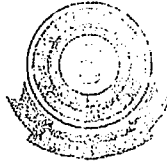
 सत्यमेव जयते	केंद्रीय कर आयुक्त (अपील) O/O THE COMMISSIONER (APPEALS), CENTRAL TAX, केंद्रीय कर भवन, सातवीं मंजिल, पोलिटेकनिक के पास, आम्बावाडी, अहमदाबाद-380015 टेलीफोन : 079-26305065	 7 th Floor, GST Building, Near Polytechnic, Ambavadi, Ahmedabad-380015 टेलीफैक्स : 079 - 26305136
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रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : V2(94)/27/Ahd-I/2017-18 V2(94)/21/EA-2/Ahd-I/2017-18 / 622-26
 Stay Appl.No. NA/2017-18

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-001-APP-260&261-2017-18
 दिनांक Date : 22-01-2018 जारी करने की तारीख Date of Issue 21/01/18

श्री उमा शंकर आयुक्त (अपील) द्वारा पारित
 Passed by Shri. Uma Shanker, Commissioner (Appeals)

ग Addl Commissioner, केन्द्रीय कर, Ahmedabad-South द्वारा जारी मूल आदेश सं 18/CX-I
 Ahmd/ADC/MK/2017 दिनांक: 28/3/2017, से सृजित

Arising out of Order-in-Original No. 18/CX-I Ahmd/ADC/MK/2017 दिनांक: 28/3/2017 issued by
 Addl Commissioner, Central Tax, Ahmedabad-South

घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent
 M/s. Geeta Steel Furniture
 Ahmedabad

कोई व्यक्ति इस अपील आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथारिथिति नीचे बताए गए सक्षम अधिकारी को
 अपील या पुनरीक्षण आवेदन प्रस्तुत कर सकता है।

Any person aggrieved by this Order-In-Appeal may file an appeal or revision application, as
 the one may be against such order, to the appropriate authority in the following way :

भारत सरकार का पुनरीक्षण आवेदन
 Revision application to Government of India :

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अतत नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा को उप-भाग के प्रथम पर्यंत
 के अंतर्गत पुनरीक्षण आवेदन अधीन सचिव, भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली
 : 110001 को की जानी चाहिए।

(i) A revision application lies to the Under Secretary to the Govt. of India, Revision Application Unit
 Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New
 Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the following case, governed by first
 proviso to sub-section (1) of Section-35 ibid :

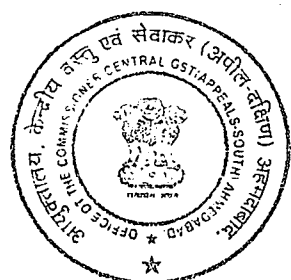
(ii) यदि माल की हानि के मामले में जब ऐसी हानि कारखाने से किसी भण्डागार या अन्य कारखाने में या किसी भण्डागार से दूसरे
 भण्डागार में माल ले जाते हुए मार्ग में, या किसी भण्डागार या भण्डार में चाहे वह किसी कारखाने में या किसी भण्डागार में ह; माल की प्रतीक्षा के
 दौरान हुई हो।

(ii) In case of any loss of goods where the loss occur in transit from a factory to a warehouse or to
 another factory or from one warehouse to another during the course of processing of the goods in a
 warehouse or in storage whether in a factory or in a warehouse.

(b) In case of rebate of duty of excise on goods exported to any country or territory outside India of
 on excisable material used in the manufacture of the goods which are exported to any country
 or territory outside India.

(ग) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया माल हो।

... 2 ...



(ख) भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित माल पर या माल के विनिर्माण में उपयोग शुल्क का माल पर उत्पादन शुल्क के रिबेट के मामलों में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है।

(b) In case of rebate of duty of excise on goods exported to any country or territory outside India of on excisable material used in the manufacture of the goods which are exported to any country or territory outside India.

(ग) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया माल हो।

(c) In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.

अंतिम उत्पादन की उत्पादन शुल्क के भुगतान के लिए जो ड्यूटी क्रेडिट मान्य की गई है और ऐसे आदेश जो इस धारा एवं नियम के मुताबिक आयुक्त, अपील के द्वारा पारित वो समय पर या बाद में वित्त अधिनियम (नं.2) 1998 धारा 109 द्वारा नियुक्त किए गए हो।

(d) Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under and such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec.109 of the Finance (No.2) Act, 1998.

(1) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 के नियम 9 के अंतर्गत विनिर्दिष्ट प्रपत्र संख्या ईए-8 में जो प्रेषित प्रेषित आदेश के प्रति आदेश प्रेषित दिनांक से तीन मास के भीतर मूल-आदेश एवं अपील आदेश की को प्रेषित प्रेषित उचित आवेदन किया जाना चाहिए। उसके साथ खाता ई. का मुख्यशीर्ष के अंतर्गत धारा 35-इ में निर्धारित फीस के भुगतान के सबूत के साथ टीआर-6 चालान की प्रति भी होनी चाहिए।

The above application shall be made in duplicate in Form No. EA-8 as specified under Rule, 9 of Central Excise (Appeals) Rules, 2001 within 3 months from the date on which the order sought to be appealed against is communicated and shall be accompanied by two copies each of the OIO and Order-In-Appeal. It should also be accompanied by a copy of TR-6 Challan evidencing payment of prescribed fee as prescribed under Section 35-EE of CEA, 1944, under Major Head of Account.

(2) रिविजन आवेदन के साथ जहाँ संलग्न रकम एक लाख रुपये या उससे कम हो तो रुपये 200/- फीस भुगतान की जाए और जहाँ संलग्न रकम एक लाख से ज्यादा हो तो 1000/- की फीस भुगतान की जाए।

The revision application shall be accompanied by a fee of Rs.200/- where the amount involved is Rupees One Lac or less and Rs.1,000/- where the amount involved is more than Rupees One Lac.

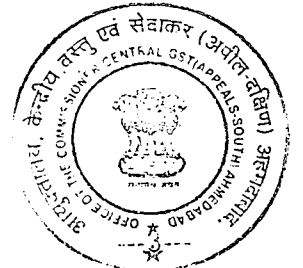
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35-बी/35-इ के अंतर्गत:-

Under Section 35B/ 35E of CEA, 1944 an appeal lies to :-

(क) उक्तलिखित परिच्छेद 2 (1) क में बताए अनुसार के अलावा की अपील, अपीलों के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में आ 20, न्यू मेटल हॉस्पिटल कम्पाउण्ड, मेघानी नगर, अहमदाबाद-380016

(a) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at O-20, New Metal Hospital Compound, Meghani Nagar, Ahmedabad : 380 016, in case of appeals other than as mentioned in para-2(i) (a) above.



The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 as prescribed under Rule 6 of Central Excise(Appeal) Rules, 2001 and shall be accompanied against (one which at least should be accompanied by a fee of Rs.1,000/-, Rs.5,000/- and Rs.10,000/- where amount of duty / penalty / demand / refund is upto 5 Lac, 5 Lac to 50 Lac and above 50 Lac respectively in the form of crossed bank draft in favour of Asstt. Registrar of a branch of any nominate public sector bank of the place where the bench of any nominate public sector bank of the place where the bench of the Tribunal is situated.

- (3) यदि इस आदेश में कई मूल आदेशों का समावेश होता है तो प्रत्येक मूल आदेश के लिए फीस का भुगतान उपरोक्त ढंग से किया जाना चाहिए इस तथ्य के होते हुए भी कि लिखा पढ़ी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता है।

In case of the order covers a number of order-in-Original, fee for each O.I.O. should be paid in the aforesaid manner notwithstanding the fact that the one appeal to the Appellate Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 1 lacs fee of Rs.100/- for each.

- (4) न्यायालय शुल्क अधिनियम 1970 यथा संशोधित की अनुसूची-1 के अंतर्गत निर्धारित किए अनुसार उक्त आदेशों के मूल आदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रति पर रु.6.50 पैसे का न्यायालय शुल्क टिकट लगा होना चाहिए।

One copy of application or O.I.O. as the case may be, and the order of the adjournment authority shall a court fee stamp of Rs.6.50 paise as prescribed under scheduled-1 item of the court fee Act, 1975 as amended.

- (5) इन ओर संबंधित मामलों को नियंत्रण करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है जो सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्याविधि) नियम, 1982 में निहित हैं।

Attention is invited to the rules covering these and other related matter contended in the Customs, Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982.

- (6) सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट), के प्रति अपील के मासिक कर्तव्य मांग (Demand) एवं दंड (Penalty) का 10% पूर्व जमा करना अनिवार्य है। हालांकि, अधिनियम 1994 के क्रोड रूप है (Section 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

केन्द्रीय उत्पाद शुल्क और सेवा कर के संदर्भ में शामिल होने "कर्तव्य की मांग" (Duty Demanded) को

- (i) (Section) खंड 11D) के तहत निर्धारित राशि;
- (ii) लिया गलत सेन्वैट क्रेडिट की राशि;
- (iii) सेन्वैट क्रेडिट नियमों के तहत जमा किया गया राशि।

यह पूर्व जमा 'निहित अपील' में प्रदत्त पूर्व जमा की बुझाई में, अपील दर्ज करने के लिए पूर्व जमा राशि का 10% भुगतान करना आवश्यक है।

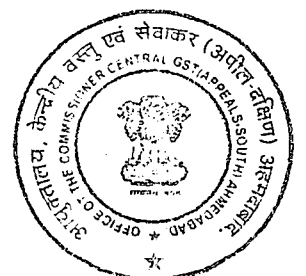
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (Section 35 C (2A) and 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

Under Central Excise and Service Tax, "Duty demanded" shall include:

- (i) amount determined under Section 11 D;
- (ii) amount of erroneous Cenvat Credit taken;
- (iii) amount payable under Rule 6 of the Cenvat Credit Rules.

इस इस आदेश के प्रति अपील प्राधिकरण के समक्ष जहाँ शुल्क अथवा शुल्क या दण्ड विवादित हो तो माँग किए गए शुल्क का 10% भुगतान पर और जहाँ केवल दण्ड विवादित हो तब दण्ड के 10% भुगतान पर की जा सकती है।

In view of above, an appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute."



ORDER-IN-APPEAL

M/s Gita Steel Furniture, situated at 168, Shiv Shakti Estate, Behind V-Trans (I) Ltd., Opp. Kashiram Textiles, Narol, Ahmedabad (hereinafter referred to as 'appellants') have filed the present appeal against the Order-in-Original No.18/CX-I Ahmd/ADC/MK/2017 dated 28.03.2017 (hereinafter referred to as 'impugned order') passed by the Additional Commissioner, Central Excise, Ahmedabad-I. (Hereinafter referred to as 'adjudicating authority'). Department has also filed appeal against the impugned order.

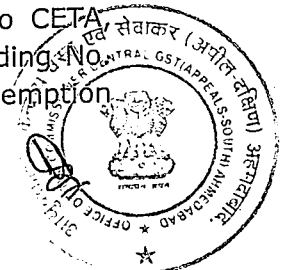
2. Briefly stated facts are that the appellant is, engaged in manufacture of Hospital Furniture and parts thereof falling under Ch. 940290 of the Central Excise Tariff Act, 1985. The said assessee holds Central Excise Registration No. ABCPP2230QEM001. During scrutiny of ER-I return it was observed that the Appellant has classified Mattresses under Chapter Heading No. 9402 and availed the Benefit of concessional rate of duty of 8% availed under Notification No. 06/2006-CE Dated: 01.03.2006, up to 16.03.2012 than from 17.03.2012 @ 8% under Notification No. 12/2012-CE Dated: 17.03.2012 (Sr. No. 320), which does not appear to be correct, in view of the Chapter Note 3(B) of Chapter 94 the Hospital Mattresses classified under Chapter Heading No. 9404 of the Central Excise Tariff Act, 1985, therefore the Appellant is required to pay Central Excise Duty @ prevailing rate.

2.1 Further it was observed that the Appellant has also manufactured and cleared other articles of furniture such as Hospital Bed, Hospital Locker, Hospital Scrub, Hospital Wheel Chair, Hospital Couch, Hospital Crash Cart, Hospital Screen, Hospital Stand, Hospital Table, Hospital Stretchers, Hospital Stool, Hospital Seat Cum Bed, Seating Bench, Hospital Rack, Hospital Crib, Modular System, Dining Table, Hospital Furniture Accessories etc. under Chapter Heading Nos. 9402 90 10 or 9402 90 20 and paid Central Excise Duty at Concessional Rate claiming benefit under Sr. No. 70 of erstwhile Notification No. 06/2006-CE Dated: 01.03.2006 and from March 2012 under Sr. No. 320 of the Notification No. 12/2012-CE Dated: 17.03.2012 as amended.

2.2 Whereas, the Appellant had manufactured and cleared both the types of Beds i.e. Bed with mechanism and Bed without mechanism mentioning as "Hospital Beds" under Chapter Heading No. 9402 90 10 and availed exemption under erstwhile Notification No. 06/2006-CE Dated: 01.03.2006 and from March-2012 under Sr. No. 320 of Notification No. 12/2012-CE Dated: 17.03.2012. The Chapter Heading No. 9402 90 10 covers Hospital Beds with Mechanical fittings only. Further Explanatory Note to Chapter 9402 given in HSN wherein it is specifically mentioned that **beds without the mechanism would fall in heading No. 9403**. The SCN was issued and decided vide impugned Adjudication Order, wherein it was held that;

(i) The Mattresses presented separately are classified under Chapter Sub Heading No. 94042190 of the first schedule to CETA, 1985 and benefit of exemption notification no. 12/2012-CE dated 17.03.2012 (earlier Noti. No. 6/2006-CE dated 01.03.2006) is denied;

(ii) "Hospital beds without mechanical fittings", "Hospital Locker", Hospital Cabinet", "Hospital Stools", "Hospital Seat Cum Bed", "Hospital Rack" "Modular System" "Hospital Seating Bench" and "Dining Table" are classified under Chapter Sub Heading No. 94032010 of the first schedule to CETA, 1985 and Scrub (Steel Wash basin) is classified under Chapter heading No. 73241010 of Central Excise Tariff Act 1985 and benefit of exemption notification no.12/2012-CE dated 17.03.2012 is denied;



(iii) Confirmed the demand of Rs.21,60,121/- for the period from March 2015 to Dec.2015 under Section 11A (1) of Central Excise Act 1944. And already paid duty of Rs.6,01,377/- appropriated against their duty liability.

(iv) Confirmed the demand of Interest under Section 11AA of the Central Excise Act, 1944 and the interest of Rs. 99,898/- already paid appropriated towards their interest liability;

(v) Imposed penalty of Rs.2,16,012/- (i.e.10% of duty of Rs. 21,60,121/-) upon them under Section 11AC(1)(a) of the Central Excise Act, 1944. However, as per 11AC(1)(b) of the Central Excise Act, 1944,

(vi) Dropped the demand of Rs.59,27,990/- pertaining to the period from April 2011 to Feb.2015 as being time-barred.

3. Being Aggrieved the Appellant preferred an appeal against the said order on the grounds that they have rightly classified their product as Hospital Furniture and correctly availed the benefit of Notification No.12/2012-CE dated 17.03.2012 (earlier Noti. No. 6/2006-CE dated 01.03.2006).

4. Being aggrieved with the part of impugned order wherein the demand of Rs.59,27,990/- pertaining to the period from April 2011 to Feb.2015 dropped as being time-barred, department preferred an appeal against the impugned order; on the grounds that;

i). The assessee had deliberately misclassified the Mattresses under Chapter heading No.9402 by mentioning the word Hospital before Mattress in their ER-1 returns by way of willful mis-declaration with intent to evade duty.

ii). Despite knowing that the Bed without mechanism is not covered under Chapter Sub-heading No.94029010 by mentioning the word "Hospital" before Bed in their ER-1 returns by way of willful mis-declaration with intent to evade duty.

iii). The said assessee had deliberately mis-classified the goods by using the word Hospital before the description of the goods and has also mis-declared the actual description of their goods from the department, with an intent to evade payment of Central Excise Duty. They never have furnished the details of the goods cleared under the head "Parts and Accessories of Hospital Furniture" to the department.

5. Personal hearing in the case was granted on 01.11.2017 wherein Shri Deepak Kumar, Ms. Ruhi Jhota and Shri Yogendra Singh appeared before me and reiterated the grounds of appeal they extensively discussed the classification and exclusions. Also points out the ISI specifications for disputed items. He submitted additional submissions case laws and product catalogues of other manufacturers.

5.1 Personal hearing for departmental appeal was held on 18.12.2017 wherein Shri Deepak Kumar and Ms. Ruhi Jhota appeared before me and explained the limitation. He submits that departmental appeal is wrong because there was no mis-statement for this they submit case of Uniworth Textiles Ltd. Vs. Commissioner of Central Excise Raipur, 2013(288) E.L.T. 161 (SC). They have submitted all invoices of last five years to show that all equipments were supplied for the medical purpose only. They also filed cross objection against the departmental appeal. Also submits that Mattress has never been sold separately.

6. I have carefully gone through the facts of the case on records, grounds of appeal in the Appeal Memorandum by the appellant and by the

[Handwritten signature]



department and oral submissions made by the appellants at the time of personal hearing. Their additional submissions, citations, ISI specifications for hospital furniture and parts, tender of other hospitals for procurement of hospital furniture i.e. AIIMS Delhi, catalogue of other manufacturers. I take up the matter for decision;

6.1 The three main issues which need decision in this case are as under:

i). whether the Mattresses cleared by the appellant along with the goods namely Hospital Beds, Examination Table, Labour Table, Stretcher Trolley, Gynaec Table, Seat Cum bed etc. is classifiable under Heading 9402 as part of Hospital Furniture, as claimed by the appellant or under Heading no. 9404.2190 as Mattresses of Polyurethanes (PU), presented separately, as held in the impugned Order.

ii). whether Beds cleared to Hospitals without the "mechanism" or beds without mechanical fittings having Item code 7500, 7501, 7575 and 7400 of the appellant's Brochure is classifiable under Heading 9402 as Hospital Furniture and entitled to concessional rate of duty, as claimed by the appellant or under Heading no. 94032010 as Steel Furniture as held in the impugned Order as Beds without mechanism is stated to fall in Heading 9403 as per HSN.

iii). whether Miscellaneous Items namely Patient Bedside Locker, Revolving Stools with or without cushion, Bedside Stool, Surgeon Stool, Single or Double Step Stool, Surgical Instrument Cabinet, Patient Seat cum Bed, Patient Seating Benches, Rack, Modular system, Dining Table and Scrub are classifiable as Hospital Furniture under Heading 9402 and entitled to concessional rate of duty as claimed by the appellant or under Heading 94032010 and Scrub, (steel wash basin) is classifiable under Chapter Heading 7324.1010 as held in the impugned Order.

6.2 For departmental Appeal, question to be answered is whether suppression of facts with intent to evade duty establishes and extended period can be invoked.

7. First I take up the matter of the Appellant. It is clear that Classification of a product in the Central Excise Tariff more or less follows the HSN scheme. Therefore, understanding of meaning and content of the expression 'Medical or Surgical Furniture and parts thereof' occurring in the Heading 9402 of the Central Excise Tariff should be based on HSN scheme and Explanatory Notes. In other words, Chapter Notes and Notes for each Heading under Chapter 94 of the HSN shall apply to Central Excise Tariff for purpose of classification of goods.

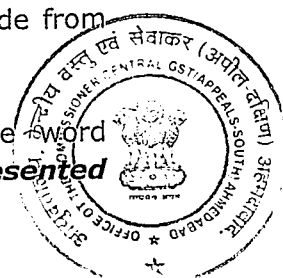
7.1 Now coming to the first issue as to whether Mattresses cleared along with the goods of which it is part, is classifiable under Heading 9402 or under Heading 94042190, for the purpose of classification of Mattresses, the Adjudicating Authority has relied on Note 3(B) given under Chapter 94 as under:

" 3(B) Goods described in heading 9404, presented separately, are not to be classified in heading 9401, 9402 or 9403 as parts of goods"

Adjudicating Authority has accordingly held that Mattresses if cleared separately shall fall under Heading 94042190 as Mattresses are made from PU Foam and covered with Rexine.

(i) Here Adjudicating Authority has incorrectly interpreted the word '**presented separately**' used in Note 3(B) above. The word '**presented**'





'separately' means that it should be cleared **'as such'** without any other goods or article. In the case of the appellant, the purchase order is received from the Hospitals for Bed, Examination Table, Labour Table, Stretcher Trolley, Gynaec Table, Seat cum Bed etc. along with the Mattresses, as such the Mattresses are supplied along with the goods of which they are part and not as a Spare Part. In other words the Mattress is presented along with the goods and not separately and therefore Note 3(B) of Chapter 94 prohibiting classification of goods under Heading 9402 as parts of the goods is not applicable in case of mattress as Mattress are invariably cleared along with the goods of which it is a part and is never presented separately.

(ii) The classification of the Mattresses when supplied along with the goods of which it is a part, under Heading 9402 is supported with the Explanatory Notes of 'Parts' of Chapter 94 which reads as under: "*This Chapter only covers parts, whether or not in the rough, of the goods of Heading 9401 to 9403 & 9405 when identifiable by their shape or other specific features as parts designed solely or principally of article for those Heading*". Since Mattresses of Bed, Trolley, Examination Table etc. are identifiable by their shape or other specific features as parts designed solely or principally of article of Heading 9402, it is to be classified under Heading 9402 as parts of goods of Heading 9402 only.

(iii) Further, the Explanatory Note of 'Parts' of Heading 9401 states as under:

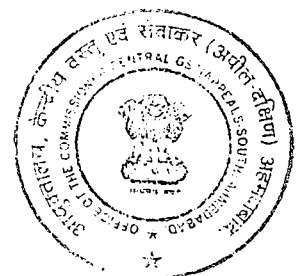
"separately presented cushions and mattresses, sprung, stuffed or internally fitted with any material or of cellular rubber or plastic whether or not covered are excluded (9404) even if they are clearly specialized as parts of upholstered seats (for e.g settees, couches, sofas). When these articles are combined with other parts of seats, however they remain classified under this heading. They also remain in this heading when presented with the seats of which they form part."

This means that Mattresses and cushions if separately presented are to be classified under heading 9404 whereas when they are presented with the goods of which they are part, they remain classified in the heading in which the goods (of which mattress is a part) falls.

Thus, Mattresses cleared along with the goods of which they are parts are rightly classifiable under Heading 9402 as parts of that goods under Heading 9402 and accordingly the benefit of concessional rate of duty under Notification no. 6/2006 CE dated 01.03.2006 and Notification no. 12/2012 CE dated 17.03.2012 shall be applicable to Mattresses of Heading 9402 of CET.

7.2 Now coming to the second issue as to whether Beds having Item code: 7500, 7501, 7575 & 7400 of the appellant's Brochure cleared by the appellant is classifiable under Heading 9402 or under Heading 9403 as these Beds has been held to be without any mechanism. The Adjudicating Authority has held in the impugned Order that the appellant is manufacturing both the Beds namely: Bed with mechanical fitting & Bed without mechanical fitting and Chapter Sub Heading 9402 9010 specially describes Hospital Beds with mechanical fittings only. **Further in the HSN Explanatory Notes for Heading 9402, it is specifically stated that Bed without the mechanism fall under Heading 9403.** Adjudicating Authority has accordingly held that since Beds having Item Codes 7500, 7501, 7575 & 7400 of the Brochure furnished by the appellant are without mechanism and are therefore classifiable under Heading 9403 as mentioned in the HSN and not under Heading 9402 9010.

9



The HSN Explanatory Note for the Heading 9402 states that this group includes:

- (1)
- (2)
- (3)
- (4)
- (5)
- (6) *Confinement beds (sometimes called birthing beds), usually consisting of a lower part with a basin which slides under the upper part.*
- (7) *Mechanical beds for raising injured or sick persons without shaking or for giving them hygienic attention without moving them*
- (8) *Beds with hinged mattress- support specially designed for therapeutic treatment of pulmonary tuberculosis or other diseases.*
- (9) *Beds combined with splints or other dislocation or fracture appliance and the like.*

However when such equipment is of a type designed to be simply attached to but not fixed to the bed, it falls in heading 9021; **Beds without the mechanism fall under Heading 9403.**

Here it is necessary to discuss the definition of Mechanism.

(i) As per **Collins Dictionary:**

A mechanism is a part, often consisting of a set of smaller parts, which performs a particular function.

(ii) As per **Macmillan Dictionary:**

Mechanism means a machine or part of a machine; a system of parts that people think of as working together like the parts of a machine.

(iii) As per **Oxford Dictionary:**

A mechanism is a system of parts working together in a machine; a piece of machinery.

(iv) As per **Business Dictionary:**

Mechanism means a logical assembly of components, elements, or parts, and the associated energy and information flows that enable a machine, process, or system to achieve its intended result.

(v) As per **Cambridge Dictionary:**

Mechanism means a part of a machine, or a set of parts that work together; a way of doing something that is planned or part of a system.

3. Bed Specifications:

Beds having item code 7500 / 7501 / 7575 / 7400 manufactured by the appellant (Page no. 11-14 of the appellant's catalogue) has the following mechanism:

- 1. Bed having item code 7500:**
 - o Detachable pair S.S. Head and foot with laminated panel made from plywood material with sunmica.
 - o Provision for stainless steel I.V. rod at 4 locations.
 - o Leg fitted with PVC shoes.
 - o Perforated bed base.
- 2. Bed having item code 7501:**
 - a. Detachable pair M.S. powder coating panel at head and foot side.
 - b. Provision for stainless steel I.V. rod at 4 locations.
 - c. Leg fitted with PVC shoes.



d. *Perforated bed base.*

3. *Bed having item code 7575:*

- o *Head bows 1060mm height with 3 vertical and 1 horizontal support.*
- o *Provision for stainless steel I.V. rod at 4 locations.*
- o *Leg fitted with PVC shoes.*
- o *Perforated bed base.*

4. *Bed having item code 7400:*

- o *Head and leg bows are of equal height with 2 vertical and 1 horizontal supports.*
- o *2 side full length detachable rail.*
- o *Leg fitted with PVC shoes.*
- o *Perforated bed base.*

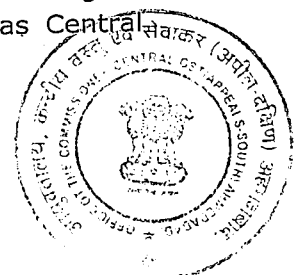
*Thus each of the above beds have the mechanism to give support to the patient to rest; raising the head and feet helps ease movements of patient; prevent falling off from bed; keeping pillows from falling off the bed; saline arrangement to provide IV fluid; perforated bed base to maintain hygiene & air ventilation; rail provides protection to the patient & makes the patient feel more secure; and smooth movement of bed due to PVC shoes fittings. In other words all these hospital beds have mechanical fittings and therefore they are rightly classifiable under sub-heading 9402.9010 and entitled to concessional rate of duty applicable to heading 9402 under Notification No. 6/2006-CE and 12/2012-CE. I think the original authority has misunderstood the word "mechanism". This ^{word} has to be examined in light of various definitions given above. These Beds are specifically designed for Medical or Surgical use and is therefore rightly classifiable under Heading 9402 as per HSN Explanatory Note. Further these Beds cannot be classified under Heading 9403 as the HSN Explanatory Note for Heading 9403 specifically states that **'This heading covers furniture and parts thereof, not covered by the previous headings' (previous headings here means heading no.9401 or 9402).***

7.3 Now coming to the third issue as to whether Miscellaneous Items namely Patient Bedside Locker, Revolving Stools with or without cushion, Bedside Stool, Surgeon Stool, Single or Double Step Stool, Surgical Instrument Cabinet, Patient Seat cum Bed, Patient Seating Benches, Rack, Modular System, Dining Table and Scrub are classifiable as Hospital Furniture under Heading 9402 or under Heading 94032010 and Heading 73241010 for scrub, The Adjudicating Authority has held in the impugned Order that these goods are not covered under Heading 9402 as these are not having any special design or special characteristics which can be used only for medical, surgical, dental or veterinary use. The above said article of furniture can also be used for other general purpose also.

The Scheme of Central Excise Tariff more or less follows the HSN Scheme. Therefore, understanding of meaning and content of the expression 'Medical or Surgical Furniture and parts thereof' occurring in the Heading 9402 of the Central Excise Tariff should be based on HSN Scheme and Explanatory Notes. HSN Explanatory Note for Heading 9402 states as under: " *It should be noted that this group is restricted to furniture of a type specially designed for medical, surgical, dental or veterinary use; furniture for general use not having such characteristics is therefore excluded.*"

This means that if furniture is specially designed for medical or surgical use then it is classifiable under Heading 9402 of HSN as well as Central

1



Excise tariff. **The Hon'ble High Court of Allahabad in the case of M/s. Imperial Surgico Industries Lucknow, reported at 1969 (23) STC 201 (ALL)** rejected the contention of the Revenue that operation tables, beds including fowler beds, bedside lockers, dressing carriages, instrument cabinets, revolving stools, instrument trollies, instrument tables and self propelling chairs, though intended for use in hospitals were amenable to comparable use in dwellings. They corresponded, with some variations, to articles in normal use. Nothing in their design or equipment precluded them from being put to domestic use. The Court observed from the catalogue produced by the assesses that the goods were specially designed for use in hospitals and were described as hospital furniture. The Revenue's contention that the description and design of the articles did not preclude them from being used as domestic furniture was not accepted by the Court. **The test, in the Court's opinion, was not whether the articles were capable of being used as domestic furniture, but whether they were ordinarily so used and could be accepted as such according to the general or popular notion of what furniture was.**

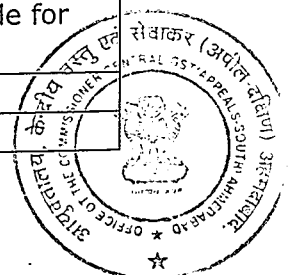
The Hon'ble Tribunal in the case of M/s Unique Industries reported at 1988 (37) ELT 443 (Trib) has held that **test in deciding whether goods specially designed for use in hospital and describes as hospital furniture would be not whether the article were capable of being used as furniture in household or similar places but whether they were ordinarily so used and could be accepted as such according to the general or popular notion of what furniture was.**

The Hon'ble Supreme Court of India, in the case of State of A.P. vs V. Sarma Rao & Ors. reported at 2007 2 SCC 159, has held that "the expression "ordinarily" may mean "normally", as has been held by this Court in **Kailash Chandra v. Union of India - (1962) 1 S.C.R. 374 and Krishan Gopal v. Prakashchandra - (1974) 1 SCC 128** but, the said expression must be understood in the context in which it has been used." Therefore the word "ordinarily" implies that the furniture must be ordinarily/normally be used in the hospital and it would be immaterial if the said furniture is also used for other domestic purpose.

From the HSN Explanatory Notes & above judgments of the Courts it is crystal clear that a furniture is said to be specially designed for medical or surgical use if said furniture is normally/ordinarily used in such manner in the hospitals. The very fact that some of such hospital furniture could also be used in domestic or other purpose will not change the classification of such furniture so long they are normally/ordinarily used in the hospitals instead they will continue to be classified as hospital furniture. Many of these miscellaneous items have been found covered in the Indian Standards Specifications of Hospital Furniture. **The Hon'ble Supreme Court of India in the case of M/s Delhi Cloth and General Mills Co. Ltd. reported at 1977 (1) E.L.T. (J 199) (S.C.) and in the case of M/s Kirlosker Oil Engines Ltd. reported at 1995 (77) E.L.T. 479 (S.C.)** has held that IS Specification is not ignorable in absence if any material. The various IS Specifications for the items cleared by the appellant are as under:

IS SPECIFICATION	DESCRIPTION
IS: 4266-1967	Specification for Lockers, Bedside for Hospital use
IS: 7081-1973	Revolving Stool for Hospital use
IS: 6877- 1977	Cabinet Instrument (Surgical

①



	Instrument Cabinet)
IS: 4494-1968	Tables, Over bed (Dining Table)
IS: 4267-1967	Stands, Wash Hand Basin (Scrub)
IS: 5029-1979	Bedstead Hospital, General Purpose (Bed with four saline arrangement)
IS: 3933: 1993	Trays and Instruments (Swab Rack)

Thus IS specification also confirms that all these items namely Patient Bedside Locker, Revolving Stools with or without cushion, Bedside Stool, Surgeon Stool, Single or Double Step Stool, Surgical Instrument Cabinet, Patient Seat cum Bed, Patient Seating Benches, Rack, Dining Table and Scrub are Hospital Furniture and therefore rightly classified under Heading 9402 of the CET. It is also evident from the invoices submitted by the appellant for the last five years that they have sold their entire products to hospitals and medical health care centers only.

8. As regards the appeal filed by the department wherein main allegation put fourth is that they had deliberately misclassified their products by mentioning the word Hospital before all the products, Mattress, Bed and parts, in their ER-1 returns by way of willful mis-declaration with intent to evade duty. They never have furnished the details of the goods cleared under the head "Parts and Accessories of Hospital Furniture" to the department. Also mis-declared the actual description of their goods from the department, with intent to evade payment of Central Excise Duty.

Now it is necessary to discuss the meaning of the word Hospital.

Meaning of the Word "Hospital"

(i) As per Wikipedia:

A hospital is a healthcare institute providing patient treatment with specialized medical and nursing staff and medical equipment. They are general and district hospital. Specialized hospitals include trauma centers, rehabilitation hospitals, children's hospitals, seniors' (geriatric) hospitals, and hospitals for dealing with specific medical needs such as psychiatric treatment (see psychiatric hospital) and certain disease categories.

(ii) As per World Health Organization (WHO):

Hospital is health care institutes that have an organized medical and other professional staff and in-patient facilities and delivers service 24*7. They offer a varying range of acute, convalescent and terminal care using diagnostic & curative care.

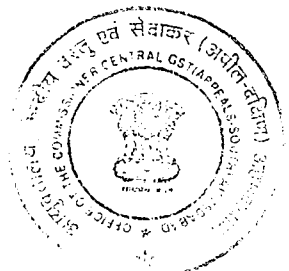
(iii) As per University of Mosul document:

- A building in which the sick, injured, or infirm are received and treated; a tent, building, or other place where the sick or wounded of an army cared for;
- Hospital is a formal institutions developed by the society for patient care Intended to meet the complex health needs of its members;
- Hospital is a place for the diagnosis and treatment of human ills and restoration of health and well-beings of those temporarily deprived of these. Professionally & technically skilled people apply their knowledge and skill with the help of complicated equipment and appliances - to provide quality care for the patients.

(iv) As per Free Dictionary:

- A facility that provides emergency, in-patient and usually out-patient medical care for sick or injured people.

[Handwritten signature]



- An institution for the care and treatment of acutely sick and injured person.

8.1 In view of the above definitions of the hospitals, it could be seen that appellant has been supplying furniture to the hospitals only and has therefore been affixing the word hospital before each of its products namely, hospital bed, hospital locker, hospital mattress, hospital scrub, hospital stool, hospital seat cum bed, hospital bench, etc. As such there has not been any ill intention in prefixing the word hospital before each of these items. Also adjudicating authority in para 31,32 and 33 of OIO had discussed in detail and arrived at conclusion that extended period cannot be invoked, I agree with the view and decision of adjudicating authority in this regards.

8.2 As discussed above regarding duty confirmed by the adjudicating authority for normal period it is concluded that the appellant has rightly classified their products and correctly availed the benefit of Notification No. 06/2006-CE Dated: 01.03.2006, up to 16.03.2012 than from 17.03.2012 @ 8% under Notification No. 12/2012-CE Dated: 17.03.2012 (Sr. No. 320).

8.3 In view of above discussed facts, I conclude that the demand for normal period as confirmed by the Adjudicating authority is not sustainable and required to be set aside. I hereby set aside the Impugned order to the extent of confirming demand for normal period, with consequential relief to the appellants if any and uphold the OIO for dropping the demand for extended period.

8.4 As regards the departmental appeal it does not merit consideration and hence rejected in view of above discussed facts.

9. The appeals filed by both the appellant stand disposed off in above terms.

9. अपीलकर्ताओं द्वारा दर्ज की गई अपीलों का निपटारा उपरोक्त तरीके से किया जाता है।

उमा शंकर

(उमा शंकर)

केन्द्रीय कर आयुक्त (अपील्स)

Date:- 22.1.2018

ATTESTED

K.H. Singhal

(K.H.Singhal)
SUPERINTENDENT (APPEAL),
CENTRAL TAX, AHMEDABAD.

BY R.P.A.D.

M/s Gita Steel Furniture,
168, Shiv Shakti Estate, Behind V-Trans (I) Ltd.,
Opp. Kashiram Textiles, Narol, Ahmedabad

Copy To:-

1. The Chief Commissioner, Central Tax, GST Ahmedabad zone, Ahmedabad.
2. The Principle Commissioner, Central Tax, GST Ahmedabad-South.
3. The Assistant Commissioner, Central Tax, GST Division-IV Ahmedabad South.
4. The Assistant Commissioner, System-Ahmedabad South.
5. Guard File.
6. P.A. File.

