CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, WEST ZONAL BENCH : AHMEDABAD

REGIONAL BENCH - COURT NO. 3

CUSTOMS Appeal No. 12111 of 2018-DB
MISC Application No. :-**C/MISC/10976/2018**

[Arising out of Order-in-Original/Appeal No AHM-CUSTM-000-COM-007-18-19 dated 25.04.2018 passed by Principle Commissioner Customs, Excise and Service Tax-AHMEDABAD]

Gtpl Hathway Limited .... **Appellant**
(earlier Known As Gujarat Telelink Pvt Ltd),
Gtpl House, F.P. No. 50, Opp. Armeida, Nr. Pakwan
Crossroad, Sindhu Bhavan Road, Bodakdev,
AHMEDABAD, GUJARAT-380059

VERSUS

Commissioner of Customs, Ahmedabad .... **Respondent**
Custom House, Near All India Radio Navrangpura,
Ahmedabad, Gujarat

WITH

CUSTOMS Appeal No. 12323 of 2018-DB

[Arising out of Order-in-Original/Appeal No AHM-CUSTM-000-COM-007-18-19 dated 25.04.2018 passed by Principle Commissioner Customs, Excise and Service Tax-AHMEDABAD]

Commissioner of Customs, Ahmedabad .... **Appellant**
Custom House, Near All India Radio Navrangpura,
Ahmedabad, Gujarat

VERSUS

Gujarat Telelink Pvt. Limited .... **Respondent**
F.P. No. 50, Opp. Armeida, Nr. Pakwan Crossroad,
Sindhu Bhavan Road, Bodakdev,
AHMEDABAD, GUJARAT-380059

APPEARANCE :

Shri Amal Dave, Advocate for the Appellant-Assessee
Shri Himanshu P Shrimali, Superintendent (AR) for the Respondent-Revenue

CORAM: HON'BLE MR. SOMESH ARORA, MEMBER (JUDICIAL)
HON'BLE MR. C.L. MAHAR, MEMBER (TECHNICAL)

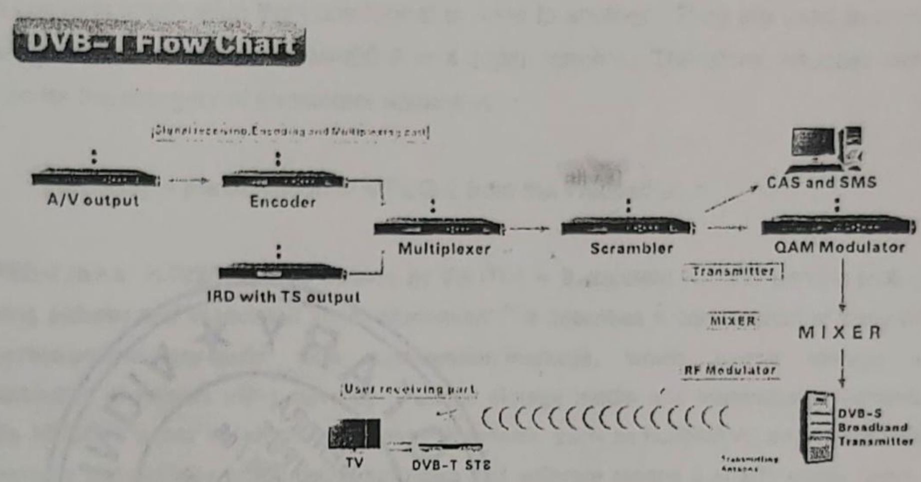
DATE OF HEARING /DECISION: 13.09.2023

FINAL ORDER NO. 12159-12160/2023

SOMESH ARORA :

The dispute in the instant case relates to impugned product which has been described in the Bills of Entry as 'Encoder Model No. ULBA-Magic-8100A" by the appellant. The equipment, as per the learned Advocate is used in Cable TV network as an electronic device (which includes hardware and its associated software) for decoding encrypted signals and helps in transmission data to the customers. The product use, as described by the learned Adjudicating Authority in Para 15 by a flow chart, is as under:-

15 It would be appropriate to show a chart of a headend equipment.



16 As can be seen from the above chart, I find that the Encoders are digital headend equipments which helps in transmitting data. It is not in dispute that the importer has imported these digital headend equipment like encoders. Encoders are addressed as COPE/Digital Headend items for the purposes of trading/marketing them.

As per the assessee, during the period of dispute which was March-April 2013, they had classified the product under Chapter heading (CTH) 85176290 which is falling the product description as under:-

Entry	Description	Rate
8517	Telephone sets, including telephones for cellular networks or for other wireless networks; other apparatus for the transmission or reception of voice, images or other data, including apparatus for communication in a wired or wireless network (such as a local or wide area network), other than transmission or reception apparatus of Heading 8443, 8525, 8527 OR 8528	
8517 62	Machines for the reception, conversion and transmission or regeneration of voice, images or other data, including switching and routing apparatus:	Free
8517 62 10	PLCC equipment	Free
8517 62 20	Voice frequency telegraphy	Free

8517 62 30	Modems (modulators-demodulators)	Free
8517 62 40	High Bit Rate digital subscriber line System (HDSL)	Free
8517 62 50	Digital Loop Carrier System (DLC)	Free
8517 62 60	Synchronous Digital Hierarchy System (SDH)	Free
8517 62 70	Multiplexers, multiplexers	Free
8517 62 90	**Others**	**20%**

The department initially proposed reclassification under CTH 85287390 which has the product description as under:-

8528 73 90	Others	20%

However, later on while making appeal, the department has raised the tariff heading 85287100 as an alternate heading. As against this, the assessee has again proposed through Miscellaneous application during appeal CTH 8517 only and rejection of 85287100 also. It was also argued by the advocate for the assessee that the Hon'ble Supreme Court has decided the classification of the similar products under CTH 8525 which relates to transmission apparatus. Therefore, the decision of the Hon'ble Supreme Court if found applicable in the instant case, the product is to be classified under CTH 8525. Learned Advocate for the appellant-assessee further cited the decision in the case of *CC vs. Multi Screen Media Pvt. Limited – 2015 (322) ELT 572 (SC)* in this regard. He submits that decision of the Hon'ble Supreme Court sought to reclassify the similar product as above and also principal Bench of this CESTAT vide its order in the case of *Brigadier R. Deshpande vs. CC, New Delhi – 2018 (363) ELT 572 (Tri Del.)* has followed the decision of the Hon'ble Supreme Court by classification of the same product in Tariff Head 85.25.

2. Learned AR presses for the grounds of appeal as indicated in appeal memo to justify new classification sought by the department.

3. We have gone through the rival submissions and find that the impugned product which is used in transmission of signals through cable network is disputed for classification. However, we find that it is not coming out what is the product description and its usage and its akinness or otherwise to other products decided by Hon'ble Supreme Court and coordinate bench of Delhi concurring with Apex Court decision, in the order or from the grounds of appeal as raised by the department. Again, we find that vital decisions have been made after the above classification of the product as stated by the appellant which indicate the product may merit classification under a different tariff head depending upon akinness, as was done by a W.C.O. ruling made available. Further, the ruling in the subsequent decisions, HSN Notes, WCO etc. have also not been considered in so far as the impugned decision is concerned. WCO ruling to the extent HSN is aligned has a lot of persuasive value, though cannot be in conflict with Apex Court decision. Therefore, we are inclined to remit the matter back to the Commissioner to go through the exact nature of the product and rulings given by the Hon'ble Supreme Court as well as W.C.O., after ascertaining the detailed nature of the product. Matter is thus allowed by way of remand with directions that while considering the law of the land and various alternate classifications the Commissioner will definitely give weightage to the fact that disputed matter is of legal interpretation and therefore the extended period cannot be invoked as per settled law. An alternate classification to give effect to law of land propounded by SC though is not barred by us but same if found to be beyond those proposed in show cause notice would amount to fresh proceedings with all legal effects.

3. Both the appeals are allowed by way of remand in above terms. Miscellaneous application filed for allowing the additional grounds pertains to legal material is also allowed and disposed of.

4. Appeals disposed of in above terms.

(Dictated pronounced in the open court)

(Somesh Arora)
Member (Judicial)

(C L Mahar)
Member (Technical)

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