CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH - COURT NO. 1

Customs Appeal No. 21094 of 2018

(Arising out of Order-in-Appeal No. 84/2018 dated 12.02.2018 passed by the Commissioner of Customs (Appeals), Bangalore.)

M/s. Bosch Ltd.
(Earlier known as M/s. Bosch India Pvt. Ltd.)
Post Box No.3000,
Hosur Road,
Adugodi
Bangalore – 560 030.

Appellant(s)

VERSUS

The Commissioner of Customs
BMTC Building,
Old Airport Road,
Domlur,
Bangalore – 560 071.

Respondent(s)

APPEARANCE:

Shri Ravi Raghavan, Advocate for the Appellant

Shri K. A. Jathin, Authorised Representative for the Respondent

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

Final Order No. 20278 /2024

DATE OF HEARING: 13.10.2023
DATE OF DECISION: 10.04.2024

PER : R. BHAGYA DEVI

This is appeal filed against the impugned Order-in-Appeal No.84/2018 dated 12.02.2018. The appellant had imported 'Navigation System' classifying them under Chapter Heading 8526 9190. On investigation, it was found that they were 'Multifunctional Devices' and were rightly classifiable under CTH 8527 2900. Accordingly, notice was issued and the authorities below found that the imported goods are not 'Navigation System' but 'Multifunctional Devices' of a kind used in motor vehicles and therefore, held that they are rightly classifiable under Chapter Heading 8527. Aggrieved by the impugned order, the appellant is in appeal before us.

2. The learned counsel on behalf of the appellant submits that the impugned goods are 'Navigation System' with GPS receiver comprising a touch screen human machine interface that provides controls to the user to interact with various features provided in the system which *inter alia* include GPS Navigation, 7" TFT screen, AM/FM tuner, USB/SD/IPOD support, Aux audio input and DVD video input, Bluetooth phone, smartphone integration, sound adjustments, voice control, steering wheel control, etc. There is no dispute that these are used in the motor vehicles. Relying on the Interpretative Rules, it is submitted that Rule 1 states the titles of section, chapter and subchapters are provided for ease of reference only, classification shall be determined according to the terms of the Headings and any relative Section or Chapter Notes. Reliance is placed on **CCE vs. Wood Craft Products Ltd.: 1995 (77) ELT 23 (S.C.)** and **CC vs. Business Forms: 2002 (142) ELT 18 (S.C.)** to claim that the Section and Chapter Notes should be considered for classification of the impugned goods.

2.1 It is further submitted that General Interpretative Rule 3(b) provides that the factors that need to be considered while determining the essential character of a product and such factors specifically include quantity and value of the materials or components used in the manufacture of the composite goods. Referring to Note 3 of Section XVI, it is stated that in case of a composite machine capable of performing two or more functions and it has to be classified as if consisting only of that component or as being that machine which performs the 'principal function'. Referring to Note 5 of the above Section, it is submitted that unless the context otherwise requires composite machines consisting of two or more machines fitted together to form a whole and other machine 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. It is submitted that the principal function of the item imported is 'Navigation System' and this 'Navigation System' comes with a feature like GPS receiver, an SD card loaded with the offline map supplied to the OEM and this SD card is inserted into the improved goods by the OEM during manufacture. The 'Navigation System' is normally fitted into the dashboard and the dashboard is commonly used for music, Bluetooth facilities and the 'Navigation System' provides one stop solution to all the safety and entertainment requirements. Finally, it is submitted that by virtue of Rule 1 read with section Note 3 and 5 of section XVI of the Custom Tariff Act and Rule 3(b), classification should be determined on the basis of the principal function performed by the imported goods. The principal function being navigation, they are rightly classifiable under Chapter Heading 8526. To substantiate their arguments reliance is placed on the following decisions:

- **Secure Meters Ltd. vs. Commissioner of Customs: 2015 (319) ELT 565 (S.C.)**
- **Salora International Ltd. vs. Commissioner of Central Excise 2012 (284) ELT (SC)**
- **Logic India Trading Company Ltd. vs. Commissioner: 2016 (337) ELT 65 (Tri-Bang)**
- **Associated Millers Pvt. Ltd. vs. Collector of Customs 1990 (50) ELT 633 (Tri)**

2.2 It is further stated that the imported goods have a wide screen which can be used as an interface to interact with various features. At the time of import, the imported goods have a system and application software embedded in it already, however, the versions of the software is updated after import. The goods supplied by the foreign supplier to the appellant is also supplied to other countries and the software is uploaded based on the map and graphical representations of the country where it is being imported.

It is submitted that the appellant had supressed the multi-functional status of the product in order to avail payment of duty to invoke extended period of limitation, it is settled position of law that the onus of proper classification of any goods whether imported or exported ultimately lies with the revenue and since the goods have been already cleared after assessing the same they cannot now invoke supersession. Reliance is based on the following judgements

a. **CCE vs. Ishaan Research Lab (P) Ltd., dated 2008 (230) E L T 7 (SC)**

b. **Chamtuidi Die Cast (P) Ltd. Vs. CCE, dated 2007 (215) E L T 169 (SC)**

2.3 It is further submitted that based on the technical literature and suppliers' invoice, the classification was determined under the *bona fide* belief that it was the correct classification and to substantiate their argument they placed reliance on **Commissioner of Customs (Import) vs. Reliance Industries Ltd.: 2015 (325) E L T 223 (SC)**. It is also submitted that penalty under Section 114A is not sustainable since they have not supressed any facts or there was any wilful misdeclaration and relied upon the decision of **CC Vs. Videomax Electronics dated 2011 (264) E L T 0466 (Tri.-Bom) and** also relied on following decisions for waiver of penalty.

a. **Bahar Agrochem & Feeds Pvt. Ltd. Vs. Commissioner of C. Ex Pune: 2012 (277) E.L.T. 382 (Tri-Mum.)**

b. **Digital Systems Vs. Commissioner of Customs: 2003 (154) E.L.T. 71.**

c. **Goodyear (India) Vs. CCE: 2003 (157) E.L.T. 560**

d. **Anand Metal Industries Vs. CCE: 2005 (187) E.L.T. 119**

3. The Authorised Representative referring to the catalogue that has been produced at the time of import submits that the imported goods are Multifunction Devices with multiple features like call connect, drive, and listen. The catalogue specifically describes the goods as 'infotainment system' with various

features like AM/FM tuner, USB/SD/Pod, a UX audio input and DVD video output, Bluetooth, smartphone integration, GPS navigation, etc. He submits that it is switched on when the ignition of the motor car is on and switched off when the ignition of the vehicle is switched off and thus, it is a Multifunctional Device not capable of operating without external source of power of a kind used in motor vehicles and rightly classifiable under Chapter Heading 8527 2900. It is further submitted that the appellant being an accredited client has misused the facility by suppression and by declaring the wrong classification at the time of filing the Bill of Entry. Therefore, the differential duty is liable to be recovered under the provisions of Section 28(4) of the Customs Act, 1962, along with applicable interest and the goods are liable for confiscation under Section 111(m) of the Customs Act, 1962 and liable to penalty under Section 114A of the said Act. Based on the detailed findings of the authorities below, it is submitted that goods are rightly classifiable under CTH 8527 and requests that the appeal needs to be dismissed. He also refers to the Interpretative Rules and relying on Rule 3(c) submits that the goods have been rightly classifiable classified under chapter heading 8527. He also relies on decision of Hon'ble Madras High Court in the case of **Venus Enterprises vs. Commissioner of Customs, Chennai: 2006 (199) ELT 205**, which has been affirmed by the Hon'ble Supreme Court as reported at **2007 (209) ELT A61 (SC)** for invoking suppression and imposing penalty.

4. The issue to be decided is classification of the imported goods as to whether they are classifiable under CTH 8526 as claimed by the appellant or under CTH 8527 as argued by the Revenue.

4.1 The catalogue submitted by the appellant vide their letter dated 28.04.2015 of the imported goods are described as "Infotainment system" with various features as follows:

AM/FM tuner

18 FM and 12:00 AM manual presets
USB/SD /pod
supports MP 3, WMA, AAC, WAV,3GPP, audio books, MPG AVI
Playlists
Browsing
Random/repeat
AUX voice Audio input and DVD video input
Bluetooth phone
Hands free
Phone book access
Music streaming
Smartphone integration
sound adjustments
bass, treble, balance, fader
6 equaliser presets
voice control
GPS navigation
steering wheel control
Bluetooth remote control APP

4.2 The instructions manual of the catalogue also mentioned that "switching the device on off"- the device is switched on automatically when you switch the vehicle ignition lock from off to ACC. The device is switched off automatically when you switch the vehicles ignition lock from ACC to off. Further it mentions that "if your device is not equipped with the navigation system, you will be able to access these main operating modes like:

radio: radio listening
call: telephone
media: playing media
connect: smartphone integration"

4.3 It also mentions that navigation function is available only if the device is equipped with the 'Navigation System' and this function is available when the SD card obtaining the map data is inserted.

4.4 These above facts are not disputed. The only counter argument by the appellant is that the catalogue is meant for marketing purpose to impress upon the customers and it should not determine the classification. From the above data, it is also seen that the 'Navigation System' is not functional at the time of import and it becomes functional only after the software is uploaded on to the system at the time of assembling it in the car. This is also corroborated by the Mr. K. Kannan, Senior Manager, Exports and Import, of the appellant in his statement dated 27.08.2015.

4.5 From the above, its clear that the device is a 'Multifunctional Device' with 4 main functions such as listen, call drive and connect whereas navigation is an optional function where it basically takes you to the required destination as per the individual requirements and this is done only on the basis of the software being uploaded and the software varies depending upon the country of import. It is also a fact that in the invoice No.288607352 dated 11.07.2014 of M/s. Robert Bosh, Malaysia in the name of M/s. Bosch Ltd., Bangalore as noted by the original authority in the order, the appellant has imported the item as 'Navigation System' classified under CTH 8527. Thus, implying that the products are rightly classifiable under Chapter Heading 8527. Let's examine the relevant Chapter Headings.

CTH as claimed by the Appellant

Tariff Item		**Description of goods**	**Unit**	**Rate of duty**	
				Standard	**Preferential Areas**
(1)		(2)	(3)	(4)	(5)
8526		**Radar Apparatus, Radio Navigational Aid Apparatus and Radio Remote Control Apparatus**			
8526 10 00	- -	Radar apparatus Other :	U	7.5 %	-
8526 91	--	Radio navigational aid apparatus:	U	7.5 %	-
8526 91 10	---	Direction measuring equipment	u	7.5 %	-
8526 91 20	---	Instrument landing system	u	7.5 %	-
8526 91 30	---	Direction finding equipment	u	7.5 %	-
8526 91 40	---	Non-directional beacon	u	7.5 %	-
8526 91 50	---	VHF omni range equipment	u	7.5 %	-

8526 91 90	**---**	**Other**	**u**	**7.5 %**	**-**
8526 92 00	--	Radio remote control apparatus	u	7.5 %	-

Customs Tariff Heading 8527 as classified by the Revenue

Tariff Item		Description of goods	Unit	Rate of duty	
				Standard	Preferential Areas
(1)		(2)	(3)	(4)	(5)
8527	-	**Reception Apparatus for Radio-Broadcasting Whether or not Combined, in the Same Housing, with Sound Recording or Reproducing Apparatus or a Clock** Radio-broadcast receivers capable of operating without an external source of power:			
8527 12 00	--	Pocket-size radio cassette-players	u	10%	-
8527 13 00	--	Other apparatus combined with sound recording or reproducing apparatus	u	10%	-
8527 19 00	--	Other	u	10%	-
	-	**Radio-broadcast receivers not capable of operating without an external source of power, of a kind used in motor vehicles:**	u	10%	-
8527 21 00	--	Combined with sound recording or reproducing apparatus	u	10%	-
8527 29 00	**--** **-**	**Other** **Other:**	**u**	**10%**	**-**
8527 91 00	--	Combined with sound recording or reproducing apparatus	u	10%	-
8527 92 00	--	Not combined with sound recording or reproducing apparatus but combined with a clock	u	10%	-
8527 99 00	-- ---	Other Radio communication receivers	u	10%	-
8527 99 11	---	Radio pagers	u	10%	-
8527 99 12	---	Demodulators	u	10%	-
8527 99 19	---	Other	u	10%	-
8527 99 90	--	Other	u	10%	-

4.6 Chapter heading 8526 is for navigational aid while 8527 deals with **Radio-broadcast receivers not capable of operating without an external source of power, of a kind used in motor vehicles.**

As seen from the literature, the description of the product and statements given by the Senior Manager, there is no doubt that navigation is also part of the function of the device but it cannot be considered as the principal function. Every function in the catalogue of the device is used for whether it is navigation, radio, Bluetooth or to make calls all are equally important functions and there is nothing like principal function. In fact all other functions are in use at the time of import itself and GPS becomes functional only after the software card is inserted and all these functions are available only after they are assembled in the car and only when the car ignition is on. So as rightly argued by the Revenue, the products are correctly classifiable under CTH 8527 as per the specific Chapter Headings.

4.7 Since the appellant has heavily relied on the Interpretative Rules, let's examine the same. The relevant Rules relied by the appellant are reproduced below:

> **<u>The General Rules for the Interpretation of Import Tariff:</u>**
>
> Classification of goods in this Schedule shall be 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. (a) Any reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, as presented, the incomplete or unfinished articles has the essential character of the complete or finished article. It shall also be taken to include a reference to that article complete or finished (or falling to be classified as complete or finished by virtue of this rule), presented unassembled or disassembled.
>
> (b) Any reference in a heading to a material or substance shall be taken to include a reference to mixtures or combinations of that material or substance with other materials or substances. Any reference to goods of a given material or substance shall be taken to include a reference to goods consisting wholly or partly of such material or substance. The classification of goods consisting of more than one material or substance shall be according to the principles of rule 3.

> 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. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods.
>
> (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.
>
> (c) When goods cannot be classified by reference to (a) or (b), they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration.

There is no doubt that these Interpretative Rules have a significant role in deciding the classification as has been held in various judicial forums. It is the claim of the appellant that based on Rule 3(b) of the above Rule, the classification is to be decided in terms of their principal function. First of all, the impugned product is not a mixture of materials to be decided based on the essential character or principal function. The literature clearly establishes that it is a multifunctional device which is used as a device to make call, listen to music, use as a Bluetooth device and of course as a navigation device. It is a device used in motor vehicles and functions with external source of power. Therefore, as seen from the CTH given above this device being used in the motor vehicles for various functions is rightly classifiable under CTH 8527.

4.8 We have seen the Bills of Entry placed on record where the description of the products was mentioned as 'Navigation System'. However, on investigation, after verifying the catalogue and the instructions manuals, it was found that the goods were actually described as 'infotainment system'. The importer is an accredited client where certain privileges are extended to them and the Bill of Entry was cleared under RMS, the lapse was noticed only after SIIB investigation and therefore, the Commissioner (Appeals) was right in invoking suppression/mis-declaration, since the goods were mis-declared by the appellant knowing very well as per the catalogue and the manual that they were multifunctional devices. The appellant's only defence is that though the catalogue/technical literature is only for the purpose of marketing to show that it is a one stop solution to all the features required in the car cannot absolve them from the responsibility from making a true and correct declaration of the description of the product so as to decide its appropriate classification by the assessing authorities. Also, this itself proves that the appellant was well aware of all the features but still decided to declare them only as a 'navigation equipment' thus wilfully mis-declaring the products. Therefore, the Commissioner (A) was justified in invoking the suppression on the ground that the facilities provided to the appellant being an 'Accredited client' was misused by mis-declaring the facts. The case laws cited by the appellant on the issue are not applicable to the case in hand involving different set of facts and circumstances. Accordingly, the differential duty with interest is upheld along with mandatory penalty under Section 114A of the Customs Act, 1962.

4.9 The Hon'ble Supreme Court in the case of **Commissioner of Central Excise Ahmedabad Versus M/s. Urmin Products P. Ltd. And Others: 2023-TIOL-148-SC-CX** observed as follows: *"Thus, in the event of mis-description, wrong description or erroneous description or intentional improper classification of the product manufactured, would not tie the hands of the Competent Authority from piercing the corporate veil to ascertain the true nature of the product and reclassify the same, necessarily after affording an opportunity of hearing which would be in compliance of the doctrine of natural justice"*. In view of the above, we find that the Commissioner was justified in invoking the extended period of limitation.

5. In the result, the impugned order is upheld and the appeal is rejected.

(Order pronounced in Open Court on 10.04.2024.)

(D.M. MISRA)
MEMBER (JUDICIAL)

(R. BHAGYA DEVI)
MEMBER (TECHNICAL)

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