CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
<u>BANGALORE</u>

REGIONAL BENCH - COURT NO. 1

Customs Appeal No. 2661 of 2010

(Arising out of Order-in-Appeal No.162/2010 dated 28.8.2010 passed by the Commissioner of Customs, Bangalore.)

M/s. ABB Limited
Plot No.5 & 6, II Phase,
P. G. No.5806,
Peenya Industrial Area,
Bangalore.

Appellant(s)

Versus

The Commissioner of Customs
Air Cargo Complex
Bangalore – 560 001.

Respondent(s)

AND

Customs Appeal No.20146 of 2014

(Arising out of Order-in-Appeal No.403/2013 CUS. (B) dated 4.11.2013 *passed by the Commissioner of Customs, Bangalore.)*

M/s. ABB Limited
Sy. No.88/3 & 88/4, Basavanahalli Village,
Kasaba Hobli, Nelamangala Taluk,
Bangalore – 561 403.

Appellant(s)

Versus

The Commissioner of Customs (Appeals)
C.R. Building,
P.B. No.5400, Queens Road,
Bangalore – 560 001.

Respondent(s)

<u>Appearance:</u>

Ms. Neetu James, Advocate — For the Appellant

Mr. K. A. Jathin, AR — For the Respondent

CORAM:

HON'BLE DR. D.M. MISRA, MEMBER (JUDICIAL)
HON'BLE MRS. R. BHAGYA DEVI, MEMBER (TECHNICAL)

Final Order No. 21151-21152 /2023

Date of Hearing: 01.06.2023
Date of Decision: 20.10.2023

Per : R. BHAGYA DEVI

M/s. ABB Limited, the appellants have filed two appeals against the respective impugned orders. Since the issue involved in both these appeals are common, they are taken up together for disposal. The details are as under:

Appeal No.	Show-cause Notice	Period	Order-in-Original	Order-in-Appeal
C/2661/2010		September 2009	No.286/2009 dt. 13.10.2009	No.162/2010 dt.28.8.2010
C/20146/2014	22.2.2010	August 2009 to September 2009	No.246/2011 dt. 20.11.2011	No.403/2013 dt.4.11.2013

2. The Appellants, M/s ABB Limited, are engaged in the manufacture of Automation Products, Distribution Control Systems, Control and Relay Panels, Air Circuit Breakers (ACBs), Low Voltage Products etc. They imported ‘Frequency Converter’ (variable speed drive) from M/s. ABB Finland vide 14 Bills of Entry from classifying them under Chapter Heading 9032 89 90. The original and the appellate authorities rejected the classification of the imported goods under Chapter Heading 9032 8990 as claimed by the Appellants and re-classified the same under Chapter Heading 8504 4010. Aggrieved by these orders, the appellant is in appeal.

3. On behalf of the appellant the counsel made the following submissions:

a) The item imported Frequency converter/Variable-Frequency Drive (VFD) is a system for controlling the rotational speed of an AC electric motor by controlling the frequency of the electrical power supplied to the motor. The frequency converters are not mere electric convertors but also carry out the function of motor control and are widely used in industries to control the speed of motor automatically coupled with energy saving feature.

b) The VFD senses the requirement of pressure through pressure transducer and vary the speed of the motor to keep pressure constant in the storage tank. During certain timings when the pressure requirement is low, the VFD will decrease the motor speed to keep the pressure constant at the air delivery pipe of the compressor. Whereas, when the air pressure demand increases, VFD will automatically increase the motor speed to keep the air pressure constant in order to meet pressure demand. Thus, it ensures motor control of the machinery to ensure optimum performance. Variable-Frequency drives are also known as Adjustable-Frequency Drives (AFD), Variable-Speed Drives (VSD), AC drives, micro drives or inverter drives.

c) The frequency converter has two components; one is the rectifier and other is an inverter. The rectifier receives the AC voltage and converts it to Direct Current (DC) voltage. A DC bus inside the VSD functions as a ‘parking lot’ for the DC voltage.

The DC bus energizes the inverter, which converts it back to AC voltage again. The inverter can be controlled to produce an output frequency of the proper value for the desired motor shaft speed. When the capacity of the drive increases, the drives are split into two components namely, the Supply Unit (Converter) and the Drive Unit (Inverter), by adding the inverters in parallel.

d) The frequency converter (variable speed drive) is made up of several different units namely, the diode supply unit, IGBT Supply unit, Thyristor supply unit, dynamic breaking unit and control unit, which are used for control, monitoring and measurement purposes. The system control program provides solutions to drive applications and it *inter alia* facilitates motor fan control with diagnostics and the drive is pre-programmed to provide protection by maintaining ambient temperature, avoiding DC over-voltage, DC under voltage, controlling drive temperature, over current, power limits etc. One of the key applications is the motion control program. The intelligent integrated motor control functions eliminate the need for an external motion controller. It is not always necessary to have a separate PLC for drive and process control. The motion control has four operating modes namely, speed, torque, positioning, and synchronization and provides for switching online between two selected modes.

e) Referring to Chapter heading 8504 40 10 of the Customs Tariff Act, 1975, it is submitted that it covers Electric Inverters and referring to the HSN Explanatory notes states that Chapter

Heading 85.04 refers to 'Static Converters', which are only simple inverters which merely does the function of converting the Direct Current into Alternating Current. Referring to the technical literature as discussed above, it is submitted that the ‘Frequency Converter’ is not a mere inverter which converts the DC current into AC current, but regulates the frequency of the current into a variable speed and thereby controls the motor speed and torque thereby facilitating motion control. It is submitted that Note 1(m) of Section XVI to Customs Tariff specifically excludes goods which are classifiable under Chapter Heading 90 of the Customs Tariff Act, 1975 from being classified under Section XVI (which includes chapter 85).

4. The learned counsel, therefore, submits that the impugned goods are covered under Chapter 9032 by virtue of Note 1(m) to Section XVI since the goods get excluded from Section XVI itself. In this regard, reliance is placed on the Explanatory notes to Refer to HSN EN to 8504 which excludes 9032 provides that Automatic voltage regulators are to be classified under Heading 9032. Instead, it is rightly classifiable under Chapter Heading 9032 89 90 of the Customs Tariff Act, 1975 as chapter heading 9032 covers “Automatic Regulating or Controlling Instruments and Apparatus” and in terms of Note 7(b) to CTH 9032, the said Heading applies to ‘automatic regulators of electrical quantities and instruments or apparatus for automatically controlling non-electrical quantities the operation of which depends on an electrical phenomenon varying according to the factor to be controlled’. The automatic regulators of this heading include an

automatic regulator which consists of a measuring device, an electrical control device and a starting, stopping or operating device, whether assembled together as a single entity or in accordance with Note 3 to Chapter 90 as a functional unit. The electrical control device compares the measured value with the desired value and gives a signal generally in the form of a modulated current. Electrical control devices even if they do not conform to the definition of Note 7(b) are to be classified in 9032 as incomplete automatically controlling instruments or apparatus. The electronic regulators function on a strict electrical principle and not electro mechanically. The regulators are used not only for electrical quantities such as voltage, amperage, frequency, and power but also for other quantities such as revolutions per minute, torque etc.

5. The learned counsel also rely on the Circular No.45/95-Cus dated 19.4.1995 issued by the CBEC whereby it was held that the product 'Supermizer-SMX' is classifiable under 90.32 and not 85.04 on the ground that the Supermizer besides having the ability to function as static converter also contained measuring devices, control devices and operating devices and also places her reliance on the decision in the case of **CC, Chennai Vs Kone Elevator India ltd. reported in 2002 (146) E.L.T. 369 (Tri. - Chennai)** wherein it was held that a product which is not a mere inverter and apart from converting DC to AC and vice versa is also capable of automatically controlling certain parameters/ electrical quantities, is rightly classifiable under CTH 9032 of the Customs Tariff Act, 1975. Reliance is also placed on the following

decisions wherein it was held that where the goods are not mere converters but help in controlling motor speed, the same is not classifiable under CTH 8504.

(i) Collector of Customs, Madras v. Widia (I) Ltd., reported in 1994 (71) E.L.T. 193 (Tribunal).

(ii) Collector of Customs, Madras v. Kwality Biscuits Ltd., reported in 1994 (71) E.L.T. 1035 (Tribunal).

6. It is further submitted that the World Customs Organisation (WCO) ruling was specifically in relation to the frequency converter and the frequency converter which was considered by the WCO did not have the control functions and it is for this reason the goods were classified as inverters under 8504 while the impugned goods having control functions including programmable control functions are rightly classifiable under CTH 9032. They also claim that based on the decision in the case **Commissioner of Central Excise and Customs v. M/s. Reliance Infrastructure Ltd.** with **Final Order No. A/30026/2022**, the supplier’s classification is not binding on the importer. It is further claimed that the Order-in-Original has been passed on grounds not set out in the show-cause notice. In the absence of specific charges set out in the demand notice, it is stated that the demand notice was vague and therefore, the Order-in-Original passed on the basis of the demand notice in question is clearly violative of the principles of natural justice. In this regard, the Appellant places reliance on the decision of the Supreme Court in the case of ***Commr. of Customs, Mumbai v Toyo Engineering India Ltd., 2006 (201) ELT 513 (SC)*** wherein the Apex Court held that when certain grounds are not

mentioned in the show-cause notice, the department cannot travel beyond the show cause notice and invoke such grounds at a later stage. Similarly, the Apex Court in ***Commissioner of C. Ex. v. Brindavan Beverages (P.) Ltd., 2007 (213) E.L.T. 487 (S.C.)*** held that the Show Cause Notice is the foundation on which the department has to build up its case and that all the allegations and evidence must find place in the Show Cause Notice.

7. The Authorised Representative on behalf of the Revenue referring to the order of the original authority submits that based on the Section and Chapter Notes to Chapter 8504 and 9032, the authorities were right in classifying the said products under Chapter 8504. He also refers to the classification of the said product by the WCO i.e., classification of standard frequency converters in Chapter Heading 8504 40. It is further submitted that based on the technical literature produced by the appellant, the item imported is as per the specifications referred under Chapter 8504 and the supplier has classified the said product under Chapter Heading 8504 and hence, the appellant cannot change the classification. It is argued that the said item is being imported at other Custom Houses where it is classified under Chapter Heading 8504 and therefore, based on the Chapter Notes, Section Notes and the classification done by World Customs Organisation, all go to prove that the item frequency converters are rightly transferable under Chapter Heading 8504. He also relies on the judgement in the case of **Larsen and Toubro Ltd. vs. CCE, Mumbai-II: 2005 (189) ELT 439 (Tri.-**

Mumbai) to state that the item is classifiable under Chapter 85 and not under Chapter 9032 as claimed by the appellant.

8. Heard both sides. The issue to be decided is whether the imported goods "Frequency Converter (Variable Speed Drive)" is classifiable under Chapter Heading 9032 89 90 or under 8504 40 10 of the Customs Tariff Act, 1975? We hereby reproduce the competing chapter headings:

9032	Automatic regulating or controlling instruments and apparatus			
9032 89 90	Other	u	7.5%	-

8504	Electrical transformers, static converters (for example, rectifier) and inductors			
8504 40	Static converters:	u	10%	-
8504 40 10	--- Electric inverter ---Rectifier			

9. The Learned counsel has stated that the show-cause notice is not a valid notice since no grounds were alleged in the notice for reclassification of the said product in question. The original authority vide Order-in-Original No.286/2009 dated 13.10.2009 has clearly stated that a query was raised for manufacturer's catalogue in substantiation of the classification claimed by the appellant. It is also stated that on scrutiny of import documents and the invoice, it is found that the said goods have been described as 'frequency converter' and the Customs Tariff Heading indicated by the foreign supplier in the invoice is 8504. Based on these observations, a show-cause notice was issued classifying the 'frequency converters' under Chapter Heading 8504 and it is also noted that there is no reply

to the show-cause notice though the personal hearing was attended by the appellant. The second show-cause notice dated 22.2.2010 was a recurring show-cause notice, therefore, no grounds were specified in that show-cause notice, hence, the claim by the appellant that the show-cause notice is an invalid notice is baseless since the grounds are already mentioned in the first show-cause notice.

10. The item imported "Frequency converter" as per their own literature is described as an attractive solution to the challenge of linking asynchronous electric systems, or transforming utility grade energy into the frequency and voltage required for the particular application. Whenever the grid frequency does not match the customer's requirements, ABB's static frequency converters provide an economic solution. AC drives are also referred to as frequency converters, variable speed drives or variable frequency drives. Frequency converter refers to a device used to adjust the frequency of alternating current. Frequency converters are a central component in variable-speed drives to control the speed, torque or power on the shaft of an electric motor by adjusting the frequency and voltage of the electricity powering the machine. Frequency converters are used to control the rotational speed of wind turbines to stabilize the frequency of the electricity they produce. Frequency converters are also used to connect electrical systems operating at different frequencies. These drives are used in as metals, cement, mining, pulp and paper, printing, Chemical industries etc.

11. Now let's examine the relevant Chapter Headings and the Chapter Notes for a better understanding of the issue of classification.

> **"Section-XVI Chapter-85**
>
> **Electrical machinery and equipment and parts thereof; sound recorders and reproducers, television image and sound recorders and reproducers, and parts and accessories of such articles ------**
>
> 2. Headings 8501 to 8504 do not apply to goods described in headings 8511, 8512, 8540, 8541 or 8542. However, metal tank mercury arc rectifiers remain classified in heading 8504.
>
> 8504 Electrical Transformers, Static Converters (For Example, Rectifiers) and Inductors
>
> 8504 40 - Static converters:
>
> **8504 40 10 --- Electric inverter**
>
> **HSN Explanatory notes of Electric static Convertors**
>
> The apparatus of this group are used to convert electrical energy in order to adapt it for further use. They incorporate converting elements (e.g. valves) of different types. They may also incorporate various auxiliary devices (e.g. transformers, induction coils, resistors, command regulators, etc.) their operation is based on the principle that the converting elements act alternately as conductors and non-conductors. The fact that these apparatus often incorporate auxiliary circuits to regulate the voltage of the emerging current does not affect their classification in this group, nor does the fact that they are sometimes referred to as voltage or current regulators.
> This group includes:
>
> .....
>
> (B) Invertors
>
> (C) Alterating current converters and cycle converters by which alternating current (single or polyphase) is converted to a different frequency or voltage.
>
> (D) Direct current converters by which direct current is converted to a different voltage."

From the submissions of the learned counsel, the item in question the frequency converter has two components; one is the rectifier and other an inverter. The rectifier receives the AC voltage and converts it to direct current ('DC') voltage. A DC bus inside the VSD functions as a 'parking lot' for the DC voltage. The DC bus energizes the inverter, which converts it back to AC voltage again. The inverter can be controlled to produce an output frequency of the proper value for the desired motor shaft speed. When the capacity of the Drive increases, the drives are split into two components namely, the Supply Unit (Converter) and the Drive Unit (Inverter), by adding the inverters in parallel. These drives are used in Industries such as metals, cement, mining, pulp and paper, printing, Chemical industries etc. The above facts are not in dispute but the appellants only claim is that the frequency inverter is not a mere inverter which converts the DC current into AC current but it further regulates the frequency of the current into a variable speed and thereby controls the motor speed and thereby facilitates motion control. Therefore, they are not merely converters, hence, not to be classified under Chapter Heading 8504. Based on these submissions, its very clear and categorical that these drives primary function as conversion of the current from DC to AC and also functions as inverters. The above HSN explanatory notes clearly define what an electric convertor is all about and based on the technical literature discussed above, they rightly fall into this description.

12. As seen from above, Chapter 85 includes all machinery and 8504 specifically includes electric inverter and the drives which are meant for the industries specified above all fall under either Chapter 84 or 85 and they have nothing to do with Chapter 9032 which includes "Optical, Photographic, Cinematographic, Measuring, Checking, Precision, Medical or Surgical Instruments and Apparatus; Clocks and Watches; Musical Instruments'.

13. Now let's examine Chapter 90 /9032

CHAPTER 90

Optical, photographic, cinematographic, measuring, checking, precision, medical or surgical instruments and apparatus; parts and accessories thereof

(a) parts and accessories which are goods included in any of the headings of this Chapter or of Chapter 84, 85 or 91 (other than heading 8487, 8548 or 9033) are in all cases to be classified in their respective headings;

(b) other parts and accessories, if suitable for use solely or principally with a particular kind of machine, instrument or apparatus, or with a number of machines, instruments or apparatus of the same heading (including a machine, instrument or apparatus of heading 9010, 9013 or 9031) are to be classified with the machines, instruments or apparatus of that kind;

"9032 Automatic Regulating or Controlling Instruments and Apparatus
9032 89 -- Other :

9032 89 10 --- Electronic automatic regulators

Heading 9032 applies only to:

(a) instruments and apparatus for automatically controlling the flow, level, pressure or other variables of liquids or gases, or for automatically controlling temperature, whether or not their operation depends on an electrical phenomenon which varies according to the factor to be automatically controlled, which are designed to bring this factor to, and maintain it at, a desired value, stabilized against disturbances, by constantly or periodically measuring its actual value; and

(b) automatic regulators of electrical quantities, and instruments or apparatus for automatically controlling non-electrical quantities the operation of which depends on an electrical phenomenon varying according to the factor to be controlled, which are designed to bring this factor to, and maintain it at, a desired value, stabilized against disturbances, by constantly or periodically measuring its actual value."

14. As rightly observed by the Commissioner (A) in the impugned orders, the products under Chapter 9032 refers to instruments and apparatus for automatically controlling the flow, level, pressure or other variables of liquids or gases, or for automatically controlling temperature, while the product under dispute undisputedly converts alternating current to different

frequency which are entirely different from an automatic regulator. Therefore, the question of classifying the 'Frequency converter imported by the appellant under 9032 is ruled out.

15. Further as per the "General Rules for the Interpretation of Import Tariff" classification of goods are governed by the following principles:

> "1. The titles of Sections, Chapters and sub-chapters are provided for ease of reference only; for legal purposes, classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes and, provided such headings or notes do not otherwise require, according to the following provisions:
>
> 2. ....
>
> 3. When by application of rule 2(b) or for any other reason, goods are, prima facie, classifiable under two or more headings, classification shall be effected as follows:
>
> (a) The heading which provides **the most specific description** shall be preferred to headings providing a more general description.
>
> (b) Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to (a), shall be classified as if they consisted of the material or component which gives them their **essential character**, in so far as this criterion is applicable.
>
> 4. Goods which cannot be classified in accordance with the above rules shall be classified under the heading appropriate to the goods to **which they are most akin**."
>
> Emphasis supplied

16. As per the literature of the imported item, **essential character is that of inverter** and hence, they are rightly classifiable under specific entry under Chapter 8504 as per the Interpretative Rules specified above. Moreover, they are more akin to the description given under Chapter 8504 and as per Clause (4) above of "General Rules for the Interpretation of Import Tariff" they are to be classified under Chapter Heading 8504 only. Classification being finalized based on Section /

chapter and based on the Rules of Interpretation has been upheld by the Hon'ble Supreme Court in the case of **CCE vs. Simplex Mills Co. Ltd.: 2005 (181) ELT 345 (SC)**. The apex court in the above case at para 11 held that:

> "11. The rules for the interpretation of the Schedule to the Central Excise Tariff Act, 1985 have been framed pursuant to the powers under Section 2 of that Act. According to Rule 1 *titles* of Sections and Chapters in the Schedule are provided for ease of reference only. But for legal purposes, classification "*shall* be determined according to the terms of the headings and any relevant section or Chapter Notes". If neither the heading nor the notes suffice to clarify the scope of a heading, then it must be construed according to the other following provisions contained in the Rules. Rule-I gives primacy to the Section and Chapter Notes along with terms of the headings. They should be first applied……".

17. Section XVI includes Machinery and Mechanical Appliances; Electrical Equipment; Parts Thereof; Sound Recorders and Reproducers, Television Image and Sound Recorders and Reproducers, and Parts and Accessories of Such Articles. The Section Notes reads as follows:

> 1. This Section does not cover :
>
> 2. Subject to Note 1 to this Section, Note 1 to Chapter 84 and to Note 1 to Chapter 85, parts of machines (not being parts of the articles of heading 8484, 8544, 8545, 8546 or 8547) are to be classified according to the following rules :
>
> (a) parts which are goods included in any of the headings of Chapter 84 or 85 (other than headings 8409, 8431, 8448, 8466, 8473, 8487, 8503, 8522, 8529, 8538 and 8548) are in all cases to be classified in their respective headings;
>
> 3. Unless the context otherwise requires, composite machines consisting of two or more machines fitted together to form a whole and other machines designed for the purpose of performing two or more complementary or alternative functions are to be classified as if consisting only of that component or as being that machine **which performs the principal function.**
>
> 4. Where a machine (including a combination of machines) consists of individual components (whether separate of interconnected by piping, by transmission devices, by electric cables or by other devices) intended to contribute together to a clearly defined function covered by one of the headings in Chapter 84 of Chapter 85, then the whole falls to be classified in the heading appropriate to that function.

> 5. For the purposes of these Notes, the expression "machine" means any machine, machinery, plant, equipment, apparatus or appliance cited in the headings of Chapter 84 or 85.

18. Admittedly, the principal function of the imported item is of an inverter and it is also not under dispute that these drives are being used in those machinery which are classifiable under Chapter 84 or 85. Therefore, based on the above Section Notes absolutely there is no confusion as to the classification of the product. It also says that the machine refers to the machines classifiable under Chapter 84 or 85 so the question of classifying the product under Chapter 90 does not arise. The WCO also for which India is a member decided the classification of the 'frequency converter' under Chapter 8504. Accordingly, in view of the Technical Literature submitted by the appellant and based on the relevant Section Notes, Chapter Notes, HSN Explanatory Notes, General Rules for the Interpretation of Import Tariff and the WCO decision, the products are rightly classifiable under Chapter Heading 8504, which is placed below:

WORLD CUSTOMS ORGANIZATION
ORGANISATION MONDIALE DES DOUANES

General Secretariat

NG0008E1
(HSC/23/May 99)
O. Eng./fr.
H9-4

Brussels, 31 May 1999.

NOTE
FOR CONTRACTING PARTIES
TO THE HARMONIZED SYSTEM CONVENTION

APPROVAL OF DECISIONS
TAKEN BY THE HARMONIZED SYSTEM COMMITTEE
AT ITS 23rd SESSION

1. Some of the decisions taken by the Harmonized System Committee at its 23rd Session fall to be approved under the procedure laid down in Article 8.2 of the Harmonized System Convention.

2. These decisions are listed in the Annex Hereto, in the order in which the various items appear in the Report of the Committee's 23rd Session (Doc. NC0000E2).

3. Under the procedure laid down in the HS Convention, Contracting Parties who wish to request that any of the decisions listed in the Annex be referred to the Council may do so within a period of two months running from 1 June 1999. Any such request should therefore reach the Secretariat by 31 July 1999 at the latest.

4. Following the above closing date, the Secretariat will notify all Contracting Parties to the Harmonized System Convention of :

(a) the decisions deemed to have been approved;

(b) any decisions having given rise to a request that they be referred to the Council.

x

x x

File No. 1258

For reasons of economy, documents are printed in limited number. Delegates are kindly asked to bring their copies to meetings and not to request additional copies.

Annex to
Doc. NG0006E1

Annex to the Report	Subject	Decisions
G/17, M/29	Classification Opinion and amendment to the Explanatory Notes arising from the classification of certain toilet sets	(1) Amendments to the Compendium of Classification Opinions (2) Amendment to the Explanatory Notes
H/15	Classification of the "MVX" voice processing system in subheading 8517.30	Classification Decision
IJ/1	Classification of non-aromatic cut tobacco in subheading 2403.10	Classification Decision
IJ/2	Classification of certain special shampoos in subheading 3305.10	Classification Decision
IJ/3	Classification of "Katla" fungicides in subheading 3808.20	Classification Decision
IJ/4	Classification of certain specially designed plastics bottles in subheading 3924.90	Classification Decision
IJ/6	Classification of (standard) frequency converters in subheading 8504.40	Classification Decision
IJ/8	Classification of certain hand and foot warmers in subheading 3824.90	Classification Decision
IJ/9	Classification of certain drilled lumber used in construction in subheading 4418.90	Classification Decision
IJ/10	Classification of coins in subheading 7118.10	Classification Decision
IJ/11	Classification of aluminium covers for cans in subheading 8309.90	Classification Decision

19. In the case of **Xerox India Ltd. V. CC 2010 (260) ELT 161 (SC)**, the Hon'ble Supreme Court held that:

> "10. In order to determine the classification of the Multi-Functional Machines, it is necessary to look into some relevant provisions. Rule 3(a) of the General Rules for the Interpretation of the First Schedule (which along with the Second Schedule specifies the rates at which duties of customs shall be levied under the Customs Act) provides:
>
> > "The heading which provides the most specific description shall be preferred to headings providing a more general description..."
>
> 11. Further, Rule 3(b) of the same reads as follows:
>
> > "Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to (a), shall be classified as if they consisted of the material or component which *gives them their essential character,* insofar as this criterion is applicable."

(emphasis supplied).

12. In addition, Note 3 of Section XVI (which includes both Chapter 84 and Chapter 85) reads as follows:

> "Unless the context otherwise requires, composite machines consisting of two or more machines fitted together to form a whole and other machines designed for the purpose of performing two or more complementary or alternative functions are to be classified as if consisting only of that component or as being that machine which *performs the-principal function."*

20. This view of classification being based on the principal function was once again upheld by this Tribunal in the case of **Logic India Trading Co. vs. Commr. of C. Ex.: 2022 (382) ELT 244 (Tri Bang.)** which was upheld by the Apex Court.

21. The reliance placed on by the learned counsel on note 1(m) of Section XVI which states this Section does not cover articles of Chapter 90 is totally misplaced as seen from the chapter notes and the explanatory notes supra. The learned counsel has also relied on the explanatory notes where it states "automatic voltage regulators are classified in heading 90.32, conveniently ignoring the HSN explanatory notes under Chapter 8504". As discussed above, the items imported are not automotive regulators but frequency inverters and going by the Technical Literature provided by the appellant, they are rightly classifiable under Chapter 85.04. The reliance placed on Kone elevators by the appellant does not support the case of the appellant in as much as the product there was being classified under 8504 based on the expert opinions which was not rebutted by the revenue.

22. The learned Authorised Representative has rightly relied on the decision of the Tribunal in the case of **Larsen & Toubro Ltd. V. Commissioner of Central Excise Mumbai 2005 (189) ELT 439 (Tri-Mumbai)** wherein the similar products under dispute, the Tribunal upheld the classification under 8504 as against the classification under 8537 as claimed by the Revenue. The facts of the case are that the static converters manufactured by the appellant where the primary function of the subject goods was to convert electrical energy in order to adopt it for further use namely direct current - alternating current - direct current or alternating current - alternating current. The subject goods technically known as 'frequency inventors, convertors for speed control of D.C. Motors, Chopper Controllers, A.C. Regulators'. The dispute involved in the present case relates to the classification of the said "static convertors" manufactured by the appellants. The appellants claimed the classification of the said products under Chapter subheading 85.04 of the Tariff Act and cleared the products at appropriate rate of duty accordingly. By the order impugned in this appeal, the Commissioner (A) classified the said products as "'Panels'' under Chapter Heading 85.37 of the Tariff Act. But based on the primary function of the product, the Tribunal found classification under 8504 to be appropriate.

23. In the case of **Pioma Chemicals v. Commissioner of Customs, Nhava Sheva-I: 2019 (370) ELT 301 (Tri-Mumbai)** held that:

> "In our view all the published literature support the findings recorded by the Commissioner in the impugned order to the effect that the goods imported are nothing but re-esterified fat/oil. On going through the published literature referred above, and also the fact that as per the rulings relied from US Customs and Kenya Customs we do not find any error in the classification of the goods determined under Chapter 1516 20 91. It is true that the Rulings of the US Customs and Kenya Customs may not be binding but definitely have great persuasive value as the Classification Code followed by all these countries, are based on **,**which the classification system adopted by Indian Customs is also aligned. It is only beyond six-digit level that local jurisdictions have their own expansions."

24. The Hon'ble Supreme Court of India in the case of **Thermax Ltd. Versus Commissioner of Central Excise, Pune-I: 2022 (382) E.L.T. 442 (S.C.)** dated on 13-10-2022 the Supreme Court held that:

> "**6.** The definition of a product given in the HSN should be given due weightage in the classification of a product for the purpose of levying excise duty. This is because in the Statement of Objects and Reasons of the Bill leading to enactment of *Central Excise Tariff Act, 1985*, it was clearly stated that the pattern of tariff classification is broadly based on the system of classification derived from the *International Convention on the Harmonised Commodity Description and Coding System* (Harmonised System) with such contraction or modification thereto as are necessary, to fall within the scope of the levy of Central Excise duty. The tariff so suggested for the levy under the Indian Tariff Act is based on an internationally accepted nomenclature, in the formulation of which, all considerations, technical and legal, have been taken into account. This was done to reduce avoidable disputes on tariff classification. Besides, the tariff would be on the lines of the harmonized system. It was also borne in mind that the tariff on the lines of the harmonized system would bring about considerable alignment, between the Customs and Central Excise Tariffs, which in turn, would facilitate charging of additional customs duty on imports, equivalent of excise duty. It was therefore expressly stated in the Statement of Objects and Reasons that the Central Excise Tariff are based on the HSN and the internationally accepted nomenclature was as such taken into account, to reduce tariff classification disputes..........".

In view of the above, the decision of the WCO cannot be ignored and also the fact that the suppliers invoice classified the product under Chapter Heading 8504.

25. Therefore, based on our above observations and the various decisions as discussed above, we find that the goods are rightly classifiable under Chapter Heading 8504 as against the classification under Chapter Heading 9032 as claimed by the appellant.

26. The appeals are dismissed.

*(Order pronounced in Open Court on **20.10.2023**.)*

(D.M. MISRA)
MEMBER (JUDICIAL)

(R. BHAGYA DEVI)
MEMBER (TECHNICAL)

rv