

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

REGIONAL BENCH - COURT NO. 2

Customs Appeal No. 3609 of 2012

[Arising out of Order-in-Appeal No.161/2012 dated 28.09.2012 passed by the
Commissioner of Customs (Appeals), Bangalore]

ADC India Communications Limited

P.B. No. 5812, 10C, II Phase,
Peenya,
Bangalore – 560 058

.....**Appellant**

VERSUS

**Commissioner of Customs
Bangalore**

PB 5400, C.R. Building
Queens Road
Bangalore – 560 001

.....**Respondent**

Appearance:

Mr. N. Anand, Advocate for the Appellant
Mr. K. Vishwanath, Authorised Representative for the Respondent

Coram:

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

Final Order No.: 20912 / 2024

Date of Hearing: 27.02.2024

Date of Decision: 26.08.2024

Per: Pullela Nageswara Rao

M/s. ADC India Communications Ltd., the appellant is engaged in the manufacture of telecommunication and network related goods and products, *inter alia* the appellant manufactures 'Patch Panel', a telecommunication and network product.

2. The brief facts of the case are the appellant manufactures 'Patch Panel' a telecom/network product used in Local Area Network (LAN),

which acts as an interface between telecommunication cable/Un-shielded Twisted Pair (UTP) and Patch Chord/Cable, which enables transmission of data, voice, and other phenomenon.

3. The appellant imported '6 Port Connector Assembly' a component/part used in the manufacture of 'Patch Panel'. The appellant was classifying the impugned imported goods under Customs Tariff Item Entry 85177090. Further they are exporting the manufactured product i.e. 'Patch Panel' classifying under Customs Tariff Item Entry 85177090, under Duty Drawback Scheme and were allowed the drawback under All Industry Rate (AIR) by the Respondent. Further, they were also clearing the 'Patch Panels' domestically on payment of Central Excise duty under Central Excise Tariff Item entry 85177090.

4. The Department issued show-cause notice dated 02.09.2010 regarding import of the '6 Port Connector Assembly' imported vide 7(seven) bills of entry during the period 06.03.2010 to 08.07.2010 alleging that the appellant had imported the impugned goods and classified them under Customs Tariff Item Entry 85177090 with the benefit of Notification No, 24/2005-Cus.dated 01.03.2005, whereas the goods are classifiable under Customs Tariff Item Entry 85389000 on the grounds that HSN explanatory notes to CTH 8517 – Parts -- The heading also excludes; at clause(h) "Relays and Switching equipment such as selectors for automatic telephone exchanges of heading 8536", the imported goods are classified by the exporting country (USA) as per their invoice under Chapter Heading 853890300. Further as observed from the pictorial details furnished by the appellant the imported goods are used in the manufacture of Patch Panel, which will be fitted in between/switch and the socket connecting the computer and the

telecommunication network, therefore, they cannot be treated as parts of networking equipment, and they appear to be rightly classifiable under Chapter Heading 8538 as confirmed by the supplier in their invoices. The adjudicating authority has confirmed the classification under Customs Tariff Item Entry 85389000 and confirmed the differential duty of Rs. 12,16,783/- for the goods covered by the 7(seven) bills of entry under Section 28(1) along with interest under 28AB of the Customs Act, 1962.

5. On appeal, the Commissioner (Appeals) has confirmed the classification and also the differential duty with interest and rejected the appeal. Aggrieved by the order of the Commissioner (Appeals) the appellant has filed this appeal before the Tribunal.

6. The appellant in the appeal contended that they have been classifying the impugned imported item '6 Port Connector Assembly' as parts under Customs Tariff Item entry 85177090 and have been allowed clearance by the Customs; they import the above item for manufacture of Patch Panel; the 'Patch Panel' is a network related goods consisting of metal panel, which accommodates four numbers of connector assemblies used in the LAN; the end use computer is connected to the Patch Panel using UTP (Un-shielded twisted pair) cable; the patch panel receives the UTP cable at the rear side and connects to an RJ45 patch cord in the front side. The patch cord connects the hub (switch) to the patch panel. Therefore, the patch panel is an interface between UTP cable (telecommunication cable) and the patch cord/cable, the rear side of the patch panel receives UTP cable and frontside receives the RJ45 cord (computer communication cable), hence the patch panel assists in connecting a telecommunication network cable with a computer

networking patch cord/cable, which enables transmission of data, voice, image or other phenomenon.

7. The learned counsel further submitted that; Revenue has re-agitated the issue once again and reclassified the goods without any legal justification and it is well settled that when there is no change in the fact, in the product, in statutory provisions, Revenue is not justified in changing the classification without proper evidence, reliance is placed on the decisions in **Shri Baidyanath Ayurved Bhavan Ltd. reported in 2009 (237) E.L.T. 225 (SC), Jayaswals Neco Ltd. Vs. CCE – 2006 (195) E.L.T. 142 (SC)**; further, Revenue has not challenged the 7(seven) Bills of Entry involved in the show-cause notice, which have been duly assessed and it is settled that Bill of Entry assessment is an order, which is appealable and if the Revenue has not challenged the Bill of Entry, then they cannot issue the show-cause reviewing the Bill of Entry assessment and reliance was placed on the decision of **ITC Ltd. Vs. CCE – 2019 (368) E.L.T. 216 (SC)**.

8. The learned counsel in his submission has submitted that the issue of classification was raised for the first time by the Revenue on 12.09.2007, wherein the Department has sought change of classification from Customs Tariff Item Entry 85177090 to 85389030. However, the Department did not initiate any further proceedings and that thereafter they were importing the impugned goods classifying under Customs Tariff Item Entry 85177090.

9. The learned Authorised Representative (AR) for the Revenue reiterated the findings of the adjudicating authority and the first appellate authority.

10. Heard both sides and perused the records.

11. The learned counsel has contended that Revenue has not challenged the 7(seven) Bills of Entry involved in the show-cause notice, which have been duly assessed and it is settled that Bill of Entry assessment is an order, which is appealable and if the Revenue has not challenged the Bill of Entry, then they cannot issue the show-cause reviewing the Bill of Entry assessment and reliance was placed on the decision of **ITC Ltd. Vs. CCE – 2019 (368) E.L.T. 216 (SC)**. We find that the Hon'ble Apex Court has 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)

Thus, we find that there is no bar to demand duty under Section 28 and interest under Section 28AB of the Customs Act, 1962, which is legal and proper.

12. The issue in this case is whether classification of the impugned imported goods '6 Port Connector Assembly' is under Customs Tariff Item Entry 85177090 or Customs Tariff Item entry 85389000. We find that the appellant has been importing this item for the last many years and the Department has allowed the classification as parts under Customs Tariff Item Entry 85177090. Further we find that the goods 'Patch Panel' manufactured by utilizing the impugned imported item have been cleared

on payment of excise duty and also exported under Duty Drawback Scheme under the Customs Tariff Item Entry 85177090.

13. The appellant is claiming the classification of the impugned goods under Customs Tariff Item Entry 85177090 as parts of 'Patch Panel'. The Department has issued a show-cause notice based on the grounds that; HSN explanatory notes to CTH 8517 – Parts -- The heading also excludes; at clause(h) "Relays and Switching equipment such as selectors for automatic telephone exchanges of heading 8536"; the imported goods are classified by the exporting country (USA) as per their invoice under Chapter Heading 853890300. The Department has contended that in view of the above, the impugned imported goods are classifiable under Chapter heading 8538 as opposed to the classification adopted by the appellant under Customs Tariff Chapter Heading 8517. We find that the change in classification has been proposed and confirmed by the appellant on the above two grounds, the differential duty payable was also confirmed along with interest.

14. We find that the impugned imported goods are not used in the "Electrical apparatus for switching or protecting electrical circuits, or for making connections to or in electrical circuits (for e.g. switches, fuses, lightening arresters, voltage limiters, surge suppressors, plugs and other connectors, junction boxes) for a voltage exceeding 1,000 voltage to be classified under Customs Tariff Chapter Heading 8535 or of Chapter heading 8536, which reads as under: "Electrical apparatus for switching or protecting electrical circuits, or for making connections to or in electrical circuits (for e.g. switches, fuses, lightening arresters, voltage limiters, surge suppressors, plugs and other connectors, junction boxes)

for a voltage not exceeding 1,000 voltage; connectors for optical fibres, optical fibre bundles or cables.”

15. Further, Customs Tariff Chapter Heading 8537 covers “Boards, panels, consoles, desks, cabinets and other bases, equipped with two or more apparatus of heading 8535 or 8536, for electric control or the distribution of electricity, including those incorporating instruments or apparatus of Chapter 90, and numerical control apparatus, other than switching apparatus of heading 8517.”

16. We find that the impugned goods as per the Department are held to be classifiable under Customs Tariff Item Entry 85389000 – under heading “Others’ of chapter heading 8538, which reads as “parts suitable for use solely or principally with apparatus of headings 8535, 8536 or 8537”. We find that the item was classified by the Department under chapter heading 8538 *inter alia* based on the classification adopted by the supplier in USA. We further find that the United States International Trade Commission adopts the classification under Harmonized Tariff Schedule (HTS), We find that the chapter headings of HSN code adopted by the Indian Customs and a HTS code of the US are not completely aligned. Hence, determination of classification based on HTS code of US for the purpose of Indian Customs Tariff Act does not appear to be tenable.

17. We find that the impugned item is an interface between the telecommunication network cabling and the computer network cabling, and it is not any Relay or Switching equipment to be excluded from the chapter heading 8517, in view of the exclusion provided in the HSN to chapter heading 8517. We find that the impugned goods are used in connecting a telephone or telecommunication network to a computer

network for the purpose of transmission of voice, video and data and not for transmission of electricity and is not a relay or a switching equipment. The headings 8535, 8536 and 8537 are primarily for equipment and apparatus related to transmission and distribution of electricity. Hence, the classification of the impugned goods does not merit classification under any of the headings 8535, 8536 and 8537. Further, Chapter Heading 8536 provides for specific classification for 'connectors of optical fibre, optical bundles or cables'. We find that the impugned imported item is not meant for any connections of optical fibre or optical fibre bundles.

18. In view of the above discussion, we find that the classification of the impugned goods under Customs Tariff Item Entry 85389000 is not correct, and the classification should be under Customs Tariff Item Entry 85177090 as declared by the appellant. Accordingly, appeal is allowed with consequential relief, if any as per law.

(Order pronounced in Open Court on 26.08.2024)

(P.A. Augustian)
Member (Judicial)

(Pullela Nageswara Rao)
Member (Technical)

iss...