CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
CHENNAI

REGIONAL BENCH - COURT No. III

Excise Appeal No. 41399 of 2018

(Arising out of Order-in-Appeal No.82/2018 (CTA-II) dated 28.02.2018 passed by Commissioner of Central Tax (Appeals-II), CGST & Central Excise, Newry Towers, 2054/I, II Avenue, 12th Main Road, Anna Nagar, Chennai 600 040.)

M/s.Emerson Process Management,
Chennai Pvt. Ltd. **.... Appellant**
(Formerly known as Fisher Sanmar Ltd.)
No.147, Karapakkam Village,
Chennai 600 097.

VERSUS

The Commissioner of GST &
Central Excise, **... Respondent**
Chennai South Commissionerate,
No.692, MHU Complex,
Nandanam,
Chennai 600 035.

APPEARANCE :

Shri Raja Praveen, Chartered Accountant for the Appellant
Smt. G. Krupa, Authorized Representative for the Respondent

CORAM :

HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)
HON'BLE MR. M. AJIT KUMAR, MEMBER (TECHNICAL)

FINAL ORDER No.40459/2026

DATE OF HEARING : 16.03.2026
DATE OF DECISION :02.04.2026

Per: Shri P. Dinesha

By this Appeal the Assessee-Appellant is challenging *inter alia* the very jurisdiction of Central Excise officer to disturb the classification of imported 'Valve-Link Software' as assessed at the time of import. We have heard Shri Raj Praveen, ld. Chartered Accountant for the Appellant and Smt. G. Krupa, ld. Superintendent for the Revenue, perused the orders of lower authorities and we have carefully considered the documents placed on record including the written submissions filed during the course of arguments.

2. The reason for questioning the very jurisdiction of the Central Excise authorities to disbelieve the classification of imported 'Valve-Link Software' which was declared under **CTH 90328990** on which CVD & SAD were paid and the Appellant had also availed cenvat credit, by the Central Excise Department through the Deputy Commissioner, was that the appropriate classification was under **CTH 85238020** (Information Technology Software) which was fully exempt and, therefore, CVD & SAD were not liable

to be paid; consequential credit availed was therefore inadmissible.

3. At the very threshold, we find that when payment of CVD & SAD was accepted and the Customs classification is not disputed by the Customs authorities and the legal consequences of such classification having been accepted by one wing of the Department as well as the Assessee-Tax payer, it is very strange and uncomfortable situation when another wing of the same Department calls in question the classification of the same goods, which only amounts to doubting or suspecting other wing of the same Department, rather the same leads to a problematic/sensitive situation of exposing perhaps the differences, which again is not in good taste and certainly not in the interest of the public.

4. The Original Authority having, however, disputed thus, issued a show cause notice by *inter alia* proposing to demand incorrect cenvat credit of CVD & SAD availed which was on account of re-classification of the goods in question by him, which came to be confirmed vide Order-in-Original No.40/2017 dated 13.06.2017 despite serious resistance by the Appellant-Assessee. The Appellant having not met with success in its first Appeal before the Commissioner (Appeals), who *vide* impugned Order-in-Appeal No.82/2018

(CTA-II) dated 28.02.2018 has upheld the demand along with interest etc., the Appellant is forced to approach this forum.

5. We have noted in the earlier paragraphs that disputing a settled-declared classification of goods in question after accepting payment of CVD & SAD by one wing of the Department is not a good practice and the same has led to unnecessary litigation. If the classification was wrong, the Customs Department would have been alerted, which is not the case here; rather the Central Excise authority takes on himself the responsibility of concluding that there was misclassification and the correct classification was under CTH 85238020 and, therefore, the cenvat credit had been availed incorrectly. It is very unfortunate that though the same was questioned in their first Appeal, even the First Appellate Authority has not considered the issue with an open mind and certainly not in accordance with law and the prescribed procedure under the statute.

6. In view of the above, it is sufficient for us to hold that the recovery of allegedly wrongly availed cenvat credit by the Central Excise Department is not in accordance with law since, at any rate, the cenvat credit availed in the case on

hand relates to CVD / SAD levied under the Customs Tariff Act, on the import of goods and the same is certainly not Excise Duty on the goods manufactured in India.

7. Resultantly, we set aside the impugned order and allow the Appeal with consequential benefits, if any, as per law.

(Order pronounced in open court on 02.04.2026)

sd/-
(M. AJIT KUMAR)
Member (Technical)

sd/-
(P. DINESHA)
Member (Judicial)

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