CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
1st Floor, WTC Building, FKCCI Complex, K. G. Road,
BANGLORE-560009

COURT-2

Customs Appeal No. 1714 of 2010

[Arising out of the Order-in-Appeal No.90/2010 dated 30.04.2010 passed by the Commissioner of Customs (Appeals), Bangalore.]

The Commissioner of Customs (Appeals) **....Appellant**
C.R. Buildings,
No.1, Queen's Road,
Bangalore – 560 001.

Vs.

M/s. Larsen & Toubro Ltd. **....Respondent**
KIADB Indl. Area,
Hebbal,
Hootagalli,
Mysore – 570 018.

Appearance:

Mr. K. A. Jathin, AR **....For Appellant**

Mr. Mohit Raval, Advocate **.... For Respondent**

CORAM:

HON'BLE MR. P. A. AUGUSTIAN, MEMBER (JUDICIAL)
HON'BLE MRS R. BHAGYA DEVI, MEMBER (TECHNICAL)

Date of Hearing: 04.08.2023

Date of Decision: 30.11.2023

FINAL ORDER No. 21316 of 2023

Per R. BHAGYA DEVI:

The respondent M/s. Larsen and Toubro Ltd. imported G-24 PL 001 GSM Chipset Wavecom (modem) vide Bill of Entry No.2120004 dated 02.09.2009, classifying them under chapter Heading 8517 6230. The supplier invoices described the imported goods as "electronic components for metering production system", and on examination, officers found that the goods imported were a chipset mounted on printed circuit board and as per the Technical Write-up, the circuit boards were wireless CPU-a powerful programmable processor. Based on the above description and with reference to HSN Explanatory Notes, the items were classified under Chapter Heading 8537 1000 by the Original Authority as against the classification claimed by the respondent under Chapter Heading 8517 6230. On an appeal before the Commissioner (A), the Commissioner (Appeals) based on the catalogue produced before him found that the wireless CPU wavecom includes ARM microprocessors that can process data, listen to more than 50 peripheral devices, address complex display driver interfaces, etc; thus describes the modem to be a powerful programmable processor which can also connect to cellular networks anywhere in the world. Thus, classified the same under Chapter Heading 8517 as claimed by the respondent. The Department is in appeal against the above impugned order.

2. The matter came up for hearing today and the learned Authorised Representative on behalf of the Revenue submitted that the item imported is a programmable processor mounted on a printed circuit board and based on this description, the goods were rightly classified under Chapter Heading 8537 by the Original Authority. It is submitted that the classification should be based on the description and function of an item as it is imported and not based on the end-use of the same. The Commissioner (Appeals) classified the items based on the end-use that they

were used in the manufacture of modem which is inappropriate; hence, the impugned order needs to be set aside.

3. The learned counsel on behalf of the respondent submits that Chapter Heading 8537 merely consists of Boards, panels for electric control and distribution of electricity and items imported by them is nowhere connected to this description. It is their claim that the goods are rightly classifiable under Chapter Heading 8517 as the goods are used for transferring the data from the electric metre to the control unit and to be treated as networking equipment and these items are used in the manufacture of modems which are classifiable under Chapter Heading 8517. Thus, requests to dismiss the revenue appeal.

4. Heard both sides. There is no dispute that the items imported are a programmable processor mounted on a printed circuit board. The Commissioner (Appeals)'s classification under Chapter Heading 8517 is misplaced in as much as this Chapter includes *Telephone sets, smartphones and other telephones for cellular networks or for other wireless networks; other apparatus or 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*. He further observed that based on the flowchart produced by the respondent, the imported item is a component to be used in the manufacturing of a modem and any part which goes into the manufacture of the same, needs to be classified

under Chapter Heading 8517. It is a settled fact that the principles of classification endorses that any classification should be based on the description and function of an item as it is imported and not based on its end-use as held by the Supreme Court in number of cases. In the case of **Commissioner of Central Excise, Delhi Versus Carrier Aircon Ltd. 2006 (199) E.L.T. 577 (S.C.)** decided on 5-7-2006 the Hon'ble Supreme Court held that:

> "15. End use to which the product is put to by itself cannot be determinative of the classification of the product. See *Indian Aluminium Cables Ltd.* v. *Union of India and Others,* 1985 (3) S.C.C. 284. There are a number of factors which have to be taken into consideration for determining the classification of a product. For the purposes of classification the relevant factors *inter alia* are statutory fiscal entry, the basic character, function and use of the goods. When a commodity falls within a tariff entry by virtue of the purpose for which it is put to, the end use to which the product is put to, cannot determine the classification of that product".

5. Now let's examine the rival tariff entries which read as under:

> **8517:** Telephone sets, smartphones and other telephones for cellular networks or for other wireless networks; other apparatus or 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 –
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> **8537:** Boards, panels, consoles, desks, cabinets and other bases, equipped with two or more apparatus of Heading 8535 or 8536, for electric control or the distribution of 8537 10 00 electricity, including those incorporating instruments or apparatus Of chapter 90, and numerical control apparatus, other than switching apparatus of Heading 8517.

6. The HSN Explanatory Notes to Chapter Heading 8537 states that this heading covers 'programmable controllers which are digital apparatus using a programmable memory for the storage of instructions for implementing specific function such as logic sequencing, timing, counting and arithmetic to control through

digital or analogue input/output modules, various types of machines'. It is also a fact that the appellant are manufacturers of electric metre and their products are classifiable under chapter heading 90283010 and it is also an admitted fact that these impugned goods are used in automatic metering system. Therefore, Commissioner (Appeals) justification for classification under Chapter Heading 8517 as part of modem is inappropriate. Since programmable controllers are specifically covered under Chapter Heading 8537, they are rightly classifiable under this Heading and not under Chapter Heading 8517 as part of modem. The Board vide Circular No.49/3/97-CX dated May 9, 1997 has classified the programmable logic controller under Chapter Heading 8537, which is reproduced herein below:

ORDER NO. 49/3/97-CX, Dated: May 9, 1997

Classification of Programmable Logic Controllers and Programmable Process Controllers-order under Section 37B of CEA, 1944

Attention is drawn to the Board's Section 37B Order No.45/3/96-CX dated 06.08.1996 clarifying that Programmable logic controllers and other forms in variations such as DCS (distributed Control System), PCE (Process Control Equipment), TDC (Total Distributed Control System), LCS (Logic Control System) and PM (Process Manager) etc. shall be classifiable under heading 85.37 of the Central Excise Tariff.

2. Representations have been received from trade pointing out that programmable logic controller and Programmable process controllers such as process control equipment/distributed control system are two different types of controls classifiable under different headings of Central Excise Tariff i.e., heading 85.37 and heading 90.32 respectively. The following specific differences have been pointed out between two types of controllers:-

Programmable Logic Controller	Programmable Process Controller
1. These are controlling various types of machines.	These are for controlling various types of processes
2. Operation depends on set of pre-determined operations	Operations depend on factor to be controlled

Programmable Logic Controller	Programmable Process Controller
3. Operation based on desired sequence of operations.	Operation operates basically by continuously monitoring and maintaining the variable to be controlled such as pressure, flow, temperature, level etc. with/at pre-determined level.
4. No regulatory function.	Regulatory function by continuously monitoring the desired value with actual value and bringing variable to be controlled to the desirable value.
5. Conventionally it is relay-based panel for electric control with timer and switches.	Regulating apparatus for process control for continuous process governing.
6. Relay-based panel has been upgraded to programmable controller commonly known as programmable logic controller by using microprocessor for storing and doing sequence of operations.	Microprocessors are used for doing complex storing and algorithms primarily for controlling. These are commonly known as controllers e.g., digital distributed control system, distributed control system.

3. the matter has been re-examined by the Board in consultation with the department of electronics. Their opinion is reproduced below:-

i) The programmable controllers covered under heading 85.37:-

They perform specific functions such as logic instruments timing etc. to control various types of machines in a plant.

ii) The automatic regulating or controlling instruments and apparatus under the heading No.90.32:-

They may be considered as industrial process control systems satisfying criteria mentioned in No.90.32. These are primarily used for controlling/maintaining the flow, level pressure or other variables of liquids or gases, or for automatically controlling temperature of a process (may be refinery, steel, chemical industry) at the present level. They can perform functions both sequence logic and different control strategies like Proportional - Integral - Differential (PID) control and other forms of control.

4. It is observed that opinion of the Department to Electronics is also in conformity with the Explanatory Notes of HSN.

5. Now, therefore, in exercise of the powers conferred under Section 37B of the Central Excise Act, 1944 and in supersession of Board's Order dated 6.8.96 referred to above, and for the

> purpose of ensuring uniformity in the classification of the goods in question, Board hereby orders that **programmable logic controller** as describe in para 2 and other similar forms **will be classifiable under heading 85.37** of the Central Excise Tariff and programmable process controller as described in para 2 and other similar forms will be classifiable under heading 90.32 of the Central Excise Tariff.
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> **[F.No.154/8/94-CX.4]**

7. In view of the above observations, we hold that imported item viz., G-24 PL 001 GSM Chipset Wavecom (modem) are rightly classifiable under Chapter Heading 8537. Consequently, the impugned order is set aside and the appeal filed by the Revenue is allowed.

(Order pronounced in Open Court on **30.11.2023***.)*

(P. A. AUGUSTIAN)
MEMBER (JUDICIAL)

(R. BHAGYA DEVI
MEMBER (TECHNICAL)

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