

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE
TRIBUNAL
BANGALORE**

REGIONAL BENCH - COURT NO. 1

Customs Appeal No. 2110 of 2012

*(Arising out of Order-in-Appeal No.90/2012 dated
30.05.2012 passed by the Commissioner of Customs
(Appeals), Bangalore.)*

M/s. ABB Limited

Plot No.5 & 6, II Phase
Peenya Industrial Area
P.B. No.5806,
Bangalore – 560 058.

Appellant(s)

Versus

Commissioner of Customs

C.R. Building
P.B. No.5400,
Queens Road,
Bangalore – 560 001.

Respondent(s)

Appearance:

Ms. Shraddha Pandey,
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. 21337 /2023

Date of Hearing: 04.12.2023

Date of Decision: 04.12.2023

Per : D.M. MISRA,

This appeal is filed against Order-in-Appeal No.90/2012 dated 30.05.2012 passed by the Commissioner of Customs (Appeals), Bangalore.

2. Briefly stated the facts of the case are that the appellant had filed Bill of Entry No.860886 dated 19.9.2008 declaring goods as inverter unit – frequency converter classifying the same under CTH 9032 9000 and claiming concessional rate of duty. The Department has reclassified the product under CTH 8504 4010 as 'inverter'. Aggrieved by the said assessment, they filed appeal before the learned Commissioner (A), who in turn upheld the order of the adjudicating authority and rejected their appeals. Hence, the present appeals.

3. At the outset, the learned Authorised Representative for the Revenue submits that on similar issues for subsequent period, this Tribunal had already decided the appeals filed by the appellant classifying the product under CTH 8504 4010 as against claimed classification of CTH 9032 9000. Therefore, the present appeal be decided accordingly.

4. Learned advocate for the appellant does not dispute the said facts.

5. Heard both sides and perused the records. We find that the issue has already been considered by this Tribunal taking note of the various aspects on the issue and precedent. After analysing the submissions from both sides, this Bench vide Final Order No. 21151 – 21152/2023 dated 20.10.2023 has held as follows:

“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 invertors, 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.

6. We do not find any reason in not following the said order of the Tribunal. Consequently, the product in question merits classification under CTH 8504 instead of CTH 9032 as claimed by the appellant. Consequently, the appeal is dismissed.

(Order dictated and pronounced in Open Court.)

(D.M. MISRA)
MEMBER (JUDICIAL)

(R. BHAGYA DEVI)
MEMBER (TECHNICAL)

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