# CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
# BANGALORE

REGIONAL BENCH - COURT NO. 1

## Customs Appeal No. 21486 of 2015

(Arising out of Order-in-Appeal No. COC-CUSTM-000-APP-474-14-15 dated 18.03.2015 passed by the Commissioner of Customs (Appeals), Cochin.)

**Commissioner of Customs,**
Custom House,
Cochin.

Appellant(s)

*VERSUS*

**M/s. KCM Appliances (P) Ltd.,**
19/411Z, Rajiv Gandhi By pass Jn.,
Malappuram – 676 121.
Kerala.

Respondent(s)

**With**

**i) Customs Appeal No. 21487 of 2015 (Commissioner of Customs, Cochin vs. M/s. KCM Appliances (P) Ltd.)**

(Arising out of Order-in-Appeal No. COC-CUSTM-000-APP-470-14-15 dated 18.03.2015 passed by the Commissioner of Customs (Appeals), Cochin.)

**ii) Customs Appeal No. 21488 of 2015 (Commissioner of Customs, Cochin vs. M/s. KCM Appliances (P) Ltd.)**

(Arising out of Order-in-Appeal No. COC-CUSTM-000-APP-471-14-15 dated 18.03.2015 passed by the Commissioner of Customs (Appeals), Cochin.)

**iii) Customs Appeal No. 21489 of 2015 (Commissioner of Customs, Cochin vs. M/s. KCM Appliances (P) Ltd.)**

(Arising out of Order-in-Appeal No. COC-CUSTM-000-APP-473-14-15 dated 18.03.2015 passed by the Commissioner of Customs (Appeals), Cochin.)

**iv) Customs Appeal No. 21894 of 2015 (Commissioner of Customs, Cochin vs. M/s. KCM Appliances (P) Ltd.)**

(Arising out of Order-in-Appeal No. COC-CUSTM-000-APP-72 to 75/2015-16 dated 06.07.2015 passed by the Commissioner of Customs (Appeals), Cochin.)

**APPEARANCE:**

Mr. K.A. Jathin, Deputy Commissioner (AR) for the Appellant.

Mr. Syed Peeran, Advocate with Ms. Ashwini Nag, Advocate
for the Respondent.

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

**Final Order No. 20623 - 20627 / 2024**

DATE OF HEARING: 06.08.2024
DATE OF DECISION: 06.08.2024

**PER : DR. D.M. MISRA**

These appeals are filed by the Revenue against respective Orders-in-Appeal passed by Commissioner of Customs (Appeals), Cochin.

2. Briefly stated the facts of the case are that the respondent had imported Multimedia Speakers/Computer Speakers against respective Bills of Entry. In the Bills of Entry, they declared the classification of imported Multimedia speakers under Customs Tariff Heading (CTH) 8518 2200. The Revenue rejected the classification and reclassified the same since all these Multimedia speakers had the facility of USB playback or FM radio under CTH 8519 8100 and CTH 8527 9990, respectively. Further, taking note of Board Circular No.27/2013-Customs dated 01.08.2013, Department assessed the imported Multimedia speakers under MRP based assessment as per Sl. No.101-A of Notification No. 49/2008-CE(NT) dated 24.12.2008. The Respondent paid the duty under protest. Aggrieved by the said assessment order, they filed appeal before the learned Commissioner of Customs (Appeals), who in turn upheld the assessment order on reclassification of the impugned goods, however, set aside the

applicability of MRP based assessment. Hence, these present appeals by the Revenue.

3. At the outset, the learned Authorised Representative for the Revenue reiterating the grounds of appeal has submitted that since the imported Multimedia speakers has both USB playback and FM radio facility, therefore, in view of Board Circular No.27/2013-Customs dated 01.08.2013, the goods are rightly assessable under MRP based assessment vide Sl. No. 101-A of Notification No. 49/2008-CE(NT) dated 24.12.2008.

4. Leaned advocate for the Respondent on the other hand submits that the classification of the impugned product has been challenged before this Tribunal against the same Order-in-Appeal now in question. The Tribunal in respondent's own case vide Final Order No.20218- 20224/2018 dated 12.02.2018, following the judgment of the earlier decision in the case of **Logic India Trading Co.. vs. CC, Cochin: 2016 (337) ELT 65 (Tri.-Bang.)** wherein the classification of impugned goods under 8518 2200 was upheld. Therefore, the MRP based assessment cannot be made applicable, since the said classification does not fall under the Notification No. 49/2008-CE(NT) dated 24.12.2008.

5. Heard both sides and perused the records.

6. The short issue involved in the present appeals filed by the Revenue is whether MRP based assessment is applicable to the imported goods viz., Multimedia speakers also loaded with the facility of USB playback and FM radio. The said Notification No.49/2008-CE(NT) dated 24.12.2008 would be applicable to the goods which are classifiable under CTH 8519 and 8527. However, in the present case, this Tribunal after recording its

reasons in the case of **Logic India Trading Co.** (supra), held as follows:

> **"4.7** As we have already observed that even the lower authorities are not disputing the fact that the goods in question are speakers with added function, as such the main role of the item in question remains amplifying the sound received by it either from outside source or from inbuilt feature. As such, going by the Interpretative Rules and Section Note 3 to Section XVI, the criteria for classifying the product is the principal and the main function it performs, which in the present case remains to be that of a speaker. We accordingly hold that the goods in question are properly classifiable under Chapter Heading 8518 22 00. We may also add that the invoices raised by the seller of the goods stand examined by it and the description stand given as "Multimedia Speaker". This also reflects upon the fact that the goods in question, in common parlance are also traded as speakers. The appellants have also submitted an affidavit of the dealers, the invoices raised by them against the customers and the statement of Service Manager of the assessee. Examination of these documents shows that goods are primarily sold as speakers. Even the brochures placed on record indicate that the goods are being traded as speakers only and not as either FM radio or the sound reproduction system.
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> **4.8** We are also strengthened in our view by the decision of the Hon'ble Supreme Court in the case of *Xerox India Ltd.* v. *Commissioner of Customs, Mumbai* - 2010 (260) E.L.T. 161 (S.C.). Though the said decision did not deal with the items under consideration in the present appeal but the ratio of law laid down by the Hon'ble Supreme Court would be squarely applicable to the facts of the present case. It was held that the multifunctional printing machines having fax facility and screening facility would continue to fall under Heading 8471 of the Customs Tariff Act as 'digital printers' only inasmuch as the predominant function of the machine in question was printing."

6.1 The same principle was latter upheld by the Hon'ble Supreme Court as reported at **2016 (342) ELT A34 (SC)** and followed in respondent's own case. Since the classification has been settled under CTH 8518 2200, therefore, the applicability of Notification No.49/2008-CE(NT) dated 24.12.2008 to the imported goods as argued by the learned Authorised Representative for the Revenue, cannot be accepted.

7. In the result, impugned orders on this count are upheld and Revenue's Appeals are dismissed.

(Order pronounced and dictated in Open Court)

**(D.M. MISRA)**
**MEMBER (JUDICIAL)**

**(R BHAGYA DEVI)**
**MEMBER (TECHNICAL)**

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