IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, CHENNAI

Customs Appeal No. 41307 of 2016

(Arising out of Order-in-Appeal C. Cus. II No. 880/2015 dated 03.09.2015 passed by the Commissioner of Customs (Appeals – II), Chennai)

M/s. Bangalore Surgicals **Appellant**
121, Ambalathadaiyar Madam Street
Puducherry – 605 001.

Vs.

Commissioner of Customs **Respondent**
Chennai – II Commissionerate
Customs House, 60, Rajaji Salai,
Chennai – 600 001.

APPEARANCE:

Shri A.K. Jayaraj, Advocate for the Appellant
Shri Sanjay Kakkar, Authorised Representative for the Respondent

CORAM

Hon'ble Shri P. Dinesha, Member (Judicial)
Hon'ble Shri M. Ajit Kumar, Member (Technical)

FINAL ORDER NO. 41229/2026

Date of Hearing: 09.06.2026
Date of Decision: 27.11.2026

Per M. Ajit Kumar,

This appeal is filed by the appellant against Order-in-Appeal C. Cus. II No. 880/2015 dated 03.09.2015 passed by the Commissioner of Customs (Appeals – II), Chennai (impugned order).

Factual Matrix

2. The Appellant filed Bill of Entry No. 342172 dated 26.10.2009 for clearance of 'Spinal Needle – 25G (cannula for intra corporeal spaces)', classifying the goods under CTH 9018 3990 and claiming the benefit of Customs Notification No. 21/2002 at Sl. No. 363A and Central Excise Notification No. 6/2006-CE at Sl. No. 61A. The Department subsequently issued a show cause notice proposing to deny the

exemption on the ground that as per Central Board of Excise and Customs (CBEC) Circular NO.847/05/2007-CX, dated 06.02.2007, "IV Cannula" is primary used in the Peripheral veins and Aorta and is not covered by description "Disposable and Non-Disposable Cannula for Aorta and Vena Cavae and similar veins and Blood Vessels and Cannula for intra-corporal spaces". Hence benefit of Customs Notification No. 21/2002 at Sl. No. 363A and Central Excise Notification No. 6/2006-CE at Sl. No. 61A would not be available and the goods are leviable to BCD 7.5% and CVD 4%. Upon adjudication, the differential duty demand of Rs.1,31,153/- was confirmed. The Commissioner (Appeals) rejected the Appellant's appeal, leading to the present appeal before the Tribunal.

3. The Ld. Advocate Shri A.K. Jayaraj appeared for the appellant and Ld. Authorized Representative Shri Sanjay Kakkar appeared for the respondent.

Submissions made by the Appellant

3.1 Shri A.K. Jayaraj the Ld. Counsel for the Appellant submitted as follows:

A. The imported goods, namely, 'Spinal Needle – 25G (Cannula for intracorporeal spaces)', are specifically covered by the description in Sl. No. 363A of Notification No. 21/2002-Cus. and Sl. No. 61A of Notification No. 6/2006-CE, and are consequently eligible for the exemption. The goods are intended exclusively for use in intracorporeal spaces and that the exemption could not be denied by relying upon CBEC Circular No. 847/5/2007-CX dated 06.03.2007, which was based on the opinion of the Directorate General of Health Services (DGHS).

B. Reliance was placed on the Tribunal's decision in **CCE, Coimbatore Vs Saberwal Surgical (P) Ltd.** [2000 (117) ELT 400 (Tribunal)], affirmed by the Hon'ble Supreme Court, wherein it was held that the expression 'blood vessels' in the relevant exemption entry has to be read independently of the preceding expression relating to the aorta, vena cavae and similar veins. The Appellant also relied upon **Kanji Shavji Parekh (Calcutta) Pvt. Ltd. Vs Commissioner of Customs, Kolkata** [2018 (10) TMI 1791 – CESTAT Kolkata] and **Becton Dickinson India Pvt. Ltd. Vs CCE, Delhi-III** [2015 (6) TMI 335 – CESTAT New Delhi], which followed the above interpretation and recognised the eligibility of cannula for intracorporeal spaces under the exemption entry. It was further submitted that the decisions of the Tribunal, having been affirmed by the Hon'ble Supreme Court, constitute binding precedents.

C. The decisions of coordinate Benches on the same issue, having attained finality, must be followed in the interest of judicial discipline. Reliance was placed on **Royal Sundaram General Insurance Company Ltd. Vs Commissioner of Central Excise and Service Tax, LTU**, [WP No. 31725 of 2023, Dated: 24.05.2024], and the Hon'ble Supreme Court's decision in **Shabna Abdulla Vs Union of India**, [Criminal Appeal No. 3082 of 2024, Dated: 20.08.2024], to submit that a Coordinate Bench disagreeing with an earlier decision on an identical issue must refer the matter to a larger Bench rather than take a contrary view.

D. The Ld. Counsel prayed that the impugned Order may be set aside.

Submissions made by the Respondent-Revenue

3.2 Shri Sanjay Kakkar Ld. Authorized Representative appearing for the Respondent, submitted that:

A. The imported goods were described in the supplier's invoice merely as "Spinocan 25G", whereas the Bill of Entry described them as "Spinal Needle 25G (Cannula for intracorporeal spaces)". The addition of the words "Cannula for intracorporeal spaces" appeared to be an attempt to bring the goods within the exemption entries under Notification No. 21/2002-Cus. and Notification No. 6/2006-CE. However, the Appellant had not furnished any catalogue, technical literature, product insert or other documentary evidence to establish the nature and intended use of the goods. It could also have produced the relevant CDSCO registration or licence to substantiate the description claimed.

B. A spinal needle and a cannula are distinct medical devices with different functions. A conventional peripheral intravenous (IV) cannula is designed principally to obtain access to a peripheral vein for the administration of fluids, medicines and blood products. It is not ordinarily designed or recommended for insertion into body cavities or other intracorporeal spaces. The exemption entries cover only specified cannulae and not spinal needles. The Appellant had failed to establish whether the imported goods were spinal needles or cannulae and, even assuming that they were cannulae, had not proved that they were intended for use in the aorta, vena cavae, similar veins and blood vessels, or intracorporeal spaces. The Commissioner (Appeals), therefore, rightly concluded that the goods were meant for peripheral

blood vessels and ordinary transfusion or infusion purposes, and not for the specified uses contemplated by the notifications.

C. As per the Directorate General of Health Services (DGHS) opinion, incorporated in **CBEC Circular No. 847/5/2007-CX dated 06.03.2007**, intravenous cannulae are primarily intended for peripheral veins and arteries and are not recommended for use in intracorporeal spaces. The fact that such cannulae may, in an emergency or in exceptional circumstances, be used in abdominal or pleural cavities when specific catheters are unavailable does not establish their suitability or intended use for intracorporeal purposes. The Appellant had not produced evidence to displace this technical opinion or establish that the imported goods were specifically designed or intended for such use.

D. As per the Constitution Bench of the Hon'ble Supreme Court in **Commissioner of Customs (Import), Mumbai Vs Dilip Kumar & Co.** [2018 (361) E.L.T. 577 (S.C.)], an exemption notifications must be interpreted strictly and the burden of establishing eligibility rests entirely on the importer. Any ambiguity in the applicability of an exemption must be resolved in favour of the Revenue. In the present case, the Appellant had failed to discharge this burden and had not demonstrated compliance with the conditions of the notifications.

E. The Order in **Kanji Shavji Parekh (Calcutta) Pvt. Ltd**. (supra), is distinguished on the ground that it concerned a different notification entry, a different factual setting and spinal needles imported as accessories, whereas the goods in the present case were imported for trading. The reliance placed therein on *Saberwal Surgical (P) Ltd.* (supra) was misplaced, since *Saberwal Surgical* concerned a

different notification entry and a different product, namely, scalp vein infusion sets. The said decision was therefore distinguishable both on facts and in view of the subsequent Constitution Bench ruling in *Dilip Kumar & Co.*

F. The Ld. A.R. stated that the Appellant had failed to establish that the imported goods were covered by the exemption entries or that the prescribed conditions were satisfied. It accordingly prayed that the appeal be dismissed.

Issues for determination - Discussion and findings

4. We have heard the rival submissions and perused the records.

4.1 The questions which arise for consideration are:

(i) whether the imported goods, described as 'Spinal Needle – 25G (Cannula for intracorporeal spaces)', are covered by Sl. No. 363A of Notification No. 21/2002-Cus., read with Sl. No. 61A of Notification No. 6/2006-CE;

(ii) whether the exemption could be denied by relying upon CBEC Circular No. 847/05/2007-CX dated 06.02.2007;

(iii) the effect of the decision in Saberwal Surgical (P) Ltd. (supra), and the subsequent decisions following the same.

Exemption Notification

5. Sl. No. 363A of Notification No. 21/2002-Cus. covers goods specified in List 37, which includes:

> "Disposable and non-disposable cannula for aorta, vena cavae and similar veins and blood vessels and cannula for intra-corporal spaces."

The corresponding Sl. No. 61A of Notification No. 6/2006-CE extends the exemption to the goods covered by the said Customs Notification. Both notifications are, therefore, required to be read together.

5.1 The entry covers three categories: (i) cannulae for aorta, vena cavae and similar veins; (ii) cannulae for blood vessels; and (iii) cannulae for intracorporeal spaces. The scope of the expression 'similar' was considered by the Tribunal in *Saberwal Surgical (P) Ltd.* (supra), which is discussed below.

The decision in Saberwal Surgical (P) Ltd. and Other Judgments

6. In *Saberwal Surgical*, the dispute concerned the eligibility of imported scalp vein infusion sets for exemption under Sl. No. 34 of Notification No. 55/95-Cus., which contained materially identical description of goods. Revenue in that case, contended that the expression 'similar' qualified not merely the word 'veins' but also the subsequent expression 'blood vessels'. On that interpretation, the exemption would be confined to cannulae intended for the aorta, vena cavae and blood vessels similar to them, and would not extend to cannulae used in peripheral blood vessels.

6.1 The Tribunal rejected that interpretation. It held that the expression 'similar' qualified the word 'veins' and did not extend to the succeeding expression 'blood vessels'. The latter expression was required to be read independently; otherwise, it would be rendered substantially redundant. Since the imported scalp vein infusion sets were cannulae used in blood vessels, they satisfied the description in the notification.

6.2 The Revenue's appeal against the Tribunal's decision was dismissed by the Hon'ble Supreme Court on 17.07.2000, reported in 2000 (121) E.L.T. A74 (S.C.). The interpretation adopted by the Tribunal was subsequently followed in **Becton Dickinson India Pvt. Ltd. Vs Commissioner of Central Excise, Delhi-III**, [Final Order

Nos. A/51750-51753/2015-EX(DB), dated 02.06.2015]. The Tribunal held that intravenous cannulae were covered by the corresponding entry in List 37 of Notification No. 21/2002-Cus. and that the decision in *Saberwal Surgical* continued to govern the interpretation of the expression.

6.3 We find that the principle emerging from *Saberwal Surgical* is important for the present dispute. It establishes that the description in the notification is not confined to cannulae intended for the major blood vessels, namely, the aorta and vena cavae. The expression 'blood vessels' constitutes an independent category. Equally, the entry separately recognises cannulae intended for intracorporeal spaces. The latter category cannot be read down by importing restrictions applicable to the preceding category of blood vessels.

6.4 There is, however, an important distinction. *Saberwal Surgical* dealt with the expression 'blood vessels' and the eligibility of scalp vein infusion sets. It did not directly decide whether a spinal needle, as distinct from a cannula, answers the description 'cannula for intracorporeal spaces'. Its ratio cannot be extended to dispense with the requirement that the imported goods must first be established to be cannulae falling within the description of the notification.

Effect of CBEC Circular No. 847/05/2007-CX dated 06.02.2007

7. The Department has relied upon CBEC Circular No. 847/05/2007-CX dated 06.02.2007, issued on the basis of a DGHS opinion concerning intravenous cannulae such as Venflon and Neoflon, primarily used for peripheral vascular access, infusion, transfusion and related purposes. It also observed that such cannulae are not recommended for use in intracorporeal spaces and that their occasional

use in abdominal or pleural cavities, in exigent circumstances, does not establish their suitability for such applications.

7.1 The circular clarifies that such intravenous cannulae do not qualify for the exemption, as they are not designed for use in intracorporeal spaces. We find that the circular specifically addresses intravenous cannulae intended for peripheral vascular access. It does not deal with spinal needles or instruments specifically designed for intracorporeal use. The applicability of the circular, therefore, depends upon establishing that the imported goods belong to the category considered therein.

7.2 Further, a Board circular cannot override or curtail the scope of a statutory notification or the law declared by the courts. This position stands settled by the Hon'ble Supreme Court in **CCE Vs Ratan Melting & Wire Industries** [2008 (231) E.L.T. 22 (S.C.)].

7.3 Accordingly, the circular cannot be applied as a general exclusion of all cannulae used in blood vessels, particularly in view of the interpretation adopted in *Saberwal Surgical*. Nor can it be applied to Spinocan 25G without establishing its technical identity and intended application. The circular, by itself, cannot sustain the denial of exemption.

7.4 Hence the Circular does not establish the broader proposition that:

(i) every device described as a cannula is intended for peripheral vascular access;

(ii) every device that enters the body is necessarily an IV cannula;

(iii) a device intended for the subarachnoid space is necessarily outside the expression “cannula for intra-corporal spaces”; or

> (iv) the occasional emergency use of an IV cannula in a body cavity determines the intended use of a different device.

This reinforces the point that "cannula" is a broad device description, not a single medical category.

Dilip Kumar and burden of establishing eligibility

8. The Revenue has relied upon the Constitution Bench decision of the Hon'ble Supreme Court in **Commissioner of Customs (Import), Mumbai Vs Dilip Kumar & Co.** [2018 (361) E.L.T. 577 (S.C.)], which holds that exemption notifications must be construed strictly and the burden of establishing eligibility rests upon the claimant.

8.1 We respectfully apply the said principle. However, strict interpretation does not permit the Department to introduce restrictions not contained in the notification. The notification must first be interpreted according to its language, following which the claimant must establish that the goods satisfy its description.

8.2 Thus, there is no conflict between **Saberwal Surgical** and **Dilip Kumar**. While the former settles the interpretation of 'blood vessels', the latter governs the burden of establishing eligibility under the exemption entry.

Other Decisions relied upon by the Appellant

9. The Appellant has also relied upon **Royal Sundaram General Insurance Company** (supra) and **Shabna Abdulla** (supra), on the principle of judicial discipline.

9.1 We find that the principle of judicial discipline requires a coordinate Bench to follow an earlier decision on an identical question of law or, if a contrary view is proposed, to refer the matter to a Larger Bench. In the present case, we are not departing from *Saberwal*

Surgical. The question whether the particular spinal needle qualifies as a cannula for intracorporeal spaces is a distinct factual issue and does not involve reconsideration of the ratio laid down therein.

Whether the imported goods are covered by the exemption

10. We now examine the specific goods imported by the Appellant. The Bill of Entry describes the goods as 'Spinal Needle – 25G (Cannula for intracorporeal spaces)', whereas the supplier's invoice describes them as 'Spinocan 25G'. The Revenue disputes the description in the Bill of Entry, contending that a spinal needle and a cannula are distinct medical devices.

10.1 We find that neither description, by itself, conclusively establishes the technical identity of the goods. The relevant consideration is whether, having regard to their construction, design, functional characteristics and intended medical application, the imported goods qualify as cannulae for intracorporeal spaces under the notification.

10.2 Significantly, the SCN does not rely upon the manufacturer's catalogue, technical specifications, product literature, instructions for use or any expert opinion establishing the nature and intended application of Spinocan 25G. Nor does the material on record establish that the goods are intravenous cannulae intended for peripheral vascular access.

10.3 The Hon'ble Supreme Court, in **Gorkha Security Services Vs Government (NCT of Delhi)** [(2014) 9 SCC 105]; **Metal Forging Vs Union of India** [(2003) 2 SCC 36] and **CCE, Chandigarh Vs Shital International** [(2011) 1 SCC 109], has held that a proper SCN must clearly disclose the foundational facts, specific allegations and

proposed action so as to enable the noticee to effectively defend its case.

10.4 We further find that the conclusion of the Commissioner (Appeals), that the goods are intended for peripheral blood vessels and ordinary infusion or transfusion purposes, is based primarily on the Board's circular, without independent technical examination of the imported product. The circular cannot, by itself, establish the identity or characteristics of Spinocan 25G.

10.5 The Hon'ble Supreme Court, in **Hindustan Ferodo Ltd. Vs Collector of Central Excise** [1997 (89) E.L.T. 16 (S.C.)] and **HPL Chemicals Ltd. Vs Commissioner of Central Excise, Chandigarh** [2006 (197) E.L.T. 324 (S.C.)], has held that the burden of establishing classification or chargeability rests upon the Revenue and must be discharged through appropriate evidence.

10.6 Applying the aforesaid principles, the Department was required to supply the foundational facts justifying the proposed denial of exemption in the SCN, before the burden could shift to the importer, in terms of *Dilip Kumar* (supra), to establish its eligibility. In the present case, the Department has failed to discharge this initial burden by placing on record the manufacturer's catalogue, technical specifications, product literature, instructions for use or any expert opinion establishing the nature and characteristics of the imported goods. Consequently, the burden cannot be shifted to the importer, and the denial of exemption is not sustainable in law. Revenue has failed to discharge its primary burden of laying a proper foundation in the SCN, by incorporating material facts which constitute the foundation of the cause of action. We acknowledge the strenuous

efforts made by the Ld. Authorised Representative, Shri Sanjay Kakkar, in defending the Revenue's case. However, the fundamental deficiencies in the SCN remain and are fatal to the Revenue’s case. The impugned order, therefore, cannot be sustained and merits to be set aside. Further, remand for fresh investigation and establishment of the foundational facts, which ought to have formed part of the SCN itself, would not be legally appropriate at this stage.

Conclusion

In view of the foregoing discussion, we set aside the impugned order. The Appellant shall be entitled to consequential relief, as per law. The appeal is disposed of accordingly.

(Order pronounced in open court on 27.11.2026)

Sd/-	Sd/-
(**M. AJIT KUMAR**)	(**P. DINESHA**)
Member (Technical)	Member (Judicial)

Rex