. Therefore by virtue of the Explanatory Note under Heading 90.18, the impugned goods, that is Glucose meters are classifiable under Heading 90.27."

5. We also find that the order of the Tribunal passed in the case of *Bayer Pharmaceuticals (P.) Ltd.* (supra) was approved by the Hon'ble Bombay High Court in the case of *Ascensia Diabetes Care India Pvt. Ltd.* (supra). The Hon'ble High Court has held that the Notification No.50/2017-Cus., dated 30.06.2017 at Sl. No. 576, prescribing the concessional rate of duty of 5% shall be applicable in case of goods falling under CTH 9018; and the same would not be applicable, where the goods are classified under CTH 9027. In the present case, since the appellant had claimed the classification of subject goods under CTH 9027, the benefit provided under Notification No.24/2005-Cus., 01.03.2005 should alone be applicable. In the impugned order, the learned Commissioner (Appeals) has allowed the appeal in favour of the appellant, by placing reliance on the above orders delivered by the judicial forums (referred above). Therefore, we do not find any infirmity in the said order passed by the learned Commissioner (Appeals).

6. In view of the above, we do not find any merits in the appeal filed by the Revenue and accordingly, the same is dismissed.

(Operative portion of the order pronounced in open court)

**(S.K. MOHANTY)**  
**MEMBER (JUDICIAL)**

**(M.M. PARTHIBAN)**  
**MEMBER (TECHNICAL)**