

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

REGIONAL BENCH - COURT NO. 2

Customs Appeal No. 22309 of 2014

(Arising out of Order-in-Appeal No. COC-CUSTOM-000-APP-021-14-15 dated 03.04.2014 passed by the Commissioner of Customs (Appeals), Cochin)

M/s. OEN India Ltd.

XXIX/1479, Vyttila,
Kochi – 682 019

.....**Appellant**

VERSUS

Commissioner of Customs

Cochin

Customs House, Willingdon Island,
Kochi – 682 009

.....**Respondent**

Appearance:

Mr. Kurian Thomas, Advocate for the Appellant

Mr. Neeraj Kumar, Superintendent (AR) for the Respondent

Coram:

Hon'ble P.A. Augustian, Member (Judicial)

Hon'ble Mr. Pallela Nageswara Rao, Member (Technical)

Final Order No. 20889 /2024

Date Of Hearing: 06.03.2024

Date Of Decision: 05.09.2024

Per: Pallela Nageswara Rao

M/s. OEN the appellant imported "Relays" and classified the same under Customs Tariff Item entry 85364900 and cleared on payment of duty.

2. The brief facts of the case are the respondent has issued notice to the appellant alleging that the 'Relays' are mis-classified, and they are

required to classify the item under Customs Tariff Item entry 85364100 of the Customs Tariff Act, 1975. The Adjudication authority confirmed the classification under Customs Tariff item entry 85364100. On appeal Commissioner (Appeals) rejected the appeal. Aggrieved by the impugned order the appellant has filed this appeal before the Tribunal.

3. Learned Counsel for the appellant during the hearing contended that; the goods imported were classified under Customs Tariff Item entry 85364100 by the respondent, since they are capable of being used for voltages not exceeding 60V and can be used for voltages exceeding 60V; in the Alternating Current (AC) applications they exhibit values for minimum, maximum and maximum operating voltages i.e., above 60V. The learned Counsel further contended that; as per the Customs Tariff, if any Relay is capable for use in voltages above 60V they cannot be classified under Customs Tariff Item entry 85364100 and can be classified only under Customs Tariff Item entry 85364900; the Adjudication Authority has also given a finding that the 'Relays' are also capable of being used in voltages less than 60V. Therefore, the department does not dispute the capability of the relays being used in voltages above 60V; Further the findings of the Commissioner (Appeals) is also to the effect that the 'Relays' are rated for use below 60V, also; When the relays are capable of being used in Voltages above 60V and below 60V the classification could not be under Customs Tariff Entry 85364100; hence, the impugned order holding that the classification is under Customs Tariff Item entry 85364100 is not correct; when a particular commodity falls under two entries the one beneficial to the appellant need to be adopted, reliance is placed on M/s Sun Export Corporation Vs. Collector of Customs, Bombay-1977 (93) ELT 641 (SC);

further, when a product imported is classifiable under two Customs Tariff Item entries, classification has to be under heading, which occurs last in the numerical order among those which equally merit consideration; therefore by Rules of interpretation, the impugned 'Relays' are more appropriately classifiable under Customs Tariff Item Entry 85364900, reliance is placed on the decision in Commissioner of Central Excise, Goa Vs. Waterways Shipyard Pvt., Ltd., reported in 2013 (297) ELT 77 (Tri.-Bombay.)

4. Learned Authorised Representative (AR) for the Revenue reiterated the findings of the Adjudication Authority and the first appellate authority.

5. Heard both sides and perused the records.

6. The issue in this case is with regard to the classification of 'Relays' whether they are classifiable under Customs Tariff Item Entry 85364100 as confirmed by the respondent or under Customs Tariff Item Entry 85364900 as declared by the appellant. We find that the impugned item i.e., 'Relays' are capable of being used in voltages below 60V and above 60V. The Respondent as classified the impugned imported goods under Customs Tariff Item Entry 85364100, which reads as "Relays-for Voltages not exceeding 60V" and the appellant classified them under Customs Tariff Item Entry 85364100, which reads as 'Relays-others'. Therefore, we find that the 'Relays' which operate only at voltages not exceeding 60V are classifiable under Customs Tariff Item Entry 85364100, whereas as per the finding and the technical literature of the product of the impugned goods, the impugned 'Relays' are capable of being operated at Voltages above and below 60V. Therefore, the classification under 85364100 as confirmed by the Respondent is not

appropriate for the reason that the impugned 'Relays' are capable of being operated above 60V, what is covered in the Customs Tariff Item entry 85364100 are 'Relays', which operate up to voltages of 60V, therefore relays, which operate from a range below 60 Volts to above 60 Volts cannot be classified under Customs Tariff Item entry 85364100. Therefore, we find that the impugned goods are classifiable under 85364900 under 'Relays- others'.

7. Further, we find that the appellant has contended that where there two competing entries for classification of an item, as per the General Rules of Interpretation, the entry, which comes later will be the appropriate Customs Tariff Item entry. However, in this case we find that the classification confirmed by the Respondents is for 'Relays', which operate only up to Voltages of 60V. Since the impugned imported 'Relays' operates below 60 Volts and above 60 Volts, the classification has to be under Customs Tariff Item entry 85364900 as 'Relays-others'.

8. In view of the above discussion the appeal is sustainable. Accordingly, the appeal is allowed with consequential relief if, any as per law.

(Order pronounced in open court on 05.09.2024)

(P.A.Augustian)
Member (Judicial)

(Pullela Nageswara Rao)
Member (Technical)

Sasidhar