

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

Regional Bench COURT-2

Customs Appeal No. 22389 of 2015

[Arising out of the Order-in-Appeal No. TVM-EXCUS-000-APP-152-15-16 dated
14.09.2015 passed by the Commissioner of The Commissioner of Central
Excise, Customs & Service Tax (Appeals-III).]

M/s. Asianet Satellite Communications Ltd.

Leela Infopark, Technopark Road,
Tehnopark Campus,
Thiruvananthapuram - 695581

.....Appellant

VERSUS

**The Commissioner of Central Excise,
Customs & Service Tax (Appeals-III)**

C.R.Building, I.S. Press Road,
Cochin -18

..... Respondent

Appearance:

Mr. M. Balagopal, Advocate for Appellant

Mr. K. Vishwanath, Authorized Representative for Respondent

Coram:

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

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

FINAL ORDER No. 20890 of 2024

Date of Hearing: 16.02.2024

Date of Decision: 14.08.2024

Per: Pullela Nageswara Rao

M/s. Asianet Satellite Communications Ltd., the appellant
imported and cleared the following items 'Node Optilink WOR-H-860-

(90V)-2 out photon-diode SOTU make double hybrid, Transmitter 12DB Optilink-Ortel (AOT-01-12), Return Receiver 2 in 2 out Optilink' etc., under Bills of Entry dated 14.08.2008 and 09.09.2008 classifying the items under Customs Tariff Item entry 85176990 with benefit of exemption Notification No. 24/2005-Cus dated 01.03.2005 and Notification No. 2/2008-C.E. dated 01.03.2008. The Department alleged that the items imported were transmitters used for Television Broadcasting or Transmission and reception of Television signals, hence classifiable under Customs Tariff Item entry 85255020, thereby resulting in a short levy of duty amounting to Rs. 1,90,556/-. A Show Cause Notice was issued and appellant replied that; they are not in business of Television Broadcasting, the imported equipment is for Internet and for cable TV and therefore specifically classifiable under CTH 8517; the Adjudicating Authority dropped the proceedings; the department filed an appeal and Commissioner (Appeals) has upheld the classification proposed in the Show Cause Notice and held that; the benefit of Notification No. 24/2005-Cus dated 01.03.2005 is not eligible and set-aside the order of the Adjudication Authority. Aggrieved by the decision of the Commissioner (Appeals) this appeal is filed before the Tribunal.

2. The Appellant contended that; they had claimed the classification of the goods under CTH 8517, since the impugned goods were mainly for transmitting signals, which are broadcast from elsewhere, with the benefit of Notification No. 24/2005 dated 01.03.2005; Commissioner (Appeals) held that; the correct classification of the impugned goods should be Customs Tariff Sub-Heading (CTSH) 852550, which covers "Transmission apparatus".

3. The learned counsel contends that; the Commissioner (Appeals) having accepted classification under Customs Tariff Sub-Heading (CTSH) 852550, should have extended the benefit of the Notification No. 25/2005-Cus dated 01.03.2005, which exempts goods covered under CTSH 852550 under S. No. 12; Commissioner (Appeals) in an identical matter of their own case vide OIA No. 60/CUS/TVM/2013(D) dated 23.07.2005 allowed the classification under CTSH 852550 and also extended the benefit of Notification No. 25/2005-Cus. It is settled position of law that the appellant is entitled to claim benefit of Notification at any stage of proceedings.

4. The learned counsel for the Appellant relied on the decision of the Hon'ble Apex Court in the matter of Share Medical Care Vs. UOI reported in 2007 (209) ELT 321 (SC), wherein it is held that "Even if an applicant does not claim benefit under a particular notification at initial stage, he is not debarred, prohibited or estopped from claiming such benefit at a later stage - Section 25 of Customs Act, 1962". Further, the learned counsel relied on the following decision of the Hon'ble Tribunal, Chennai in the case of M/s Elegant Fabric Vs. Commissioner of Customs, Chennai reported in 2011 (263) E.L.T. 623, wherein it is held that "Benefit of exemption Notification can be claimed at any stage"

5. Further, the learned counsel relies on decision of the Chennai Tribunal in the case of M/s Cipla Ltd., Vs. Commissioner of Customs, Chennai reported in 2007 (218) E.L.T. 547, wherein it had opined that Benefit of notifications not claimed at the time of import, cannot be denied as it can be claimed at appellate stage, also. Again, the Chennai Tribunal in the case of Commissioner of Customs, Chennai Vs. Kankai Imports reported in 2007 (7) S.T.R. 190, also was of the same opinion

that 'Benefit of exemption notification though claimed at later stage, not deniable'. In the above decisions, the Tribunal has held that the benefit of exemption Notification can be claimed at any stage. The appellant further contends that they are eligible for exemption Notification No. 25/2005-Cus dated 01.03.2005 even if the goods are classifiable under Customs Tariff Heading (CTH) 8525 and the issue is Revenue neutral.

6. The Learned Authorised Representative (AR) for the Revenue has reiterated the findings in the impugned order.

7. Heard both sides and perused the records.

8. The issue in this appeal is whether the goods imported are classifiable under Customs Tariff Sub-Heading (CTSH) 8517 or 8525. The appellant has classified the goods under CTH 8517 with benefit of Notification No. 24/2005-Cus dated 01.03.2005 and Notification No. 2/2008-CE dated 01.03.2008. The Department has proposed classification under Customs Tariff Sub-Heading (CTSH) 852550 as 'Transmission apparatus' without the benefit of Notification No. 24/2005-Cus, since this Tariff Heading is not covered under the Notification. However, we find that the entry at S.No. 12 of Notification No. 25/2005 has exempted goods covered under Customs Tariff Sub-Heading (CTSH) 852510 namely 'Transmission apparatus other than apparatus for radio broadcasting or Television'. This entry at S. No. 12 has been substituted by Notification No. 133/2006-Cus dated 30.12.2006, wherein the Tariff Heading at S.No. 12 has been substituted with Customs Tariff heading 8525. We find that the subject imports were in August and September, 2008, hence the benefit of Notification No.25/2005 at S. No. 12 covers goods, which have been classified by Commissioner (Appeals) under Customs Tariff Sub-

Heading (CTSH) 852550. The appellant has submitted that the goods even, if they are classified under CTSH 852550 they are eligible for benefit of Notification No. 25/2005-Cus under CTSH 8525 and should be extended. We find that as per the catalogue and as per technical literature submitted by the appellant the impugned goods are;

- i. AOT-01-12 optimal transmitter, receives RF electrical signal as input and convert the same to optical signal and carries over optical fibre cable.*
- ii. WR-H-860-II-CATV optical node is a outdoor optical receiver designed as a small optical node for HFC network application to meet the needs of transmission of television signal over optical fibre, the equipment receives optical signal from optical fibre cable converts the same to RF electrical signal and carries over optical fibre cable, the return transmitter in the equipment receives RF electrical signal, convert the same to optical signal and transmits over optical fibre cable.*
- iii. ONU 1845-II 2 port optical node is an equipment which receives optical signal from optical fibre cable and converts the same to RF electrical signal and carries over optical fibre cable, the return transmitter in the equipment receives RF electrical signal converts the same to optical signal and transmits over optical fibre cable.*

9. From the above technical literature we find that the impugned imported equipment, primarily receives optical signal from optical fibre cable (OFC) and converts the same to RF electrical signal and the return transmitter in the equipment converts the same to optical signal and transmits over optical fibre cable.

10. We find that the impugned order has rightly held that the impugned imported equipment/apparatus falls under CTH 852550 as 'Transmission apparatus'. However, we find that though the goods are held to be classifiable under Customs Tariff Sub-Heading (CTSH) 852550 the benefit of Notification No. 25/2005-Cus dated at S.No.12 was not extended. We find that the entry at S.no.12 of Notification No. 25/2005-Cus has been substituted by Notification No. 133/2006-Cus dated 30.12.2006. The subject imports were in August and September 2008, therefore the benefit of Notification is available for the goods classifiable under CTSH 8525. The appellant has averred that even, if the goods are classified under CTSH 852550 they are eligible for benefit of Notification No.25/2005-Cus at S.No.12. We find that the contention of the appellant with regard to benefit of Notification No. 25/2005-Cus dated 01.03.2005 is tenable in view of the decisions cited (supra). Accordingly, the appeal filed by the appellant to the extent of extending the benefit of entry at S. No. 12 of Notification 25/2005-Cus dated as amended by Notification No. 133/2006 dated 30.12.2006 is allowed.

Accordingly, the appeal is partly allowed in the above terms.

(Order pronounced in open court on 14.08.2024)

(P.A.Augustian)
Member (Judicial)

(Pullela Nageswara Rao)
Member (Technical)

Sasidhar