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

Customs Appeal No.40424 of 2025

(Arising out of Order in Original No. 3471 & 3472/2024-CH-VII dated 18.12.2024 passed by the Principal Commissioner of Customs, Air Cargo, Chennai - VI)

Principal Commissioner of Customs **Appellant**
ACC, Chennai VII Commissionerate
New Custom House
Meenambakkam, Chennai – 600 027.

Vs.

M/s. Vasta Biotech Pvt. Ltd. **Respondent**
SVN House, New No. 10, Old No. 90
C.P. Ramaswamy Iyer Road
Alwarpet, Chennai – 600 018.

APPEARANCE:

Shri Anoop Singh, Authorized Representative for the Appellant
Shri Jaydeep Patel, Advocate, and
Shri Ashutosh Kumar, Advocate for the Respondent

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

FINAL ORDER NO. 40546/2025

Date of Hearing : 28.05.2025
Date of Decision: 28.05.2025

Per M. Ajit Kumar,

Revenue has filed the present appeal against Order in Original No. 3471 & 3472/2024 passed by the Principal Commissioner of Customs, Chennai.

2. We have heard Shri Anoop Singh, AR for the Appellant and Shri Jaydeep Patel, Advocate, and Shri Ashutosh Kumar, Advocate for the Respondent and the material on record has been perused.

3. We find that this is a case where this Tribunal had decided the classification of 'Martech DHA' vide Final Order No. 40930/2024 dated 23.7.2024. The said order was accepted by the Revenue and

communicated to the respondent vide communication D. No. 202411790A0000014365 dated 12.11.2024. It is however surprising to see that the subsequent order passed by the Principal Commissioner of Customs, on identical facts, following the judgment of this Tribunal for the earlier period, was taken up in review and an appeal filed by REvenue. Para 1.4 and 1.5 of the 'Brief Facts' of the Appeal Memorandum are reproduced below;

> "1.4. In an identical case involving classification of identical goods pertaining to the same noticee, as an appeal was filed by the department in CESTAT vide Case No. Customs/41154/2018 against the Order-in-Appeal No. C.CUS I No. 18/2018 dated 07/02/2018 was pending; the Show Cause Notices dated 11/04/2012 and 04/10/2017 were moved to Call Book on 07/11/2016 and 23/10/2017 respectively.
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> 1.5 The Hon'ble CESTAT vide Final Order No. 40930/2024 dated 23/07/2024 rejected the said department's appeal and held that the goods "Martech DHA" are classifiable under CTI 2916 1590. In view of the same, both the Show Cause Notices were moved out of Call Book on 06/12/2024 for the purpose of adjudication."

4. The appeal has been filed on two grounds, termed as 'Deficiencies noticed in the Order-in-Original'. They are;

1) Non-determination of classification issue.

2) Non-applicability of the case laws relied upon.

4.1 For ground (1) the appeal states that while deciding the case, the Adjudicating Authority has merely referred to the Order of the Tribunal's ruling but has failed to decide the classification of the impugned goods on merits. This is a strange averment. It is admitted in the appeal that what was decided by the Ld. Commissioner was an identical case involving the classification of identical goods pertaining to the same notices, for the previous period, which was kept pending for a decision by the Tribunal. Once the Tribunal has examined and decided the matter and the same has not been appealed against, it becomes final and binding. This has been correctly stated by the Ld., Commissioner at para 12 of the impugned order which is reproduced below;

> "I find that the issue of classification of Martek DHA has had a long and chequered history. Since the department originally ruled that the goods are classifiable under heading 1302, it appears that the importer changed the classification to this heading. However, now the department felt that heading 2106 is the appropriate heading, and so demands were raised on all the consignments classified under heading 1302. Anyhow, the original dispute has attained finality with the CESTAT ruling that the classification of the goods "Martek DHA" falls under CTI 2916 1590) which is outside the ambit of classification under CTI 2106 9099 proposed in the SCN's. Since the correct classification of the goods is under a heading other than that proposed in the show cause notice, in terms of the ruling of the Hon'ble Supreme Court in the case of Warner Hindustan Limited Vs Collector of CE, Hyderabad (1999 (113) ELT 24 (SC), and the ruling of the CESTAT in the case of Sunrise Traders Vs Commissioner of Customs, Mundra (2022 (381) ELT 393 (Tri. Amd.) which was affirmed by Supreme Court in 2022 (382) ELT 23 (SC), I hereby drop the duty demand raised vide SCNs dated 11.04.2012 and 04.10.2017."

4.2 As per the judgment of the Apex Court delivered in the case of **Union of India Vs Kamalakshi Finance Corporation** reported in 1991(55) ELT 433 (SC), there can be no justification for any Assistant Collector or Collector refusing to follow the order of the Appellate Collector or the Appellate Tribunal, as the case may be, even where he may have some reservations on its correctness. He has to follow the order of the higher Appellate Authority. In this case there was no reservations on the correctness of the Tribunals Order as Revenue had communicated the acceptance of the said CESTAT order to the appellant and no appeal has been shown to have been filed against our order, before the Hon'ble Supreme Court by either of the parties.

4.3 The issue of classification of 'Martech DHA' on identical set of facts has hence become final. The appellant cannot be made to face the same kind of litigation twice over the same set of facts, because such a process would be contrary to considerations of fair play and justice. Principles of constructive res judicata would hence apply. It was held by the Hon'ble Supreme Court in '**Dr. Subramanian Swamy Vs State of Tamil Nadu & Ors**' – [2014] 1 SCR 308, as under;

> "23. The scope of application of doctrine of res judicata is in question. The literal meaning of "res" is "everything that may form an object of rights and includes an object, subject-matter or status" and "res judicata" literally means "a matter adjudged a thing judicially acted upon or decided; a thing or matter settled by judgments". "Res judicata pro veritate accipitur" is the full maxim which has, over the years, shrunk to mere "res judicata", which means that res judicata is accepted for truth.
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> 24. The doctrine contains the rule of conclusiveness of the judgment which is based partly on the maxim of Roman jurisprudence "interest reipublicae ut sit finis litium" (it concerns the State that there be an end to law suits) and partly on the maxim "nemo debet bis vexari pro uno et eadem causa" (no man should be vexed twice over for the same cause). <u>Even an erroneous decision on a question of law attracts the doctrine of res judicata between the parties to it. The correctness or otherwise of a judicial decision has no bearing upon the question whether or not it operates as res judicata.</u> (Vide: Shah Shivraj Gopalji v. ED-, Appakadh Ayiassa Bi & Ors., AIR 1949 PC 302; and Mohanlal Goenka v. Benoy Kishna Mukherjee & Ors., AIR 1953 SC 65). [Emphasis added]

5. The second ground taken by Revenue in its appeal is the non-applicability of the case laws relied upon in the impugned order. Once the Ld. Commissioner in his order has gone by the order of the Tribunal which has become final, with no appeal being filed against it a discussion on the relevancy of judgments cited therein becomes redundant.

6. In the light of the discussions above, we dismiss the appeal filed by the Revenue with consequential relief, if any as per law. The appeal is disposed of accordingly.

(Order dictated and pronounced in open court)

(**M. AJIT KUMAR**)
Member (Technical)

(**P. DINESHA**)
Member (Judicial)

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