CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI
PRINCIPAL BENCH - COURT NO. I

Customs Appeal No.50248 of 2025

[Arising out of Order-in-Original No.11/Commr/VC/Nichrin Imperial/ICD-PPG/2024-25 dated 13.11.2024 passed by the Commissioner of Customs, Inland Container Depot Patparganj & other ICDs, Delhi-110 096.]

M/s. Nichirin Imperial Autoparts India Pvt. Ltd.
Plot No. 187, Sector- 58, Ballabgarh, Faridabad, Haryana- 121 004. **....APPELLANT**

Versus

Commissioner of Customs,
Inland Container Depot, Patparganj & other ICD's, Delhi, New Delhi- 110 096 **...RESPONDENT**

Appearance:
Present for the Appellant : Shri Gurdeep Singh and Shri Jaideep Singh Ahuja, Advocates
Present for the Respondent: Shri Shiv Shankar, Authorised Representative.

CORAM:
HON'BLE DR. RACHNA GUPTA, OFFICIATING PRESIDENT
HON'BLE MS. HEMAMBIKA R. PRIYA, MEMBER (TECHNICAL)

Final Order No. 51477/ 2026

Date of Hearing:15.07.2026
Date of Decision:21.09.2026

DR RACHNA GUPTA:

1. M/s.Nichirin Imperial Autoparts India Pvt. Ltd.[1] is engaged in the importation of 'Brake Hoses' along with "other automobile brake components" having their operations at various Customs Ports. Additionally, the appellant also conducts domestic trading of the aforementioned goods. During the scrutiny of documents at the time of Audit, 11 observations of non-compliance on part of the appellant were noticed. The appellant had submitted a response on 24.03.2023

[1]The Appellant

however, a Final Audit Report dated 27.07.2023 was issued noticing that the appellant had wrongly declared the classification of 9 different products and the Department has proposed the correct classification as tabled below:-

SL.NO.	**Description**	**Incorrect Classification**	**Correction Classification**
1.	Mis-declaration of Freight currency	--	--
2.	Non-payment/short payment of duties due to misclassification of various 'Gauges'	CTH 9026 & CTH 9031	CTH 9017
3.	Short payment of duties due to misclassification of 'Protector tube' Part No.T3-673-0000NAI'	CTH 40091100	39172390
4.	Short payment of duty due to misclassification of 'ADAPTER, JOINT (parts of automobile) (for industrial use)'	CTH 84663020 & 84799090	87089900
5.	Short payment of duty due to misclassification of 'BR7102-02001-C3NA BRACKET (PARTS FOR AUTOMOBILE)'	CTH 83025000 & 73269099	87089900
6.	Short payment of duty due to misclassification of 'CRIMPING DIE (FOR BRAKE HOSE ASSEMBLY)'	CTH 84799099	82073000
7.	Short payment of duty due to misclassification of 'GLUING JIG TOOLS/INSPECTOR JIG TOOLS and other MACHINERY TOOOLS'	CTH 8466	8207
8.	Short payment of Duties due to misclassification of 'CONNECTOR PART NO.K94478-02000'	CTH 3917	8708
9.	Short payment of duty/taxes on freight value due to non-inclusion of certain freight charges.	--	--

2. The Department observed that earlier the appellants were classifying the goods under CTH as is claimed by the Department but

with respect to the impugned Bills of Entry[2], the goods were differently classified under the wrong CTH for claiming the duty benefits, for which the appellants were otherwise not eligible. By doing so, the appellant has violated the provisions of Section 17(1), Section 46(4) and Section 4(A) of the Customs Act, 1962[3]. The Department alleged that the said mis-declaration and suppression of facts could be un-covered only during the Audit thereby enabling the Department to invoke the extended period of limitation of 5 years for the demand of unpaid customs duty under Section 28(4) of the Act. With the said allegations, that the show cause notice bearing no.302/2023/291 dated 71.11.2023 was served upon the appellant proposing the demand for short paid customs duty amounting to Rs.1,54,37,173/- along with interest under Section 28(AA) of the Act, 1962, the amount of differential duty already paid by the appellant on 31.05.2023 and 09.06.2023 was proposed to be appropriated towards the said short paid duty. The impugned goods imported by the appellant were proposed to be confiscated under Section 111(m) of the Act. The penalties under Section 114(A) and Section 117 of the Act were also proposed to be imposed. The said proposal has been confirmed by the Commissioner of Customs, ICD, New Delhi vide Order-in-Original No.11/Commr/VC/Nichrin Imperial/ICD-PPG/2024-25 dated 13.11.2024 except the demand of Rs.92,732/- against the Adaptor-Joint, as imported vide B/E No.9181826 dated 10.12.2018 was set aside and the said goods (Adaptor-Joint) were refrained from being confiscated. Still being aggrieved, the appellant is before this Tribunal.

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[2]B/Es
[3]Act, 1962

3. We have heard Shri Gurdeep Singh with Shri Jaideep Singh Ahuja, learned Counsels for the appellant and Shri Shiv Shankar, learned Authorised Representative for the Department.

4. Learned Counsel for the appellant submitted that allegation of wrong classification with respect to the gauges, crimping die, gluing jig tools, inspector jig tools and machinery tools was already accepted by the appellant. Non-inclusion of certain charges in freight amount and mis-calculation of freight currency in some imports was also accepted by the appellant and the duty liability was already discharged to the said effect. The duty demand with respect to the Adaptor-Joint has already been dropped in the impugned order. No appeal has been filed by the Department against the same. The only contentious goods remain are the Protector Tube, (Part No.T-3,673,0Q00NAL) and Connector Co. (Part No.K94478.02000). Except for Protector Tube, the appellant has acknowledged that Bracket and Connector were inadvertently declared to be the parts of automobile instead of components for manufacturing automobile parts.

5. Learned Counsel further objected to the impugned order to have wrongly invoked the extended period of limitation under Section 28(4) of the Act. It is submitted that the documents were duly verified and the goods were physically examined by the officers of the Customs. Hence, everything was to their notice. Hence, the suppression of facts while wrongly declaring the impugned goods is, therefore, wrongly alleged.

6. Learned Counsel has relied upon the decision in the case of **Santosh Kumar Ghosh Vs. CC (Preventive), Kolkata[4],** which was affirmed by the Hon'ble High Court of Kolkata in the case of **Commissioner Vs. Santosh Kumar Ghosh[5].** Learned Counsel further submitted that claiming classification is otherwise a mistake of understanding and belief in the minds of the assessee and the same is wrongly held to be an offence under the provisions of Section 1962. Hence, the imported goods are wrongly ordered to be confiscated under Section 111(m) of the Act as wrongly invoked. Following decisions were relied upon by them:-

(1) Northern Plastics Ltd.[6]
(2) M/s. Sab Nife Power Systems Ltd.[7]
(3) Suture India Pvt. Ltd.[8]

7. Finally, it is submitted that since there is no suppression of facts nor any evidence produced by the Department to that effect that there is nothing, which may warrant the imposition of penalty under Section 114(A) of the Act, the impugned order to that extent is also liable to be set aside, following the decisions, as have been relied upon by them:-

(1) CC Vs. Videomax Electronics[9]
(2)CCE Vs. Chemphar Drugs & Liniments[10]
(3)Shreeji Shipping Vs. Commissioner of Customs[11]
(4)Coastal Energy Pvt. Ltd.Vs. CC, C.EX & ST,Guntur[12]

[4] 2009 (245) ELT 530 (T-Kolkata)
[5] Reported in 2011 (267) ELT A-57 (Kolkata)
[6] 1990 (101) ELT 549 (SC)
[7] 2000 (124) ELT 1080 (T)
[8] 2009 (245) ELT 596 (T)
[9] 2011 (264) ELT 0466 (Tri.-Bom)
[10] 1989 (40) ELT 276 (SC)
[11] (2024) 16 Centax 393 (Tri.-Ahmd.)
[12] 2014 (310) ELT 97 (Tri.-Bang.)

8. With these submissions, learned Counsel has prayed that the appeal is to be allowed.

9. While rebutting these submissions, learned Departmental Representative appearing for Department submitted that Final Audit Report had relied upon the documentary evidence as that of catalogues and photographs (RUD No.8 and 2 to show cause notices) pertaining to the supplier/manufacturer. The said documents clearly indicated that the Protector Tubes were manufactured from 100% PVC thereby warranting the classification under CTH 39172310 instead of CTH40091100 as was declared by the appellant. Hence, the classification has rightly been rejected by the adjudicating authorities below and the differential duty on Protector Tubes has rightly been confirmed after having extended the benefit of Customs Notification No.46/2011-Cus dated 01.06.2011. While submitting with respect to the classification of 'Bracket', (parts of Automobile), it is submitted that parts, which are principally used in automobiles falling under Chapter 87, must be classified under Section XVII and not under Section XV. Since the impugned goods/Brackets form an integral part of Brake Hauz Assembly used in motor vehicles, the classification under Chapter 73 or 83 would not be appropriate and it has rightly been held that the goods merit classification under CTH 87089900. No infirmity is pleaded for the findings with respect to the classification of connectors when those are also held to be parts of the motor vehicles under Section XVII.

10. Learned Department Representative has impressed upon that the functional and principally used test is applicable and since the goods are solely or principally to be used for motor vehicles that the declaration of the appellant has rightly been set aside. It is finally submitted that there are earlier B/Es on record which shows that the earlier, the appellant was classifying the goods correctly. The mis-declaration while filing the impugned B/Es is rightly held to be an intentional act of availing benefits of less or exempted customs duty. Thus the extended period has rightly been invoked. With these submissions, the order under challenge is prayed to be upheld and the appeal is prayed to be dismissed.

11. Having heard both the parties, we observe that the controversy involved is about classification of three products i.e. Protector Tube, Bracket and Connectors. It is the settled position that for such classification disputes, the reliance has to be placed upon the Harmonised System of Nomenclature[13]**.** The Hon'ble Supreme Court in **CCEs Vs. Wood Craft Products Ltd.**[14] has held that in case of ambiguity regarding classification, necessary assistance has to be taken from HSN. In an another recent case in **Commissioner of Central Excise, Salem Vs. M/s. Madhan Agro Industries (India) Pvt. Ltd.**[15]**,** the Hon'ble Apex Court has held that unless findings to the contrary is found within the First Schedule of the Tariff Act, 1985, the HSN and the Explanatory Notes thereto, being the official interpretation of the Harmonized System at the international level, would be of binding

[13] HSN
[14] (1995) 77 ELT 23
[15] 2024 (SCC) Online SC 3775

guidance in understanding and giving effect to the headings in the First Schedule.

12. We also observe that there are General Rules of Interpretation for reading the HSN Headings and the Explanatory Notes thereof. As per the General Rule 1, the most specific entry has to be considered. The General Rules 3(a) requires preface of specific entry over the generic entry. The General Rule 4 talks about classification as akin goods and as per General Rule 3(c), later entry is to be preferred over the former one.

13. Applying these principles, the impugned goods-wise findings are as follows:-

(1) Protector Tube

The appellant has declared Protector Tube to be classifiable under CTH 40091100 whereas the Department has claimed the correct CTH to be 39172310. Under both these headings, the constituent material of the goods is the relevant criteria. If the Tube is made of PVC, it is classifiable under CTH 39172310 and if it is made of vulcanized rubber, it would fall under CTH 40091100. The Department has relied upon the catalogue and photographs, the said reliance has nowhere been disputed by the appellant. Since those documents (RUD No.8) sufficiently deals with the constituents and all other requisite details about Protector Tube and declares that Protector Tube is 100% PVC Tube, the absence of any testing report of the said product do not affect the appellant adversely. It has been clearly recorded in the impugned order that as per RUD 8, Protector Tube is made of 100% PVC. The appellant has not produced any other documents to falsify the said detail of RUD

8/brochure/catalogue. The 100% PVC products are classifiable unde CTH 39172310, as already observed above. Hence we hold that the impugned order has rightly held mis-declaration on the part of the appellant. The goods are rightly held classifiable under CTH 39172310 with respect to this product (Protector Tube).

We further observe that the appellant has also availed the benefit of Notification No.46/2011 dated 01.06.2011 issued pursuant to the ASEAN Trade Agreement on the basis of a Certificate of Origin, declaring the goods under CTH 40091100. As the goods are held to be classifiable under CTH 39172310, the benefit thereof cannot be extended to these goods. We hold that the benefit has rightly been denied.

(2) Classification of "Bracket" - Whether under CTH 83025000 or CTH 73269099 or under CTH 87089900

Again, the Heading of the respective Tariff Entries 83025000, 73269099 and 87089900are perused as under:-

"Heading 8302 cover base metal mountings, fittings and similar articles suitable for furniture, doors, windows, coachwork, saddlery, trunks, chests, caskets, or similar articles. Sub-heading 83025000 specifically includes hat-racks, hat-pegs, brackets and similar fixtures.

Heading 7326 covers other articles of iron or steel not elsewhere specified, with sub-heading 73269099 being a residuary entry for "other" articles.

Heading 8708 covers parts and accessories of motor vehicles of headings 8701 to 8705 with sub-heading 87089900 covering "other" parts and accessories.

We have also perused the Section Notes of Section XV (Chapter 72 to 83) and of Section XVII about Chapter 87 where it is observed that –

> Section Note 1(g) of Section XV excludes from its ambit articles of Section XVII. Further, Section Note 3 of Section XVII provides that references to "parts" or "accessories" in Chapters 86 to 88 apply only to those parts which are suitable for use solely or principally with the vehicles of those Chapters. As per GRI, Rule 3, a part which answers to a description in two or more headings is to be classified under the heading corresponding to its principal use.

In the present case, the bracket in question is used in the manufacture of brake hose assemblies. The appellant has not contested the position taken in the show cause notice that the goods are not of general-purpose use. On the contrary, the appellant has themselves declared the goods as "parts of automobile" in the import documents. There is no evidence to suggest that the goods are excluded by the provisions of Section XVII.

Hence, both the conditions of Explanatory Notes to Chapter 87 that the goods should be suitable for use solely or principally with the motor vehicles of Heading 8701 to 8705 and that they should not have been excluded by the provisions of Section Notes, stands fulfilled. Hence, it is held that the goods/brackets are rightly classifiable under CTH 87089900 where the 'brake hose' forms parts of motor vehicles. Since the appellant had wrongly declared these goods under CTH 83025000/73269099, the demand of differential duty for this product is, therefore, upheld.

(3) Connector Part No.K94478.02000) – Whether to be classified under CTH 3917 or under CTH 8708/8714

We observe that as per Tariff Heading

- under CH 39174000 all fittings of plastics for tubes, pipes and hoses; or
- under CTH 87089900 all parts and accessories of motor vehicles and under CTH 87141090 all parts & accessories (if used with two-wheelers).

14. We further observe that Chapter Note 2(t) to Chapter 39 expressly excludes "parts of vehicles of Section XVII". Hence, irrespective of the constituent of the goods in question, if the goods are, admittedly, parts of motor vehicles, it stands excluded from the Chapter 39. Thus particular observation is sufficient for us to hold that the declaration by the appellant about these goods under CTH 3917 is a mis-declaration. The Connectors are admittedly to be used in brake hose assemblies to regulate the brake fluid flow designed and shall be specifically for integration into automobile brake systems. These are not treated as generic plumbing fittings, hence even seen from the common parlance test, the impugned goods/connectors cannot be classified under CTH 39174000. The order to that extent is also upheld.

15. Finally, dealing with the plea of limitation, as raised by the appellant, we observe that 9 discrepancies were noticed in the Final Audit Report dated 27.07.2023 including the wrong classification of the goods with respect to several products. Except for the aforementioned

three products, the appellant has admitted the alleged mis-declaration and had also voluntarily paid the differential amount of customs duty. Keeping in view the same and that present being an era of self-assessment where in terms of Section 46(4) of Customs Act, there is obligation upon the importer to make true and correct classification and also keeping in view that wrong declaration has resulted into customs duty benefit to the appellant i.e. the outcome of the alleged act is the non-payment/short payment of customs duty. It is also an apparent fact that earlier the appellant was declaring the CTH as claimed by the Department and later changed to the alleged ones. This supports the fact that the wrong classification was intentional which resulted into evasion of customs duty. We hold that while relying upon Section 28(4), the extended period is held to be rightly invoked. For the same reasons, we do not find any infirmity when the penalties have been imposed upon the appellant. In totality of the discussion made above, we hereby affirm the order under challenge and, consequent upon thereto, the appeal is hereby dismissed.

[Order pronounced on 21.09.2026.]

(DR. RACHNA GUPTA)
OFFICIATING PRESIDENT

(HEMAMBIKA R. PRIYA)
MEMBER (TECHNICAL)

Ckp.