

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

Regional Bench COURT-2

Customs Appeal No. 26861 of 2013

[Arising out of the Order-in-Appeal No. 185/2013 dated 08.03.2013 passed by
Commissioner of Customs (Appeals), Bangalore.]

M/s. Digital Circuits Pvt. Ltd.,

No 60, Doddakalasandra
Kanakapura Main Road
Bangalore, Karnataka – 560062

.....Appellant

VERSUS

**Commissioner of Customs,
Bangalore**

C R Building , Queens Road,
P.B.NO. 5400
Bangalore, Karnataka-560001

..... Respondent

Appearance:

Mr. Pradyumna G.H, Advocate for Appellant
Mr.K.A.Jathin Authorized Representative for Respondent

Coram:

Hon'ble Mr. P.A. Augustian, Member (Judicial)
Hon'ble Mr. Pullela Nageswara Rao, Member (Technical)

FINAL ORDER No. 20900 of 2024

Date of Hearing: 05.03.2024

Date of Decision: 04.09.2024

Per: P.A. Augustian

The issues in the present appeal are whether the respondent can demand differential duty without challenging the self-assessment made by the appellant and whether the goods imported by the appellant can be classified as declared by the appellant under Customs Tariff Chapter 84 or under Chapter 85 as held by the Adjudication Authority.

2. The brief facts are the appellant had imported "Transformer for Automatic Data Processing Machines" and filed a Bill of Entry No. 324457 dated 31.01.2010, classifying them under Customs Tariff Item entry 84718000 and paid Customs Duty, accordingly. Thereafter, a demand notice was issued under Section 28 directing the appellant to pay differential duty of Rs. 2,14,452/- under Section 28(1)(b) of Customs Act, 1962. Consequent to the re-classification of the 'Transformers' under Customs Tariff Item entry 85042100 of the Customs Tariff Act, 1975 and also demand of interest under Section 28 AB of Customs Act, 1962. However, the appellant has failed to comply with the above direction and accordingly a notice was issued for personal hearing as per the order-in-Original, the appellant has not responded to the personal hearing and considering that the appellant does not have any reason to rebut the allegation made in the said demand notice, proceedings were completed by issuing Order-in-Original dated 29.09.2012. Aggrieved by said order, an appeal was filed before the Commissioner (Appeals) and as per the impugned order Commissioner (Appeals) considered the issue on merit and held that the impugned order is sustainable and rejected the appeal. Aggrieved by impugned order, the appeal is filed before this Tribunal.

3. When the matter came up for hearing, Learned Counsel for the appellant submitted that; the impugned order is prima facie unsustainable, since it is issued without considering the judgement of the Hon'ble Supreme Court in the matter of **ITC Ltd Vs. Commissioner of Central Excise, New Delhi [2019 (368) ELT 216 (SC)]**. Learned Counsel submitted that, once the Bill of Entry and the Assessment of the Bill of Entry made by the respondent has attained

finality, no demand can be made or matter can be reopened for classification at a later date without challenging the assessment of the original Bill of entry. Learned counsel also relied on the decision of the Tribunal in the matter of **Rumen Dey Vs. Commissioner of Customs (Prev.), Shillong–(2023) 10 Centax 174 (Tri.-Cal.)** and **Oswal Agro Mills Ltd. Vs. Collector of Central Excise – 1993 (66) E.L.T. 37 (S.C).**

4. Regarding classification, Learned counsel for the appellant further submits that as per the impugned order to attract classification under heading 84.71 as declared by the appellant, item should satisfy conditions prescribed under Chapter Note 5(A) of Chapter 84 of the Customs Act, 1962. However, the 'Transformers' declared by the appellant under 'automatic data processing machine' were designed to perform specific function and hence same are classifiable under Customs Tariff Item entry 85042100. In this regard, Learned counsel submitted that the Bill of Entry was presented by showing the description of the goods as 'Transformers for Automatic Data Processing machine' as indicated in the invoice supplied by overseas supplier and it is meant for use in panel connector, which is wholly manufactured for Bharat Electronics, Ltd. The Learned Counsel also drew our attention to the purchase order issued by BEL. The Learned Counsel also drew our attention to Chapter Note 5(C) of Chapter 84 which clearly states that ".....Separately presented units of an automatic data processing machine are to be classified in heading 8471.

5. The Learned Counsel further submits that as per chapter note 5(D) to chapter 84 heading 84.71 does not cover;

- (i) Printers, copying machines, facsimile machines, whether or not combined;
- (ii) Apparatus for the transmission or reception of voice, images or other data, including apparatus for communication in a wired or wireless network (such as a local or wide area network)
- (iii) Loudspeakers and microphones;
- (iv) Television cameras, digital cameras and video camera recorders;
- (v) Monitors and projectors, not incorporating television reception apparatus

6. The Learned Counsel further submitted that the adjudication authority as per the impugned order considered only Chapter Note 5 to Chapter 84, which is applicable to complete automatic data processing machines and there is no evidence relied by the adjudication authority to conclude that the goods imported by the appellant can perform any other specific function other than data processing to classify the same under the appropriate head related to their respective function or to consider under residual heading of 'Transformers' under 8504.

7. The Learned counsel further submitted that Section Note 2(a) of Section XVI, which states that parts which are goods included in any of the headings of Chapter 84 and 85 are to be classified in their respective headings. Therefore, if the impugned goods are to be classified under Chapter 85, it is necessary for the revenue to exclude the entry under Chapter 84.

8. Learned Authorised Representative (AR) reiterated the submissions and submitted a detailed argument note and copy of the relevant chapters. The Learned AR further submitted that transformer cannot be regarded as being part of Automatic data processing

machines in view of chapter note 5(C) of chapter 84; as per chapter note 5(E) of chapter 84 machines incorporating or working in conjunction are working in a automatic data processing machine and performing a specific function other than data processing are to be classified in the headings appropriate to the respective function or, failing that, in residual headings; Transformers have a specific heading 8504 and hence classifiable under that heading.

9. Regarding the contention made by the appellant that the demand is not sustainable as assessment has not been challenged, Learned AR relied on the following decisions:

a. Union of India Vs. Jain Shudh Vanaspati Ltd. – 1996 (86) E.L.T. 460 (SC)

b. Component Corporation Vs. Collector of Customs, New Delhi – 1997 (93) E.L.T. 225 (Tribunal)

10. we have heard the submissions of both sides and perused the records. Regarding objections made by Learned counsel for the appellant challenging re-assessment, in view of the judgment of Hon'ble Supreme court in the matter of **ITC Ltd.(supra) Vs. CC, Kolkata reported in 2019 (368) E.L.T. 216 (S.C)**, wherein it is held that:-

"47. When we consider the overall effect of the provisions prior to amendment and post-amendment under Finance Act, 2011, we are of the opinion that the claim for refund cannot be entertained unless the order of assessment or self-assessment is modified in accordance with law by taking recourse to the appropriate proceedings and it would not be within the ken of Section 27 to set aside the order of self-assessment and reassess the duty for making refund; and in case any person is aggrieved by any order

*which would **include** self-assessment, he has to get the order modified under Section 128 or **under other relevant provisions of the Act.***

(emphasis supplied)

11. Thus, it is well settled that refund under section 27 of Customs Act, 1962 can be made only if assessment is modified under Section 128 or under other relevant provisions of the Act. Any other provision as stated in, *ibid* judgment cannot be limited to Section 128 of Customs Act, 1962, but include other provisions like Section 149 for amendment of document or Section 154 of the Customs Act, 1962 for correction of clerical error, etc. If review of the assessment is limited to Section 128 the Act, other provisions like Section 149 meant for amendment of document, Section 154 for correction of clerical error and provision of Section 28 of the Customs Act, 1962 to recover duty short paid by the importer will become redundant. Thus, even if the bill of entry is self-assessed, importer can seek amendment of bill of entry under Section 149 of the Customs Act, 1962 and respondent has to consider such request in accordance with law. Thus, importer can seek amendment of bill of entry under Section 149 of the Customs Act, 1962 or Customs can demand additional duty as done in appellant's case under relevant provision and the aggrieved party cannot challenge the same on the ground that the assessment has attained finality and only provision is under Section 128 to reconsider the assessment. Thus there is no bar to demand duty under Section 28(1) (b) and interest under Section 28AB of the Customs Act, 1962 against the appellant which is legal and proper.

12. Regarding the issue on merit, as per the Order-in-Original, adjudication authority considered Chapter Note 5(A) of Chapter 84 to determine the classification of goods under CTH 8504, which reads as "Electrical Transformers, Static Converts (for example, Rectifiers) and Inductors" However, as submitted by the appellant, the adjudication authority has not considered Note 5C of Chapter Notes stating that separately presented units of an automatic data processing machine are to be classified in Heading 8471. Further the exclusion of the goods are specifically stated Chapter Note 5(D) of chapter 84 and the goods imported by the appellant are also not falling under the said category.

13. In the facts and circumstances of the case, the goods imported by the appellant merit classification under Customs Tariff Item entry 84718000 and cannot be considered under the chapter heading 8504 as held by respondent.

14. Hence, appeal is allowed with consequential relief, if any, as per law.

(Order pronounced in open court on 04.09.2024)

(P.A.Augustian)
Member (Judicial)

(Pullela Nageswara Rao)
Member (Technical)

Sasidhar