Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench At Ahmedabad

REGIONAL BENCH-COURT NO. 3

Customs Appeal No. 12324 of 2018 - DB

(Arising out of OIO-AHM-CUSTM-000-COM-008-18-19 dated 25/04/2018 passed by Commissioner of Central Excise, Customs and Service Tax-AHMEDABAD)

C.C.-Ahmedabad **........Appellant**
Custom House,
Near All India Radio Navrangpura,
Ahmedabad, Gujarat

VERSUS

Jpr Channel **......Respondent**
301, Ganesh Niwas,
Opp. Vallabh Vidhyalaya, Sion West,
Mumbai, Maharashtra

With

Customs Appeal No. 10624 of 2019 - DB

(Arising out of OIO-AHM-CUSTM-000-COM-008-18-19 dated 25/04/2018 passed by Commissioner of Central Excise, Customs and Service Tax-AHMEDABAD)

Jpr Channel **........Appellant**
Through Its Proprietor Mr. Raja Bakkiyanathan Nadar
Having Office At 301 Ganesh Nivas Iopp Vallabh Vidhyalaya Sion W Mumbai, Mumbai

VERSUS

C.C.-Ahmedabad **......Respondent**
Custom House,
Near All India Radio Navrangpura,
Ahmedabad, Gujarat

APPEARANCE:
Shri H D Dave Advocate for the Appellant- Assessee
Shri Rajesh R Kurup, Superintendent (AR) for the Respondent- Revenue

CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR
HON'BLE MEMBER (TECHNICAL), MR. RAJU

Final Order No. 10255-10256/2024

DATE OF HEARING: 13.10.2023
DATE OF DECISION: 29.01.2024

RAMESH NAIR

The issue involved in the present case is that whether the imported goods namely “Encoder/Multiplexer under different Model” is classifiable under Tariff Heading No. 85 17 6290 as declared by appellant or under 85 28 of Customs Tariff Act, 1975, as claimed by the revenue and whether the appellant are entitled for the consequential exemption Notification No. 24/2005-CUS (Sr.No.13) dated 01.03.2005. Against the common impugned order, the assesse as well as revenue both have filed the appeals.

2. Shri H. D Dave Learned Counsel appearing on behalf of the appellant at the outset submits that the very same issue in the appellants own case has been decided by this Tribunal vide final order No. A/12699/2018 dated 03.12.2018. Therefore, the issue is no longer res-integra. He submits that though the revenue has filed the appeal/SLP before Hon'ble Supreme Court against this Tribunal's order dated 03.12.2018 however, no stay was granted.

3. Shri R.R Kurup Learned Superintended (AR), appearing on behalf of the revenue reiterates the finding of the impugned order.

4. On careful consideration of the submission made by both the sides and perusal of record, we find that as regard the assessee's appeal, the dispute relates to the classification of the goods Encoder/Multiplexer under different Model whether the same classifiable is under 85 17 6290 or 85 28. This issue in the appellant's own case has been decided by this Tribunal vide final order No. A/12699/2018 dated 03.12.2018, which is reproduced below:-

> *"6.We have heard and carefully considered the submissions made by both the sides and perused the records. We find that the dispute pertains to classification of the goods, viz. encoders, modulators and multiplexers, which are for conversion of voice, images and other data prior to its transmission for various networks. The rival entries involved in this case are 85.17 and 85.28, which reads, as under:-*
>
> > *" 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 are networks), other than transmission or reception apparatus of heading 84.43, 85.25, 85.27 or 85.28.

- Other apparatus for transmission or reception of voice, images or other data, including apparatus for communication in a wired or wireless (such as local or wide area network)

8517.61 - Base stations

8517.62 - Machines for the reception, conversion and transmission of voice, images or other data, including switching and routing apparatus.

8517.69 - Other:

The relevant heading / description in the CTH to 8528 reads as under:

"85.28 - Monitors and projectors, not incorporating television reception apparatus; reception apparatus for television, whether or not incorporating radio-broadcast receivers or sound or video recording or reproducing apparatus.

- Reception apparatus for television, whether or not incorporating radio-broadcast receivers or sound or video recording or reproducing apparatus.

8528.71 - Not designed to incorporate a video display or screen

8528.72- Other, colour

8528.73 - Other, monochrome"

The Revenue has sought to classify the impugned products under 85.28 mainly on the ground that these are parts and apparatus for transmission of signals for television transmission. We find that the CTH 85.17 covers "other apparatus for the transmission or reception of voice, images or other data, including apparatus for communication in wired or wireless network (such as local or wide network) other than transmission or reception apparatus of heading 84.43, 85.25, 85.27 or 85.28". In 85.17 6270, the items multiplex, statistical multiplex and under sub-heading 8517 6290, other items are covered. The heading 8528 7390, i.e. "other" is covered by 8528, which covers reception apparatus for television, whether or not incorporating radio broadcast receivers or sound or video recording or re-producing apparatus. In the instant case, it is an undisputed fact that the items in question, i.e. Encoders, Multiplexers, Modulators, are having individual functions. We find that each of these products is having independent functions and are used for various purposes for transmission of data. The adjudicating authority has classified the above items by terming the same as part of head-end facility used in cable television as master facility for receiving television signals for processing and distribution over a cable television system. The *adjudicating authority thus held that the goods would be classifiable under Chapter 8528. The Appellants are selling these goods not only to TV Cable operators but also to other users such as Space Centre Application (Space & Satellite related applications), Infosys (Information Technology & Software industry) , Hathway Cable Datacom (Cable & Broadband Network service provider), Broadband (Internet service provider). We find that these products are used for conversion and compression (coding) used for conversion of signals as apparatus for transmission at transmission site for both wired and wireless networks (WAN & LAN). The goods are not used at subscribers end as reception apparatus for television. The adjudicating authority has over-looked this aspect while passing the impugned order. Further, we find that the same goods have been imported into India by others classifying the same under CTH 8517. The goods classified under CTH 8517 have functions as enumerated above, whereas the goods falling under Chapter 8528 are only of reception apparatus with no functions of transmission. It is only on this basis that the impugned goods would merit classification under CTH 8517. We find that even in case of Transmission producing equipment sub-system, the Tribunal in the case of Dejero Logix Pvt Ltd Vs CCU, New Delhi, 2014 (303) ELT 565 Tri, while dealing with the same controversy held as under:-*

> "*Para 5. We have considered the submissions from both the sides and perused the records.*
>
> *Para 6. The undisputed facts are that the equipments in question can be used for transmission of audio/video signals recorded by a field reporter to the studio through GSM/3G mobile network. In this regard, the findings of the Commissioner in Para 3.5 of the impugned order are reproduced below :-*
>
> "*3.5 I also find that the impugned goods are specially for transmission purpose and not for one to one communication. The device is essentially a standalone piece which is between frontend (camera, etc.,) and back end (studio). Essentially the equipment is meant for transmission of live video between the field reporter and studio. The signal is captured by devices such as cameras (not part of this equipment), which get relayed to the studio with this device with the help of GSM Cellular network. At the other end, the studio (not part of this equipment) processes the signals and broadcasts to the audience.*"
>
> *Para 6.1 From the above findings of the Commissioner in the impugned order, it is clear that the equipment, in question, is merely for transmission of audio and video signals by a reporter from some place to his studio through GSM cellular network and it is from the studio that the audio/video recording is*

broadcasted to the public. This fact is clear from the technical literature also, according to which this equipment gives a person the flexibility to either broadcast Live programme to the studio, or to Live + broadcast server or Live + Streaming server.

Para 7. The goods covered under 8525 50 10 and 8525 50 20 are "Radio broadcast treatment" and "TV broadcast transmitter" respectively. Every transmitter is not a broadcast transmitter for public reception. The equipment which can merely transmit some audio or video signals from one place to another place and is not capable of transmitting the signals which can be received by general public cannot be called broadcast equipment. What is covered under Heading No. 8525 50 10 and 8525 50 20 are the transmitter which can transmit radio or TV programme intended for reception by public and it is such equipment which are restricted for import. Since the equipment imported cannot transmit the signals for reception by general public but is meant only for transmitting the audio or video signals by a reporter from some place to his studio from where the signals are broadcasted for general public, the equipment, in question, cannot be classified under Heading No. 8525 50 20 and hence, the same would not be restricted for import. The impugned order, therefore, is not sustainable. The same is set aside. The appeal is allowed.

The Hon'ble Supreme Court in the case of Commr. of Customs Vs Multi Screen Media , 2015 (322) ELT 421 SC in the similar set of controversy has held as under :-

Para 2. It is not in dispute that the "business satellite receivers" of the respondent has the transmitting as well as reception functions. It is for this reason that the assessee's contention is the goods fall within the description "transmission apparatus incorporating reception apparatus". Mr. Adhyaru, learned senior counsel appearing for the Revenue on the other hand contends that it is the essential character or per-dominant character of the apparatus which needs to be looked into and in the present case the per-dominant character of the satellite receiver is to receive the signals and then transmit. He has taken us through the product manual of the respondent from which he has tried to demonstrate that primary function of the goods in question is to receive the signals.

Para 3. We are not in agreement with the aforesaid submission of the learned counsel for the Revenue. A reading of Entry 85.28, under which the Revenue wants the product to be included, would show that it pertains to only *those apparatus which have the function of receiving the signals only and that they are reception apparatus. The moment particular apparatus has transmission function as well that would be excluded from Chapter Heading 85.28. On the other hand Chapter Heading 85.25 deals with transmission apparatus. Here under entry 8525.20 what is clarified that even if the apparatus which are transmitting signals have the additional functions of reception of signals as well, such goods will still be classified 8525.20. We are therefore of the opinion that the Tribunal has rightly classified the goods of the respondent under 8525.20.*

Para 4. The Commissioner, who had taken the contrary view, went by Rule 2(b), that is the classification of combination substance, and on that basis he held that since the goods were classifiable under two or more headings, classification shall be effected as per the said Rule. This itself is incorrect having regard to the fact that entry 85.28 deals only with reception apparatus with no function as transmission apparatus.

Para 5. This appeal is accordingly dismissed.

Para 6. The excess duty paid by the respondent, if any, shall be refunded in accordance with law."

Similarly, in case of CC (Import), Air Cargo Complex, Mumbai Vs. Indelox Services Pvt. Ltd - 2017 (357) ELT 946 (Tri, Mum), the Tribunal has held that if the device is having function of transmitting data through network from one server to other and has function of security for the data transmitted, the same would fall under CTH 8517. The relevant para of the said order held, as under:-

"Para 4. - We have carefully considered the submissions made by both sides. We find that the learned Commissioner (Appeals) has classified the impugned goods under CTH 8517 on the following findings:-

"5. Considered the submissions. The appellant is aggrieved by the classification of the impugned goods under CTH 8543 instead of CTH 8517 as claimed by them. As per the installation manual (page 9) the goods "McAfee Web Gateway ensures comprehensive security for networks. It protects networks against threats arising from the webs, such as viruses and other malware, inappropriate content, data leaks, and related issues. This appliance is installed as a gateway that connects a network to the web. Following the web security rules, it filters the requests that users send to the web from within the network. Responses sent back from the web and embedded objects sent with requests or responses

are also filtered. Malicious and inappropriate content is blocked, while useful content is allowed to pass through." *Therefore impugned goods act as a security device in a network and it protects the network from external malicious threats. It is not the case of the department that the impugned goods can function on its own without being connected to any network. Therefore the impugned goods are specially designed with a special purpose for use in a network and it cannot be for general use. Further Rule 3 of the Classification Rules states that the most specific description shall be preferred to headings providing a more general description. CTH 8517 covers goods such as 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 84.43, 85.25, 85.27 or 85.28. Whereas the explanatory notes to the HSN 2012 of Chapter 8517 reads as*

"(G)- Other communication apparatus.

This group includes apparatus which allows for the connection to a wired or wireless communication network or the transmission or reception of speech or other sounds, images or other data within such a network. Communication networks include, inter alia, carrier-current line systems, digital-line systems and combinations thereof. They may be con figured, for example, as public switched telephone networks, Local Area Networks (LAN); Metropolitan Area Networks (MAN) and Wide Area Networks (WAN), whether proprietary or open architecture.

This group includes:

(1) Network interface cards (e.g., Ethernet interface cards).

(2) Modems (combined modulators-demodulators).

(3) Routers, bridges, hubs, repeaters and channel to channel adaptors,

(4) Multiplexers and related line equipment (e.g., transmitters, receivers or electro-optical converters).

(5) Codecs (data compressors/decompressors) which have the capability of transmission and reception of digital information.

(6) Pulse to tone converters which convert pulse dialed signals to tone signals."

Therefore when network interface is covered under the CTH 8517, the machine comprising of similar cards is also covered under CTH 8517. The impugned goods being an interface between the web and network is rightly classifiable under 8517. Also in the matter of Commissioner of Customs, Bangalore v. Cisco Systems (India) Pvt. Ltd. - 2007 (210) E.L.T. 674 (Tri.-Bang.), I find that the classification of the network security device stands decided by the Hon'ble Tribunal under CTH 8517. In the impugned goods being of similar nature are classifiable under CTH 8517. As far as past clearance of similar goods is concerned no demand notice seems to have issued by the department, till date."

From the above finding, it is observed that the learned Commissioner (Appeals) has contended that the product in question is covered under the Network Interface Card, therefore, it was classifiable under CTH 8517.

Para 5. On the submissions of the learned Counsel, based on various authorities, we find that the product is a Gateway Security Device. It has the function of transmitting the data through Network from one server to other and it has function of security for the data transmitted. Since the product has feature of transmission of data, it merits classification under the communication apparatus i.e. under CTH 8517. Heading 8543 proposed by the Revenue is a residuary entry. Since as per the application and function of the product, it is used for communication and transmission of the data. It finds place under the specific entry i.e. under 8517. Therefore, it cannot be classified under residuary entry, which is meant for a product not elsewhere specified. As per the finding of the learned Commissioner (Appeals) and our above discussion, we are of the view that subject goods is correctly classifiable under CTH 8517 and not under CTH 8543. Therefore, the impugned order is upheld. The appeal is dismissed. The Cross-Objection filed by the respondent also stands disposed of."

7. From the above judgments, it is clear that as the impugned goods are having the function of transmission of data and other functions and hence the same would merit classification under CTH 8517. Accordingly, we hold that the goods are classifiable under CTH 8517. We therefore set aside the impugned order and allow the appeal with consequential reliefs, if any.

4.1 From the above decision, it can be seen that this Tribunal has decided the classification of the goods in question under CTH 85 17 6290. Following the above decision in the present appeal also appellant's goods are correctly classifiable under CTH 85 17 6290.

5. As regard the revenue's appeal, since this Tribunal has already decided the classification under CTH 85 17 6290, the Revenue's appeal does not sustain. Moreover, in the revenue's appeal, the revenue has proposed to classify the goods under CTH 85 28 7100. However, in the show cause notice, it was proposed to classify under CTH 85 28 7390. Therefore, the new grounds in the appeal cannot be made which is beyond the scope of show cause notice. On this ground also revenue's appeal is not maintainable.

6. Accordingly, the impugned order is set aside. Assessee's appeal is allowed and revenue's appeal is dismissed.

(Pronounced in the open court on 29.01.2024)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

Raksha