

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

REGIONAL BENCH - COURT NO. 1

Central Excise Appeal No.26173 of 2013

(Arising out of Order-in-Appeal No. 65/2013 dated 12.03.2013
passed by the Commissioner of Customs (Appeal), Bangalore)

M/s. ABB Ltd.,
Plot No.5 & 6, II Phase,
Peenya Industrial Area,
Bangalore

Appellant(s)

VERSUS

**Commissioner of Central
Excise, LTU**

JSS Towers, 100 Feet Road,
Banashanakari-III Stage,
Bangalore

Respondent(s)

With

Central Excise Appeal No.20817 of 2018

(Arising out of Order-in-Appeal No. 163-164/2018 CT dated
01.03.2018 passed by the Commissioner of Central Tax (Appeals-II),
Bangalore)

M/s. ABB Ltd.,
Plot No.5 & 6, II Phase,
Peenya Industrial Area,
Bangalore.

Appellant(s)

VERSUS

Commissioner of Central Tax,

TTMC, BMTC Bus Stand, 4th Floor,
Above BMTC Bus Stand, Domlur,
Old Airport Road, Bangalore.

Respondent(s)

And

Central Excise Appeal No.20818 of 2018

(Arising out of Order-in-Appeal No. **163-164/2018 CT** dated
01.03.2018 passed by the Commissioner of Central Tax (Appeals-II),
Bangalore)

M/s. ABB India Pvt. Ltd.

Maneja, Vadodara,
Gujarat-390 013.

Appellant(s)

VERSUS

Commissioner of Central Tax,
TTMC, BMTC Bus Stand, 4th Floor,
Above BMTC Bus Stand, Domlur,
Old Airport Road, Bangalore.

Respondent(s)

APPEARANCE:

Shri G. Shivadass, Senior Advocate for the Appellant

Shri Rajiv Kumar Agarwal, Commissioner (AR) for the Respondent

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

Final Order No. 20752 - 20754 /2025

DATE OF HEARING: 28.11.2024

DATE OF DECISION: 27.05.2025

PER : DR. D.M. MISRA

These three appeals are filed against respective Orders-in-Appeal passed by Commissioner of Central Excise (Appeals), Bangalore, since involve common issues, are taken up together for hearing and disposal.

2. The appellant, a Large Tax payer Unit(LTU), are engaged in the manufacture of excisable goods such as automation products, Distribution Control System, Relay Panels, AC/DC Drivers etc. at their units at Peenya and Moneja. The appellant had imported parts / components declaring the same as parts of Relays for manufacture of Relays by availing exemption under Notification No.36/96-Cus dated 23.07.1996 and Notification No.25/1999-Cus dated 28.02.1999 (Sl.No.112) as amended by following the procedure laid down under Customs (Import of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 1996 (the Rules, for short). The parts imported by the appellant are (i) PCBA for REJ603 Mother Board; (ii) PCBA for REJ603 Connector Board; (iii) PCBA for REF_REJ601 Comm; (iv) PCBA for REJ_601 CP&BI_T; (v) REF_601 R2:LCD Module

Assembly; (vi) REJ601: Input Board – 1A; (vii) REJ601: Output Board; (viii) REJ601: Digital Board; (ix) REF601R2: Power Supply Board; (x) Power Supply 240 R2; (xi) Power Supply 204 R1 and (xii) Capacitor Bank Protection Module etc. These parts have been used in the manufacture of finished goods declaring the same as “Relays” and classifying the same under CETH 85364900 / 85364100 in their invoices / import documents and also ER1 returns filed with the Department from time to time. Investigation was initiated by the Department about the eligibility of Notification No.25/1999-Cus dated 28.02.1999 for the said import clearances in the year 2012 alleging that these components are not parts of mere Relays but parts / sub-assembly of an Intelligent Electronic Device. Accordingly, statements have been recorded and documents retrieved from the appellant for further investigation. Later, on completion of investigation, alleging that the appellant are not entitled to the benefit of Notification No.25/1999-Cus dated 28.02.1999 (Sl.No.112), show-cause notices dated 07.04.2013 and 20.03.2014 were issued proposing to reclassify the product under Chapter sub-heading 90328910 and to recover differential duty of Rs. 11,20,03,480/- and Rs.35,07,58,336/- respectively with interest and penalty. On adjudication, the demands were confirmed with interest and penalty. Aggrieved by the said orders, they filed appeals before the learned Commissioner(Appeals) who in turn rejected their appeals. Hence, the appeals No.E/20817/2018 and E/20818/2018 are filed against the said orders. Appeal No.E/26173/2013 relates to rejection of their request letter dated 24.09.2012 by the Department for procuring imported parts availing benefit of Notification No.25/1999-Cus.

3.1. At the outset, the learned senior advocate for the appellant has submitted that the appellant had imported various parts of Relays which were used in the manufacture of final products viz.

Relays. Relays essentially identify the tentative faults occurring at the location of the protected equipment and disconnects the same from the main supply. They were importing components declaring it as parts and using the same, manufactured Relays and availed exemption under Sl.No.112 of the Notification No.25/1999-Cus dated 28.02.1999 as amended vide Notification No.22/2005-Cus dated 01.03.2005 and following the procedure laid down in Customs (Import of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 1996 (the Rules). Appellant had registered themselves under the aforesaid Rules and filed requisite application in Annexure-III. After verification, the jurisdictional officer issued a letter to the Customs officers to allow the goods imported in question. The goods so imported are used in the manufacture of finished goods and cleared as Relays, classifying the same under CETH 85364900 / 85364100 on payment of appropriate Central Excise duty. He has submitted that no proceeding has been initiated on these clearances disputing the classification and therefore the assessments have reached finality. The procedure under the said Rules required the appellant to produce accounts indicating the use of their imported materials and its consumption in every quarter based on which the bonds executed were cancelled. Appellant were following this procedure from 1996 to 2012. The learned advocate has submitted that their request letter dated 24.09.2012 in Annexure-III was rejected which is subject matter of appeal No.E/26173/2013 holding that goods manufactured by the appellant are not 'Relays'. Simultaneous enquiries were conducted by the Department on the eligibility of the benefit of the said exemption notification alleging that the imported goods / components are not parts of Relay and these were parts and sub-assembly of electronic devices.

3.2. The learned advocate has submitted that the goods in question are classifiable under Chapter heading 8536 as Relays

since protection is the principal function of the product. He has submitted that Relay is an electrical device and opens and closes the electrical circuit upon detecting the variable power surge from the pre-determined values. The primary function of a relay is protective in nature as it isolates the abnormal areas of the electrical system from the rest to ensure that there is no damage to the machinery due to such fluctuation. He has further submitted that in a complex industrial equipment, an advanced relay system is required to provide protection to such equipment from any damages. Such an advanced relay system is also capable of rectifying any tentative faults in the power system. It is their contention that advent of newer technologies, the nature of relays used by industries have also been improved. The various types of relays that are used have undergone changes from electro-mechanical relays to electro-static relays and now to digital /numeric relays etc. which in addition to their core-processing function of protecting the system, also performs the functions of identifying potential fault areas in the system, allowing the customer to rectify the same resulting in less down time for the system. Even though the technology with respect to relays have evolved over a period of time, the core function of a relay to protect the power system has not changed. The finished goods in the present case is also an electrical device which take in the analog input of the determinant condition to convert the same into digital information comparable with the pre-set quantities to identify the tentative faults and sends a command to the circuit breaker; thus, these are modern day digital relays which are classifiable under Chapter 8536. Referring to Note 7 of the Chapter 85, learned advocate has submitted that the present manufactured goods are classifiable under Relays. Further he has submitted that in terms of Rule 3(a) of the General Rules of Interpretation of the First Schedule to the Customs Tariff Act, 1975 where the product is prima facie classifiable under two or more headings, the heading which

provides most specific definition is to be preferred to the heading providing a general description. As per Rule 3(b) of the General Rules of Interpretation provides that composite goods consisting of different materials or made up of different components shall be classifiable as if they consisted the material or component which gives the essential character. This is further substantiated by Note IV of the HSN Explanatory notes which states that the multi-function or composite machines are to be classified on the basis of their principal function. They have referred to Circular No.51/2004-Cus dated 01.10.2004 wherein it was clarified that mere classification of 'Lever combination switches' under CTH 8537 will not take the item out of the category of switches. They have referred to the following Circulars:-

- i. No.17/2007-Cus dated 19.04.2007
- ii. No.27/2013 dated 01.08.2013
- iii. No.51/2004-Cus dated 01.10.2004
- iv. No.36/2013 dated 01.08.2013
- v. No.20/2013-Cus dated 14.05.2013

Also, in support, they have referred to the following judgments:-

- Xerox India Ltd. v. CC, Mumbai reported in 2010 (260) E.L.T. 161(SC)
- Logic India Trading Co. Ltd. v. CC, Cochin reported in 2016 (337) E.L.T. 65 (Tri. Bang.) affirmed by Supreme Court in 2016 (342) E.L.T. A34 (S.C.)
- Associated Millers Pvt. Ltd. v. Collector of Customs reported in 1990 (50) E.L.T 633 (Tribunal) affirmed by Supreme Court in 1991 (53) E.L.T. A32)
- CCE v. Siemens Ltd. reported in 2000 (118) E.L.T. 689 (Tribunal)
- CCE v. Wockhardt Life Sciences Ltd. 2012 (277) ELT 299 (SC)
- Westinghouse Saxby Farmer Ltd. v. Commissioner of C. Ex. reported in Calcutta 2021(376) E.L.T. 14 (S.C.)
- Commissioner of Customs v. M/s. Novo Nordisk India Pvt. Ltd. Customs Appeal No, 40367 of 2020 (CESTAT-Chennai)

3.3. Further, the learned advocate has referred to the opinion of IIT Bombay dated 22.06.2007 which clarified that a Machine Terminal REM543/545 product is considered as a Numerical Relay. Further the Assistant Commissioner, Mumbai vide Order-in-Original dated 10.12.2007 held that Relay is classifiable under

CTH 8536. Also, in response to the letter dated 07.08.2014, the CPRI vide letter dated 27.08.2014 confirmed that RED-670 Line Differential Protection is a protective Relay. It is his contention that miniature auxiliary relays imported does not affect the classification of the finished goods as Relays since the miniature relays are used along with the other parts to manufacture the finished goods whose principal function is that of a relay. The learned advocate for the appellant has further submitted that the purchase order placed on the appellant enclosed with the paper book indicate that the products supplied are considered as Relays by the customers. Thus, even applying the common parlance test, the goods under consideration qualify as Relays. Further, they have submitted that the technological advancement in any product also needs to be taken into account while considering the nature of the product. In support, they have placed reliance on the following cases:-

- i. Hewlett Packard India Sales Pvt. Ltd. Vs. CC(Import), Nhava Sheva [2023(383) ELT (SC).
- ii. CC&CE Vs. Lekhraj Jessumal & Sons [1996(82) ELT 162 (SC)]
- iii. Indian Aluminum Cables Vs. UOI [1985 (21) ELT 3 (SC)]
- iv. CC Vs. Novo Nordisk India Pvt. Ltd. [Customs appeal No.40367/2020 – CESTAT, Chennai]

3.4. Rebutting the finding of the lower authority, they have submitted that the imported goods are not classifiable under Chapter heading 9032 of CETA. It is submitted that Chapter heading 9032 covers automatic regulating or controlling instruments and apparatus which when read with chapter notes makes it clear that the key word that was used therein is 'control'. In fact, Note 7 of Chapter 90 of the Central Excise Tariff specifically uses the expression "Heading 9032 applies only" to instruments as apparatus for automatically controlling the level flow, pressure etc. It is submitted that a relay does not control the flow of electricity but only acts as an intervener to isolate an abnormal area of the power system to protect the

electrical system. This protection function of a relay cannot be equated to 'control' mentioned for Relays and thus classification under CTH 9032 is not appropriate.

3.5. Further, the learned advocate has submitted that invoking Rule 8 of the said Rules which has limited scope of examining whether the inputs indeed had been used and if not used for which, there could be verification and duty payable be demanded on the inputs so imported but not used. The said Rule 8 does not enable the reexamination of the eligibility of the inputs or the final products to the notification since a comprehensive examination has already been carried out as per the procedure laid down under Rule 3 to 7 of the said Rules. He has submitted that the appellant has duly followed all the procedures contemplated under the said Rules and the bonds executed by the appellant were periodically cancelled after filing of the reports. The cancellation of the bonds indicated that the Department was satisfied with the use of the imported goods for the intended purpose. Now the dispute raised by the Department that the final product manufactured by the appellant is not a simple Relay but an intelligent electronic device which not only perform relay functioning but several other functions; therefore, not classifiable as simple Relay under Chapter head 8536 but as an Automatic Regulator or Controlling Instrument and apparatus under Chapter heading 9032, cannot be a ground for application of Rule 8 to the present case which is totally uncalled for and unsustainable in law.

3.6. The learned advocate has further submitted that revocation of registration granted under Rule 3 of Customs (IGCRDMEG) Rules, 1996 on the ground that the appellant had not declared the product manufactured as IED was also illegal as such approval for import had been continuously allowed to the appellant for a period of more than 16 years 1996 to 2012.

Thus, there is a statutory presumption that each of the permissions granted by the authority is only after satisfying itself that the appellants are eligible to the benefit of the notification. Therefore, revocation of registration retrospectively is bad in law. In support, they have referred to the following judgments:-

- Union of India v. Sampat Raj Dugar - 1992 (58) ELT 163 (SC)
- Madurai Power Corporation (P) Ltd v. Deputy Commissioner of Central Excise, Madurai reported in 2008 (229) E.L.T. 521(Mad)
- M/s. Oriental Cuisines Pvt Ltd v. The Deputy Commissioner of Commercial Taxes-2018-TIOL-653-KAR-VAT
- M/s. Bellore Estates & Hotels v. State of Karnataka & Ors.- WP No. 12745/2019
- CTO v. Rajasthan Taxchem Ltd.- 2007 (209) ELT 165 (SC)
- Madurai Power Corporation (P) Ltd v. DCE-3008 (229) ELT 521 (Mad.)

3.7. The learned advocate has further submitted that the confirmation of the demand under Rule 8 of the said Rules since not applicable then the only provision for demanding customs duty is Section 28 of the Customs Act, 1962. In the present case, the Department is demanding on the raw materials imported by invoking Section 28 of the Customs Act, 1962 which is contrary to the principles of law laid down in the following cases:-

- S. Balasubramanian, Dir. (Operations), Surana Telecom & Power Ltd v C,C.E., C. & S.T., Hyderabad-III- 2018 (364) E.L.T. 488 (Tri. Del.)
- CCE v. Molex India Ltd. reported in 2015-TIOL-190-HC-KAR-CUS
- Dharampal Lalchand Chug v. CCE reported in 2015 (323) E.L.T. 753 (Bom.)
- Sterlite Optical Technologies Ltd. v. CCE reported in 2011 (270) E.L.T. 266 (Tri. - Mumbai)
- M/s. Ambrane India Pvt. Ltd. V. Commissioner of Customs, New Delhi 2024-VIL-1350-CESTAT-DEL-CU

3.8. The Notification No.40/2012-Cus empowers Central Excise officers to demand Customs duty cannot itself do away with invoking provisions of Section 28 of the Customs Act, 1962. If

the present proceedings are considered to be under Section 28 of the Customs Act, 1962, the demand for the period beyond 5 years is not sustainable. Also, since the appellant has disclosed the procurement of parts of Relays and manufacture of Relays in the statutory returns filed periodically, allegation of suppression with intent to evade payment of duty is not sustainable. In support, they have referred to the judgment of the Tribunal in the case of S. Balasubramaniam DIR (Operations), Surana Telcom & Power Ltd. Vs. CCE, Hyderabad]2019(370) ELT 1412 (Tri. Hyd.)]

4.1. *Per contra*, the learned AR for the Revenue has submitted that the issue involved in the present case is regarding classification of Intelligent Electronic Devices (IEDs) manufactured by the appellant under Chapter sub-heading 90328910 as claimed by the Department or under Chapter sub-heading 85364900 as claimed by the appellant; also eligibility to benefit under Sl.No.112 of Notification No.25/1999-Cus dated 28.02.1999 as amended for imports viz. parts of Relays, switches and connectors" for the purpose of manufacture of "Relays, Connectors and Switches" under Chapter 85.

4.2. The summary of his submissions is as below:-

- Relays are classified under heading 8536. Entire sub-heading 8536 under the Tariff Act deals with elementary functional units i.e. switches or connectors or PCBs etc which are units performing singular function and none which has multiple functions. Further, as per HSN Notes (IV)(b) "assemblies other than the simple switch assemblies are excluded from the purview of 8536. The parts imported as components for manufacture of Relays" are themselves, relays, controllers, connectors, input/output modules etc., the finished products manufactured by using these cannot be termed as " Relays

classifiable under 8536". The IEDs in the instant case are an assembly of many components integrated together to perform multifunctions including the function of a relay which is a part of the IED. Thus, it is very clear that the finished product here does not come under the purview of 8536.

- Commissioner (Appeals) has recorded in, para 19 of OIA No. 163-164/2018-CT dated 01/03/2018 that the items imported are not merely part of relays but several other goods. The relays imported by them are a part of the Intelligent Electronic device manufactured by them
- The catalogues of Relion series reveal that they contain measuring devices, control equipment and switching apparatus. These functionalities are the hallmark of equipment under Chapter heading 9032. Statements from all the concerned personnel including the CEO/ Head of global operations also clearly brought out that the finished goods were IEDs / multifunctional electronic devices.
- As per HSN Note 7 to Chapter 90, heading 9032 applies to:
 - (a)
 - (b) Automatic Regulators of electrical quantities, and instruments or apparatus for automatically controlling non-electrical quantities the operation of which depends on an electrical phenomenon varying according to the factor to be controlled, which are designed to bring this factor to, and maintain it at, a desired value, stabilised against disturbances, by constantly or periodically measuring its actual value. The said apparatus consists of:
 - A device for measuring
 - A control device

- A starting, stopping or operating device
- Write-ups and submissions made by the appellant clearly indicated that the finished goods were Intelligent Electronic Devices performing multiple functions and not just simple electrical relays performing singular electrical function as specified in the notification. Some of the functions are -- a) Analog to digital conversion of different parameters; b) Digital processing of Input signal with software controls; c) Diagnose errors; d) logic control; Ethernet/ optical port facility. A number of relays along with various other devices like Integrated circuits/Microprocessors/ Transistors etc. form part of the equipment. They have filed for grant of patent for Intelligent Electronic Device which indicates that the manufactured product is different from mere Relays.
- As per their catalogue REL 670 provides versatile protection, monitoring and control functionality. Due to its algorithms, it has synchronising, synchro-check, dead line detection and autoreclosing functions. It is able to protect and control several objects. It provides secure and quick local control along with back up control; also enables instant access to important data such as settings, events and disturbance information.
- Relays under heading 8536 as per tariff are simple electrical apparatus having singular function of a switch whereas the finished goods manufactured are IEDs integrating the functions of measurement, control and starting/ stopping devices. Each of the equipment also can function independently.

- When a specific heading is given under 9032, the appellant has mis-classified the same under 8536 and claimed exemption for import of parts which is clearly not correct. Note 1(m) of the CETA, 1985 states that if an article falls in Chapter 90, it stands excluded from Section XVI.
- M/S. ABB India Ltd have also stated that they have filed patents for their exclusive products i.e., RE series, which includes the RED 670-vide- No. US 830522382, which is related to Intelligent Electronic Device.

In support, the learned AR for the Revenue has referred to the following case laws:-

- (i) M/S. Bosch Ltd. Vs. The Commissioner of Customs, Bangalore [2024 (4) TMI 916-CESTAT Bangalore]
- (ii) CCE, Bangalore vs. ASEA BROWN BOVERI Ltd. 2005 (182) E.LT 401 CESTAT Bangalore
- (iii) Rittal India Private Limited Vs. Commissioner of Customs, Bangalore [Final Order No. 20683 to 20687/2024 dated 23.08.2024]
- (iv) Commissioner of Customs, Chennai Vs. Kone Elevator India Ltd. (2002 (9) TMI 351-CEGAT, CHENNAI]
- (v) Commissioner of Customs, Bangalore Vs. M/S. Ni. Systems (India) P. Ltd. (2010 (7) TMI 20-SUPREME COURT]
- (vi) Advanced Spectra Tek Pvt. Ltd. Vs. CC (Acc & Import), Mumbai [2017 (354) E.LT. 286 (Tri. - Mumbai)]
- (vii) Larsen & Toubro Ltd. Vs. Commissioner of Central Excise, Mumbai (2011 (270) E.L.T. 385 (Tri. - Mumbai))
- (viii) IFB Industries Ltd. Vs. Commissioner of Customs, Goa (2001 (131) E.E.T. 213 (Tri. - Kolkata)]
- (ix) CCE, Bengaluru-I Vs. Jas Telecom Pvt Ltd., [2018 (9) TMI 1291 - KARNATAKA HIGH COURT]
- (x) CCE, Ahmedabad vs. Gujarat Ambuja Exports Ltd. reported in 2016 (8) TMI 397-SUPREME COURT

(xi) CT scan research Centre vs. Commissioner of Customs
[2003 155 (ELT) 3 SC]

4.3. On the issue of suppression, the learned AR for the Revenue has submitted that the appellant had never declared the finished goods to be multi-functional devices when permissions under Annexure-IIIs were sought by them from time to time. In support, he referred the judgment of Hon'ble Supreme Court in the case of CCE, Ahmedabad Vs. Gujarat Ambuja Exports Ltd. [2016(8) TMI 397 -SC]. In the present case, the amount demanded is the duty foregone during the period in view of the wrong availment of exemption notification and not customs duty short levied or not levied. The total duty foregone as per Annexure-III has been submitted by the appellant to the Department which are ultimately demanded and confirmed.

4.4. On the issue of invocation of Section 28 of the Customs Act, 1962, the learned AR for the Revenue has reiterated the findings of the learned Commissioner(Appeals). Also referring to the judgment in the case of CT Scan Research Centre Vs. CC [2003(155) ELT 3 (SC)], he has submitted that in case of failure to comply with any condition of notification under bond, time limit prescribed under Section 28 of the Customs Act, 1962 is not applicable. Further rebutting the contention of the appellant that demand is not on Bills of Entry is also not acceptable since the document filed with LTU is Annexure-IIIs whereunder the exemption is allowed by the Department on the imported parts. Rule 8 of the said Rules allows the Department to recover exemption availed wrongly. On the issue of jurisdiction of AC / DC of Central Excise, learned AR for the Revenue referring to the judgment of the Hon'ble Karnataka High Court in the case of CCE, Bengaluru-I Vs. Jas Telecom Pvt. Ltd. [2018(9) TMI 1291 – Karnataka High Court] wherein the High Court has remanded the

issue for de novo consideration and finally the Tribunal vide Order No.20183/2019 dated 19.02.2019 accepted the jurisdiction of AC / DC of Central Excise to demand customs duty raised under Section 28 of the Customs Act, 1962.

5. Heard both sides and perused the records.

6. The principal issue for consideration is, whether the appellant are entitled to the benefit of Notification No.25/1999-Cus. dated 28.02.1999 as amended claimed as 'parts of Relays' and used in the manufacture of 'Relays' falling under Chapter sub-heading 85364100 / 85364900 for the period 1996 to 2006.

7.1. Undisputed facts of the case are that the appellant has been registered with the Central Excise Department under Customs (Import of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 1996 for which they were issued with Annexure-II certificate since 27.09.1996. They submit application from time to time in Form Annexure-III for receiving imported parts of relays intended to be used in the manufacture of relays availing concessional rate of duty as per Sl.No.112 of Customs Notification No.25/1999-Cus. dated 28.02.1999 as amended; which had been permitted by the Jurisdictional Assistant Commissioner/Deputy Commissioner of Central Excise.

7.2. The appellant had received the imported parts of relays and used in the manufacture of finished products called as Relays of various types which are cleared on payment of appropriate excise duty declaring its classification under Chapter Sub-heading 85364900. Also, as per the prescribed procedure under the said Rules, the appellant from time to time, on use of the imported parts in the manufacture of final products, furnished application for cancellation of bond executed at the

time of import of the goods which had been duly cancelled by the Department.

7.3. In the year 2012, as a result of investigation, the Department alleged that the final products manufactured by the appellant are not mere Relays but Intelligent Electronic Devices (IEDs), which function as equipment used for protection, control, measurement and supervision of power systems having several functions viz. (a). *Analog to Digital conversion for input parameters/signals*, (b). *Digital/Numerical Processing of inputs signals with software controls*, (c). *Diagnosis errors*, (d). *Logic Control*, (e). *Digital to Analog conversion (for output)*, (f). *Ethernet/optical communication ports/facility*, (g). *Serial ports for communication with other equipments/devices*, (h). *Power supply*, etc. Further, the modules/sub-assemblies sought for exemption, imported as component of relay, are mounted with array of relays (around 36) along with active components like Integrated Circuits/Microprocessors/Transistors/Diodes, etc. and passive components like Resistors/Capacitors/Inductors /Transformers / Relays/ Switches / Connectors etc. It is alleged that the Notification No.25/99 Cus. allows concessional rate of duty for the parts used in the manufacture of relays, switches, connectors but not when the relays, switches, connectors are themselves as such are mounted on PCB with other components, and also having control function. Analyzing their patent application before the US authorities, it is alleged that relays, falling under Chapter heading 8536 are simple electrical devices, whereas IEDs manufactured by the appellant which integrated measuring, programming and switching apparatus into one which is capable of monitoring complex circuits, hence not relays. The protection and control functions of the finished goods in question are based on the individual controls used viz. electro-mechanical relays, electro-static relays etc. These devices are electronically programmed; hence, the appropriate classification of the IEDs manufactured by the appellant was

under Chapter heading 9032 and thus, the imported parts are not used in relays, accordingly not eligible to the benefit of the Notification No.25/1999 Cus as amended.

8. The contention of the appellant on the other hand is that no doubt, IED is a complex industrial device / equipment; however, the core function is to provide protection to the equipment from any kind of damages to the electrical transmission and distribution system. It is an advanced relay system which is also capable of rectifying any tentative faults in the power system. They have vehemently argued that due to the advancement and improvement in the technologies, the nature of relays used by industries have also been improved from time to time. Various types of relays have been used earlier have undergone changes from the era of electro-mechanical relays to electro-static relays and then digital/numerical relays; which though designed to function for protecting the system but also performs ancillary functions and also facilitates the user to rectify the faults resulting in less down time for the system. It is also argued by the appellant that the goods proposed to be classified under Chapter heading 9032 of CETA by the Department is erroneous and contrary to the Chapter notes appended to the said Chapter 90. The use of the terminology 'control' in the catalogues and in the function of the IEDs is to measure and protect the system, isolate the faulty parts but not to control the quantum of flow/transmission of electricity; hence, its classification under Chapter sub-heading 9032 cannot hold good.

9. We find that the crux of the dispute is admissibility of Sl.No.112 of the Notification No.25/1999-Cus dated 28.02.1999 as amended and not a classification dispute as argued by the Appellant. Thus, it is essential to understand the function of the manufactured IEDs, which the appellant called as advance

version of digital/numerical relays with additional functions, whereas Revenue’s contention is that in addition to the function of relays, since the IEDs also equipped with measuring, control and protective mechanism, it cannot be called as a simple relay falling under Chapter sub heading 85364900, but an automatic regulating or controlling instruments/devices which attract classification under Chapter sub-heading 90328990.

10. Before analysing the rival contention, it is necessary to reproduce the said Notification, which reads as below:-

Customs Notification No.25/1999-Cus dated 28.02.1999

NOTIFICATION
No. 25/99–CUSTOMS

New Delhi, dated the 28th February, 1999 Phalguna, 1920 (Saka)

G.S.R. (E).- In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts the goods specified in column (3) of Table below, and falling under the Chapters of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) specified in the corresponding entry in column (2) of the said Table, when imported into India for use in the manufacture of the finished goods specified in the corresponding entry in column (4) of the said Table, from so much of that portion of the duty of customs leviable thereon which is specified in the said First Schedule, as is in excess of the amount calculated at the rate of,-

- (a) 5% ad valorem in the case of the imported goods specified in List A;
- (b) 15% ad valorem in the case of the imported goods specified in List B; and
- (c) 25% ad valorem in the case of the imported goods specified in List C:

Provided that the importer follows the procedure set out in the Customs (Import of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 1996.

TABLE			
S.NO.	Chapter	Description of imported goods	Description of finished goods
(1)	(2)	(3)	(4)
1.	LIST A		
112.	85	Parts of Relays, Switches, Connectors	Relays; Switches; Connectors

Amended notification:

GENERAL EXEMPTION NO. 160

Concessional rate of duty on goods imported for the manufacture of excisable goods. - In exercise of the powers con-ferred by sub-section (1) of

section 25 of the Customs Act, 1962 (52 of 1962), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts the goods specified in column (3) of Table below, Hand falling under the Chapters or heading or sub-heading or tariff items of the First Schedule] to the Customs Tariff Act, 1975 (51 of 1975) speci-hed in the corresponding entry in column (2) of the said Table, when imported into India for use in the manufacture of the finished goods specified in the corresponding entry in column (4) of the said Table, from so much of that portion of the duty of customs leviabale thereon which is specified in the said First Schedule, as is in excess of the 2[amount calculated at the rate ot-

- (a) Nil in the case of the imported goods specified in List A; and
- (b) 5% ad valorem in the case of the imported goods specified in List B:]

Provided that the importer follows the procedure set out in the Customs (Import of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 1996.

TABLE			
S.NO.	Chapter or Heading or Sub- heading or tariff item	Description of imported goods	Description of finished goods
(1)	(2)	(3)	(4)
LIST A			
112	39, 72, 74, 76, 85	Parts of Relays, Switches, Connectors	Relays; Switches; Connectors

11. There is no definition of 'Relay' prescribed under the said Notification No.25/1999-Cus nor under the Customs Tariff. However, in the HSN for Chapter 8536, Relays are explained as under:

- (C) Relays are electrical devices by means of which the circuit is automatically controlled by a change in the same or another circuit. They are used, for example, in telecommunication apparatus, road or rail signalling apparatus, for the control or protection of machine-tools, etc.
- The various types can be distinguished by, for example:
- (1) The electrical means of control used: electromagnetic relays, permanent magnet relays, thermo-electric relays, induction relays, electro-static relays, photoelectric relays, electronic relays, etc.
 - (2) The predetermined conditions on which they operate: maximum current relays, maximum or minimum voltage relays, differential relays, fast acting cut-out relays, time delay relays, etc.
- Contactors, which are also considered as relays, are relays, are devices for making and breaking electrical circuits, which automatically reset without a mechanical locking device or hand operation. They are generally operated and maintained in an active state by an electric current.

The meaning and function of a Relay in an electric power system are described in the **Handbook of Switchgears**¹ as below:-

“All electric power systems constitute certain basic components such as generating stations, transformers, transmission lines and motors. But we all know that for proper and efficient functioning, the power system incorporates many other important components. Protective relays are one of those vital constituents of the power system.

The function of protective relay is to affect disconnection of any faulty section of the power system from service. A fault is said to have occurred in a section when it suffers a short-circuit or when it starts behaving in an abnormal manner due to any other reason. This may cause damage to the equipment or otherwise endanger the effective and healthy operation of the system. A protective relay senses the abnormal condition and the task of isolation of the faulty section is achieved through a circuit breaking device which is capable of disconnecting the faulty element.

With the evolution of technology, there has been a continuous development in the design of protective relays. The use of microprocessors for achieving various relay functions is one of the most notable advancements that has taken place. The use of computers has imparted enormous flexibility in designing the required protective features in the relay.

Protective relays need the fundamental power system quantities, i.e. current and/or voltage as an input to provide the protection function. These input(s) are given to the relay(s) either directly or through instrument transformers, where necessary. Electrical relays are of many types and it is difficult to give a precise definition of a protective relay which covers all types. The following definition is, however, generally accepted:

"An electrical relay is a device designed to produce sudden, pre-determined changes in one or more electrical output circuits, when certain conditions are fulfilled in the electrical input circuits controlling the device."

The technical development of 'Relay' over a period of time has been narrated in the book Digital / Numerical Relays², as follows:-

It is now more than fifty years since electromechanical disc type over current relays were first introduced for the protection of distribution systems. Although these relays have operated reliably in the past, the new generation of microprocessor-based relays offer substantial improvements in the protection provided with significant gains in cost-effectiveness. Much of these cost savings can be attributed to the incorporation of enhanced protection and advanced communication features which enable remote access.

¹ Chapter 9 in Handbook of Switchgears authored by M.K. Srivastava and Neelam Bhogal and published by Tata McGraw-Hill.

² Chapter 1 in Digital / Numerical Relays authored by TSM Rao and published by Tata McGraw-Hill

With conventional relays, when fault conditions occur on the distribution system, the data pertaining to the fault is often obtained by sending personnel to the sub-station. The information is often limited to that available by reading the appropriate flags on the relay elements affected. Details of the fault current are generally not available.

The relay is usually not available during the period between the maintenance tests, except when a demonstrative performance is given for handling faults. Without the availability of meaningful data, it is obviously difficult to schedule cost-effective maintenance programmes.

Earlier static relays were used extensively in place of electromechanical ones, but these are now being replaced by digital/numerical relays. Microprocessor-based relays can significantly improve the situation.

Protection devices based on microprocessors were first employed in 1985. Due to the fast acceptance of numerical technology by customers, field experience could be gained quickly and a complete range of devices could be developed. On the basis of the experience that was gained by the user, a second generation of numerical protection devices was introduced in 1990. These devices can be recognised by the integrator operator panel with alphanumeric displays.

Microprocessor-based relays offer additional capabilities which are not normally available in the case of electromechanical or static relays. These include multiple characteristics, multiple protection elements, breaker failure protection, instrumentation, auxiliary and delayed elements, configurable internal scheme logic and self-supervision to allow enhanced protection. Programmable logic for multiple inputs and output-plus a communication interface to computers in sub-stations or other remote sites, allow users to develop and implement customised solutions and improvements with maximum economy. Unlike electromechanical and static relays, numerical relays offer the additional facility of remote adjustment of relay settings.

Designs with standardised hardware provide functionality in software based technology and provide cost-effective solutions with inherent benefits from standardisation, which are passed on to the customer. Traditional problems which are intrinsic to electromechanical relays, such as inertia and overrun, are substantially reduced. Settings are stored in memory in the digital format.

The advantages of numerical relays over electro mechanical and static relays from a protection perspective have been established. Numerical relays, however, offer further significant advantages over their predecessors in terms of the use of integral measurement functions, fault recording and disturbance recording facilities. Due to their cost implications, event, recording and disturbance recording have generally been reserved for use on transmission networks. The use of such records has proven valuable for post-fault analysis and the stem performance analysis of these systems. Their use in distribution networks has seldom been justified, owing to their prohibitive costs. These have self-monitoring facilities in respect of hardware, power supply, output relays and CT/VT circuits.

12. The appellant has argued that the IEDs manufactured by them is a new generation numerical relays having multiple functions and advantages in comparison to electro-mechanical or

static relays. Narrating the advantages of numerical relays, the authors in the book Power System Protection and Switchgear³ emphasized as below:-

One of the issues with electromechanical or static relays is that the relays are not in an operated condition during normal behaviour of the power system. They operate only under abnormal or faulty conditions of the power system. This may not happen very frequently and in certain cases it may happen very rarely. Hence the integrity of a relay operation can be confirmed only by frequently testing the relays. There is no continuous check on their operational Integrity. By using a digital computer for power system protection and microprocessor-based relays, one can address this issue. One very important advantage of microprocessor-based relays is that they can perform the functions of protection, measurement and control simultaneously. With the national and international grids having long ultra high voltage tie lines transferring the bulk of power, the use of microprocessor based relays is not only proving to be effective but also more or less essential.

Advantages of Numerical (Digital) Relaying

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11. Merging of Protection, Control and Metering (IED): Numerical relays have features meeting the control and metering requirements. So merging them into a single entity is possible. Nowadays, there is a new term introduced for this entity, namely, IED (Intelligent Electronic Device). Any device incorporating one or more processors with the capability to receive or send data / control signals from or to an external source is known as IED. Electronic multifunction meters, digital relays, controllers are examples of IEDs. IEDs help in implementing the concept of unmanned substations in electrical distribution systems where all control, metering and protection functions can be done in a remote control room.

12. Benefits of Metering : The benefits of metering are as given below:

(a) No separate connections for CF and PT are required.

(b) Metering of all parameters like A, V, Hz, kW, kWh, P.F., KVA, KVAR, etc., is possible.

(c) Accuracy class may be as high as 0.5% class.

(d) Since separate meters are not required, there is space saving.

(e) Networking of IEDs for metering of all feeders is possible at a single node.

³ Chapter 4- Microprocessor-Based Digital Protection in Power System Protection and Switchgear authored by Bhuvanesh A Oza / Nirmal Kumar C Nair / Rashesh P Mehta / Vija H Makwan and published by Tata McGraw Hill Education Pvt. Ltd.

(f) Measurement of THD (Total Harmonic Distortion) and individual harmonic levels for voltage and current waveforms is possible.

13. Benefits of Control Functions: The following functions of control are incorporated in numerical relays:

- (a) ON/OFF control for circuit breaker and isolator
- (b) Flexibility of auxiliary supply voltage for control circuits; generally all models of relays have flexible auxiliary voltage acceptability of 80-380 V ac/dc.
- (c) Trip circuit supervision
- (d) Local / remote selection
- (e) Alarm / trip signal generation at a remote place.
- (f) Blocking of particular operation/protection
- (g) Indication through LED, mimic generation
- (h) Condition monitoring of circuit breaker like electrical wear, preventive maintenance alarm, circuit breaker travel time, gas pressure monitoring, etc.
- (i) Spring charging control.
- (j) Interlock for operation
 - (a) Closing interlocks
 - (b): Tripping interlocks
- (k) Complex logic generation using I/Os.
 - (a) A number of inputs and outputs are possible.
 - (b) Analog inputs transducers like RTDs (Resistance Temperature Detectors) are also possible.
 - (c) Logic gate functions like AND, OR, NAND, NOR are possible.
 - (d) Flip-flops and timers are available.

13. From a plain reading of extracts of various books, it is clear that the relays are designed for protection of a system and the control functions incorporated in the numerical relays mentioned above makes it further clear that such functions are incorporated for the purpose of tripping the faulty system so as to protect the system from further damages. More or less similar explanation can be located in the HSN notes for Chapter 85.36 in emphasizing its role mentioned above.

14. Now, in the light of the above understanding of Relays, it is relevant to examine whether the features contained in the manufactured relays by the appellant can be considered as relay or a control device/instrument. The catalogue for Relion Protection and Control 670/650 series, which are manufactured by the appellants using the imported parts, appended with the

paper book, broadly explains about the features of the product, as below :

“REL670 and REL650 line distance protection offer extensive protection application opportunities for overhead lines and cables, or combinations of overhead lines and cables. They feature full scheme distance protection with selective single-phase and three-phase tripping and auto-reclosing with synchronizing and synchro check, power swing detection and a wide range of scheme communication logics. The IEDs with five zone distance protection for phase-to-phase and phase-to-earth faults enable you to protect transmission and sub-transmission lines and cables in impedance or solidly earthed networks. The IEDs are also equipped with residual overcurrent protection functions and a wide range of scheme communication logics that enable detection and fault clearance of high resistive earth faults.”

Further the functions of REL670 model briefly stated in the said catalogue as follows:-

“REL670 - maximum flexibility and performance

The REL670 provide versatile protection, monitoring and control functionality with maximum flexibility and performance optimized for transmission and sub-transmission overhead lines and cables. The powerful IED provides distance protection for double circuit, parallel operating and series compensated lines. The fast distance protection with trip times as low as 13 ms allows for additional transfer capacity in the power lines. This, together with flexible and expandable hardware, allows the IED to meet your specific requirements. As a result, you can benefit from applications with multiple algorithms and comprehensive bay control functionality, including synchronizing, synchro-check, dead line detection and auto-reclosing.

Furthermore, REL670 is able to protect and control several objects, for instance a combination of a line and a shunt reactor with a single IED. As a result, this IED increases both the reliability and profitability of your entire power system.

The REL670 provide both customized and pre-configured protection solutions. The pre-configured IEDs are equipped with complete functionality adapted for four different configuration alternatives: single pole breaker or multi-breaker arrangements with single or three-phase tripping. If needed, they can be adapted to meet your power system's specific requirements. With the customized REL670 IEDs you have the freedom to completely adapt the functionality according to your needs.”

Extensive protection for lines and cables

In addition to the wide range of overcurrent protection functions, REL670 and REL650 provide a negative sequence overcurrent protection. This function detects all unsymmetrical faults with or without earth connection. It features high sensitivity, which enables detection of faults with a low fault current. The negative sequence overcurrent protection can also be used as directional. This facilitates the coordination with protection for other objects.

The multi-stage negative sequence overcurrent protection can serve as back-up protection for most faults. It can also serve as the main protection for earth faults and other unsymmetrical faults in radial lines.

REL670 can also provide additional logic in direct transfer trip schemes to minimize the risk of unwanted operation caused by a false signal in protection communication. Several different protection functions can be used as local criteria when configuring the logic for a specific application.

What is the integrated protection, control for REL670 and REL650, it is narrated as follows:-

Integrated protection and control

REL670 and REL650 are designed for IEC 61850, implementing all the aspects of this standard and thus ensuring open, future-proof and flexible system architectures, with state-of-the art performance. Their performance meets comprehensive communication tasks, for example, GOOSE messaging for horizontal communication. These IEDs provide you with wide application flexibility, which makes them an excellent choice for both new and retrofit installations.

The advanced interlocking functionality allows you to avoid dangerous or damaging switchgear operations and to ensure personnel safety. The IED performs secure bay- and stationwide interlocking using an easy-to-use reservation functionality. This prevents simultaneous operation of disconnectors and earthing switches and ensures that the interlocking information is correct at the time of operation.

The control is based on the select-before-operate principle to ensure secure operation and to avoid human mistakes.

The integrated HMI of REL670 and REL650 provide you with a quick overview of the status of the line and service values as well as instant access to important data, such as settings. Using a library of symbols, you can easily configure the graphical display to correspond to your needs and to your substation. The built-in disturbance and event recorders provide you with valuable data for post-fault analysis and corrective actions to increase the security of your power system.

Furthermore, the HMI of REL670 allows secure and quick local control for stand-alone applications and provides back-up control for substation automation systems, when control functionality is integrated in the IED. The two-position versatile switch and the 32-position selector switch functions in REL670/650 enable you to easily manage switching operations via an icon on the IED HMI. The versatile switch function allows you to directly change, for instance, the autorecloser function from on to off, or vice versa, without changing the configuration. The function also presents an indication of the selected position.

The selector switch can replace an external mechanical selector switch and allows you to directly select the position you desire, for instance, to change the autorecloser mode between 1-pole, 3-pole or 1 - and 3-pole modes in REL670/650. In addition to the HMI, these switch functions can be operated from a remote system.

15. Analysing the functions narrated in the catalogue relevant for the present purpose, it is clear that the IED is basically designed for protection of a sub-system and the control features in the said device is with an object to ensure secure operation and to avoid human mistakes. There is nowhere in the catalogue from which it can be inferred that the control feature present in the IED is to regulate the flow of electricity or in any manner control the distribution of electricity in an electrical system. The Revenue’s claim is that since the IED incorporates the feature of control, therefore, the IED is appropriately classifiable under Chapter sub-heading 9032 of the Tariff. To analyse the said argument, it is relevant to reproduce the Chapter heading 9032, which reads as below:-

Customs Tariff heading 9032

Tariff item	Description of goods	Unit	Rate of duty
(1)	(2)	(3)	(4)
9032	Automatic regulating or controlling instruments and apparatus		
9032 10	- <i>Thermostats:</i>		
9032 10 10	... For refrigerating and air-conditioning appliances and machinery	u	7.5%
9032 10 90	... Other.	u	7.5%
9032 20	- <i>Manostats:</i>		
9032 20 10	... For refrigerating and air-conditioning appliances and machinery	u	7.5%
9032 20 90	... Other	u	7.5%
	- <i>Other instruments and apparatus:</i>		
9032 81 00	-- Hydraulic or pneumatic	u	7.5%
9032 89	- <i>Other:</i>		
9032 89 10	--- Electronic automatic regulators	u	7.5%
9032 89 90	--- Other	u	7.5%
9032 90 00	- Parts and accessories	Kg.	7.5%

The relevant HSN Explanatory Notes 7 to Chapter 90 reads as follows:-

- 7.- Heading 90.32 applies only to:
- (a) Instruments and apparatus for automatically controlling the flow, level, pressure or other variables of liquids or gases, or for automatically controlling temperature, whether or not their operation depends on an electrical phenomenon which varies according to the factor to be automatically

controlled, which are designed to bring this factor to, and maintain it at, a desired value, stabilised against disturbances, by constantly or periodically measuring its actual value; and

(b) Automatic regulators of electrical quantities, and instruments or apparatus for automatically controlling non-electrical quantities the operation of which depends on an electrical phenomenon varying according to the factor to be controlled, which are designed to bring this factor to, and maintain it at, a desired value, stabilised against disturbances, by constantly or periodically measuring its actual value.

16. A plain reading of the said Explanatory Note relevant to Chapter 9032, it is clear that automatic regulator of electrical quantities and instruments or apparatus are for automatically controlling for non-electrical quantities, the operation of which depends on an electrical phenomenon, which vary according to the factor controlled, and are designed to bring this factor to and maintain it at a desired value, stabilized against disturbances, by constantly or periodically measuring its actual value. In the present case, the IEDs are designed to trip the circuit protecting from damages to the electrical distribution system and does not control the parameter in any manner, to stabilize or maintain the desired value of current or voltage at a particular level against any fluctuations or disturbances. As already referred above; the control mechanism is incorporated for the purpose of enhanced security in tripping the circuit rather than controlling the parameters or transmission of electricity in any manner. The authorities below had observed that the IED contains a series of relays which is only a passive component and by performing various inter-linked functional sets like programmable logic controllers, self-adoptive, self-monitoring and self-testing, ability to communicate between different parts of the automation systems computing various quantities etc. be called as a multi-functional multi-device automation equipment and covered under Chapter sub-heading 9032. The Presence of number of relays in a circuit cannot be considered as a controller. This can be better understood reading the Circular No.51/2004-Cus. dated 01.01.2024 in extending benefits of Sl.No.112 of

Notification No.25/1999-Cus dated 28.02.1999 to Lever combination of switches. It reads as:

F.No. 528/44/2003-Cus(TU)

Government of India
Ministry of Finance (Department of Revenue)
Central Board of Excise & Customs, New Delhi

Subject: Assessment of Automobile parts namely 'Lever Combination Switch' declared as switch-Regarding.

I am directed to say that divergence of practice regarding assessment of automobile parts namely 'Lever Combination Switch (LCS)' has been brought to the notice of the Board. The dispute is whether parts of all kinds of switches would be covered under Notification No. 25/99-Cus, list A, Sl. 112 which provides concessional rate of duty on parts of relays, switches and connectors. The end product in this case is LCS (lever combination switch). The LCS is actually an assembly consisting of various mounted PCBs, switches, cables and electronic components. It is used in automobiles for mounting on steering column. It has two levers. One lever is used for switching on or off indicators for turning left/right. The other lever is used for wipers head/light etc.

2. As per HSN notes in the Heading 85.12, the exclusions include an assembly of switches for mounting on the steering column (CTH 85.37) which is nothing but 'lever combination switch. Since 'lever combination switches are specifically classifiable under CTH 85.37, whereas in general, switches are classifiable under CTH 85 36, it appears that lever combination switches' are not switches in the normal meaning of the term and hence these may not be treated as switches for the purpose of Customs Notification No. 25/99, dated 28-2-1999, S. No 112.

3. This matter was discussed in the Tariff Conference of Chief Commissioners of Customs held at Kolkata on 22nd and 23rd January, 2004 [Agenda Point T-6].

4. The Conference discussed that the notification does not define as to what is a switch. Switches are covered under CTH 8536 of the CTA'75, whereas combination of switches are covered under CTH 8537. The LCS being an assembly of switches is excluded from CTH 8536 by virtue of explanatory note to CTH 8512, However, Irrespective of its classification under 85.36 or 85.37, the essential nature of LCS appears to be that of switch, Like any other switch, LCS switches on or off certain equipments like wiper, light etc.

5. The Conference noted that Sl. No. 112 of List A of Notification No. 25/99-Cus., dated 28-2-99 refers to parts of switches falling under Chapter 85 (before amendment vide Notification No. 70/2004-Cus., dated 9-7-2004). It does not Indicate the heading or sub-heading number of the switches which are mentioned in the said list. The Conference, noted after seeing a sample of the item in which the part is used, that the item is nothing but a switch and it is also described as such in the list of parts of the company's motor vehicle parts list. The mere fact of classification under CTH 8537 would not take the item out of the category of 'switches'. Since parts of switches falling under Chapter 85 are eligible for exemption, the parts of lever combination switches would also be eligible for exemption.

- 6. The Board has accepted the recommendation of the Conference and it is accordingly clarified that parts of Lever Combination Switches would be covered under Notification No. 25/99-Cus., list A, Sl. No. 112, subject to fulfillment of other conditions.
- 7. Field formations may finalise the ponding assessments, if any, accordingly.
- 8. Suitable Public Notice may be issued for the benefit of the Trade.
- 9. This circular was placed on the CBEC website from 12-8-2004 to 28-8-2004 and also published in National Daily. No comments were received.
- 10. Hindi version will follow.

17. Thus, we do not find merit in the said observation of the learned Commissioner(Appeals). Even though the IED consists of a series of relays which carries out multiple functions but are basically designed for protection of system and in absence of any feature for controlling the parameters except tripping the faulty system in transmission/ distribution of electricity, it cannot be considered to fall under Chapter sub-heading 9032.

18. When a controller is classifiable under Chapter sub-heading 9032 explained by the Tribunal in the case of **Siemens Ltd. Vs. CCE [2014 303 ELT 105 (Tri. Mum.)]**. Referring to Board’s Circular in the context of classification Programmable Logic Controller (PLC) and Programmable Process Controller(PPC) and emphasizing the necessary ingredients attracting Chapter heading 9032, the Tribunal observed as:

6.10 The Central Board of Excise & Customs had issued a 37B Order vide Order No. 49/3/97-Cx, dated 9-5-1997 clearly pointing out differences between a programmable logic controller and programmable process controller. The said 37B Order is reproduced below :

“2. Representations have been received from trade pointing out that programmable logic controller and programmable process controllers such as process control equipment/distributed control systems are two different types of controls classifiable under different headings of central excise tariff i.e. Heading 85.37 and Heading 90.32 respectively. The following specific differences have been pointed out between two types of controllers.

Programmable Logic Controller	Programmable Process controller
These are for controlling various	These are for controlling various types of

types of machines	processes
Operations depends on set of pre-determined operations	Operations depend on factor to be controlled
Operations based on desired sequence of operations	Operation operates basically by continuously monitoring and maintain the variable to be controlled such as pressure, flow, temperature, level, etc. with/at pre-determined level
No regulatory function	Regulatory function by continuously monitoring the desired value with actual value and bringing variable to be controlled to the desirable value
Conventionally it is relay based panel for electric control with timer and switches	Regulating apparatus for process control for continuous process governing
Relay based panel has been upgraded to programmable controller commonly known as programmable logic controller by using microprocessor for storing and doing sequence of operations	Microprocessors are used for doing complex storing and algorithms primarily for controlling. These are commonly known as controllers, e.g. digital distributed control system, distributed control system.

The matter has been re-examined by the Board in consultation with the Dept. of Electronics. Their opinion is reproduced below :-

(i) The programmable controllers covered under Heading 85.37 : They perform specific functions such as logic instruments timing etc. to control various types of machines in a plant.

(ii) The automatic regulating or controlling instruments and apparatus under Heading No. 90.32 : They may be considered as industrial process control systems satisfying criteria mentioned in No. 90.32. These are primarily used for controlling/maintaining the flow, level, pressure or variables of liquids or gases or for automatically controlling temperature of a process (may be refinery, steel, chemical industry) at the present level. They can perform functions both sequence logic and different control strategies like Proportional-integral-differential (PID) control and other forms of control.

4. It is observed that opinion of the Dept. of Electronics is also in conformity with the Explanatory Notes of HSN.

5. Now therefore, in exercise of the powers conferred under Section 37B of the Central Excise Act, 1944 and in

supersession of the Board's order dated 6-8-1996 referred to above, and for the purpose of ensuring uniformity in the classification of the goods in question, Board hereby orders that programmable logic controller as described in para 2 and other similar forms will be classifiable under Heading No. 85.37 of the Central Excise Tariff and programmable process controllers as described in para 2 and other similar forms will be classifiable under Heading No. 90.32 of the Central Excise Tariff."

6.11 From the above clarifications it is seen that to qualify as 'programmable process controller', continuous monitoring of the various parameters such as pressure, flow and temperature level, etc., has to be done and comparison should be made of the parameters of the desired value with the actual value and the machine should be capable of bringing the variables to the desired value. None of the machines in the present case undertake these functions nor do they have a measuring device to measure any of these parameters. As per the HSN Explanatory Notes, to fall under Heading 9032, the equipment should consist of a measuring device (sensing device, resistance probe, thermocouple, etc.) which determines the actual value of the variable to be controlled and converts it into a proportional electrical signal, an electrical control device which compares the measured value with the desired value and a starting or stopping or operating device (contacts, switches or circuit breakers, relay switches). From the technical literature, it is seen that the impugned goods do not satisfy the criteria laid down. Therefore, they do not merit classification under Heading CETH 90.32.

Further distinguishing the ratio of the Hon'ble Supreme Court in *NI Systems (India) Pvt. Ltd.'s* case, it is observed as:

6.12 The appellant has relied on the decision of the Hon'ble Apex Court in the case of *N.I. Systems (India) P Ltd.* The said case dealt with import of a system consisting of PXI controllers, Input/Output Modules (Modem or Control/Adaptor units), Signal converters, and chassis and its parts. Examination of the technical literature of the product revealed that PXI controller was designed for measurement and automation applications and was a system in itself consisting of chassis, system controller and peripheral modules. It consisted of Programmable Automation Controller, Sensor and Field Programmable Gate Array and it was found to be a regulating and controlling apparatus. Based on the technical literature on the equipment, the Apex Court held that Programmable Automation Controllers, whether embedded or otherwise, were in essence Programmable Process controllers. In the case of the facts before us, as per the technical opinion obtained by the appellant, while 3 items are Programmable Logic Controllers (that is, Simatic 110A/s, 100U and 135/150 U), the other three, namely, Teleperm ME, Sicomp M and Sinaut 8 are automatic data processing machines. Thus the technical opinion relied upon by the appellant itself does not support their case for classification under CETH 9032. For the same reason, the reliance placed on this Tribunal's decision in the *Larsen & Toubro* case also fails.

19. At the cost of repetition, it can be said that from the catalogue / technical literature discussed above, it is clear that the IEDs since do not have any functional control and it is a device mainly for protection of the electrical sub-station systems cannot be classified under Chapter sub-heading 9032. In absence of allegation under any other classification of the finished goods, it is to be inferred that the 'relays' manufactured by the appellant and cleared declaring the finished goods falling under Chapter heading 85364900 in their invoices as various types of relays viz. "ABB make transfer protection relay type REL670", be accepted as 'relay' only. Also from the records, we find that the Central Excise authorities had not disputed the classification of the manufactured finished goods as 'relays' having its classification under Chapter sub-heading 85364900 at any point of time. Consequently, the appellant are entitled to the benefit of Notification No.25/1999-Cus as amended on the 'parts of relays' and used in the manufacture relays during the relevant period. Since we hold on merit that the appellant are entitled to the benefit of Notification No.25/1999-Cus dated 28.02.1999 as amended for the imported parts, analysis of ancillary issues like recovery of duty foregone, limitation etc. becomes academic; hence, not delved into.

20. The case laws referred by the learned AR for the Revenue have been delivered in a different set of circumstances; hence, not applicable to the issues in hand. In Bosch Ltd. case (supra), the question raised was classification of navigation system under Chapter sub-heading 8526 9190 or under CTH 8527 2900 being a multi-functional device used in motor vehicles. After analysing the facts of the relevant interpretative rules, catalogues and the instruction manual, it was concluded that the appropriate classification would be under CTH 8527. Similarly, in the case of Kone Elevator India Ltd. (supra), the question was classification of "Yaskavan Inverters". The Tribunal analysing the finding of

the Commissioner based on technical literature, opinion furnished by various professors of school of electrical and electronics engineering and IITs observed that inverters which control certain parameters would fall under CTH 90.32. In NI Systems case (supra), the question before the Hon'ble Supreme Court was whether a programmable process controller be classifiable under Chapter 84 or under Chapter 90 of CTA. The said judgment has already been distinguished by the Tribunal while examining the classification Programmable Logic Controller and Programmable process Controller referred above.

21. In the result, the impugned Order-in-Appeal No.163-164/2018-CT dated 01.03.2018 is set aside and the appeals E/20817/2018 and E/20818/2018 are allowed with consequential relief, if any, as per law. Also, appeal No.E/26173/2013 filed against Order-in-Appeal No.65/2013 dated 13.03.2013, whereby the learned Commissioner(Appeals) has remanded the case to re-adjudicate after giving an opportunity of hearing to the appellant, is disposed by remanding the same to the adjudicating authority to decide their request afresh in the light of above observation.

22. Appeals are disposed of accordingly.

(Order pronounced on 27.05.2025)

(D.M. MISRA)
MEMBER (JUDICIAL)

(R BHAGYA DEVI)
MEMBER (TECHNICAL)

Raja...