

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

REGIONAL BENCH - COURT NO. 1

Customs Appeal No. 20288 of 2021

(Arising out of Order-in-Original No. 38/2021 dated 29.01.2021
passed by the Commissioner of Customs, Bengaluru.)

**M/s. Hindustan Aeronautics
Limited,**

Aircraft Division,
Bangalore Complex,
Bengaluru – 560 017.

Appellant(s)

VERSUS

**The Principal Commissioner of
Customs,**

Airport & Air Cargo Complex, Airfreight
Terminal, Devanahalli,
Bengaluru – 560 300.

Respondent(s)

APPEARANCE:

Mr. Harish Bindumadhavan with Mr. Aaryan N, Advocates for the
Appellant

Mr. Maneesh Akhoury, Assistant 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. 20310 /2026

DATE OF HEARING: 30.10.2025

DATE OF DECISION: 02.03.2026

PER : DR. D.M. MISRA

This appeal is filed against Order-in-Original No.38/2021
dated 29.01.2021 passed by the Commissioner of Customs,
Airport & Air Cargo Complex, Bangalore.

2. Briefly stated facts of the case are that the appellant are engaged in the activity of manufacture, repair and overhaul of aircrafts, helicopters and their parts supplied to Indian Air Force. In carrying out the said activity, the appellant had imported "Digital Video Recorders" (DVR for short) from M/s. BAE Systems (Operations) Ltd. UK (BAE, for short) against 13 Bills of Entry during the period 17.07.2019 to 07.02.2020 declaring its classification under CTH 88033000 and discharged duty @ 3% BCD, 10% SW surcharge and 5% IGST. Alleging that the imported goods had been wrongly classified as parts of aircrafts, investigation was initiated by the Department by recording the statement of the Chief Manager (Stores) of the appellant and collecting evidences in this regard. On completion of the investigation, show-cause notice was issued to them on 27.08.2020 proposing classification of the imported DVR under CTH 85219090 and demanding differential duty of Rs.9,45,13,368/- in respect of the 13 Bills of Entry filed during the said period along with interest and proposal for penalty. On adjudication, the learned Commissioner directed reclassification of the product under CTH 85219090, confirmed the differential duty along with applicable interest and dropped the penalty proceedings. Hence, the present appeal.

3.1. At the outset, the learned advocate for the appellant has submitted that the appellant are engaged in the manufacture, repair and overhauling of aircrafts, helicopters and aircraft/helicopter parts which are used and operated by the Indian Air Force under the control of the Ministry of Defence. Appellant imported DVRs solely designed for use in Hawk Military Aircraft during the period July 2019 to February 2020 classifying the same under CTH 88033000 discharging applicable duty. The said DVRs were procured through BAE who is the licensor for the Hawk Military Aircraft and these DVRs are mounted in the

cockpit and record the pilot view along with symbologies (the displays as seen by the pilot).

3.2. Assailing the impugned order classifying the product under CTH 85219090, he has submitted that the learned Commissioner has relied upon the Note 2(f) of Section XVII and the General Note (III) to Section XVII of the HSN Explanatory Notes in classifying the product under CTH 85219090 observing that two conditions in the General Note (III) are not satisfied. He has submitted that all the three conditions in General Note (III) are satisfied in the present case viz. DVRs are not excluded by Note (II). Further, he has submitted that Note (II) cannot be read in isolation. It has to be read along with Note 3 to Section XVII which requires a part or accessory which answers to more than one heading need to be classified according to its sole or principal use. This ensures that the DVRs classifiable as part or an accessory of aircraft only. He has submitted that DVRs are solely and principally used in the aircraft and this fact has not been disputed in the impugned order. It is his contention that since DVRs are not classifiable under Tariff Item 8521 as they are not specifically included elsewhere in the HSN, the only classification that is possible is CTH 88033000. The classification arrived at by the Department is a residual entry within residual entry; hence, it is contrary to the principle of law laid down in *Indian Metals & Ferro Alloys Ltd. Vs CCE [1991(51) ELT 165 (SC)]*.

3.3. It is his contention that the classification adopted by the appellant is correct inasmuch as they have adopted the principle of "sole or principal user test" which is applicable in the present case. In support, he has referred to the following judgements:-

- (i) *Westinghouse Saxby Farmer Ltd. Vs. CCE, Calcutta [2021(376) ELT 14 (SC)]*

- (ii) Dynamatic Technologies Limited Vs. CC, Airport & Air Cargo Complex [2025(9) TMI 880 – CESTAT BANGALORE]
- (iii) Mak Controls Vs. CCE, Coimbatore [2001(138) ELT 1152 (Tri. Chennai)]

3.4. Further, the learned advocate has submitted that Notes 2 and 3 stated earlier should be read with a conjoint manner in applying the test of suitability for use solely or primarily under Section XVII. In the present case, the principal use of goods is determinative of classification. He has submitted that where two views are possible in the matter of interpretation of a charging section, the view favourable to the assessee must be preferred as laid down by the Hon'ble Supreme Court in the case of CC(Import), Mumbai Vs. Dilip Kumar [2018(7) TMI 1826 – Supreme Court (LB)]. He has submitted that there is no estoppel in law against any party and no significance is to be attached to the appellant's admission or own classification of the goods which are imported. In support, they referred to the judgment in the case of Dunlop India Ltd. & Madras Rubber Factory Ltd. Vs. UOI [1983(13) ELT 1566 (SC)].

4.1. *Per contra*, the learned AR for the Revenue reiterating the findings of the learned Commissioner has submitted that in his statement Shri P.S. Chandrasekhar explained the role of the DVR which is fixed in the cockpit and it is used for recording the pilots view of the flight in digital mode, both video and audio. The said recording after every flight is analysed by the pilot. Camera is not part of the said item and is procured separately which is mounted over the Head up Display (HUD, for short) at the front of the cockpit. The use of the DVR, if any, is after the flight is over. Hence, it is not a part of the aircraft and absence of which will not affect the working of the flight. The viewing of the recording by the DVR is prerogative of the pilot. It has nothing to do with the functioning of the flight, so it is not an essential

part of the aircraft. The DVR is redundant /of no use if the camera is not operational or gets damaged; it does not in any way affects the functioning of the plane. The camera is imported separately and used as an equipment fixed / mounted over the HUD at the front of the cockpit, whereas DVR is fitted at another place of the cockpit; thus, the imported DVR is not an accessory of the flight. Therefore, it is neither a part or an accessory of the aircraft. In support, he has referred to the judgment in the case of Mak Controls Vs. CCE, Coimbatore [2001(138) ELT 1152 (Tri. Chennai)].

4.2. Referring to the General Rules of Interpretation, he has submitted that applying Rule 1, DVR is clearly classifiable under Chapter heading 8521. As per Rule 2 which deals with (i) incomplete or unfinished articles and (ii) mixtures or combinations of materials or substance is not applicable to the present case. Rule 3 says that when by an application of rule 2(b) or for any other reason, goods are, *prima facie*, classifiable under two or more headings, classification which provides the most specific description shall be preferred to heading providing a more general description. Therefore, as per Rule 3(a) of the Rules, the imported goods merits classification under CTH 8521 which provides more specific description.

4.3. Distinguishing the judgment referred by the learned advocate for the appellant in the case of Westinghouse Saxby Farmer Ltd. (supra), he has submitted that the principle laid down in the said case is not applicable to the facts of the present case.

4.4. Further referring to the importance of HSN Explanatory Notes as laid down by the Hon'ble Supreme Court in the case of UNI Products India Ltd. [2020(372) ELT 465 (SC)], he has

submitted that as per the said notes for parts and accessories, it is clear that it is applicable to those 'parts' and 'accessories' which comply with all the three conditions mentioned thereunder. In the present case, the imported goods viz. DVR having failed the test of all three conditions mentioned in the HSN, it is not forming part of the aircraft. Referring to Note 1(I) of the Section XVI, he has submitted that it excludes articles of Section XVII, wherein Note 2(f) of Section XVII excludes electrical equipment falling under Chapter 85. Hence, goods specifically fall under Chapter 85 cannot be considered to fall under Chapter 88 (articles of Section XVII). In support, he has referred to the judgment of Hon'ble Supreme Court in the case of Videocon Industries Ltd. [2023 (384) ELT 628 (SC)]. Further, he has submitted that the ratio of judgment referred to by the appellant in the case of Dilipkumar & Company [2018(362) ELT 198 (Bom.)] is not applicable to the present case as the said principle sought to be relied is relating to the taxability of imported goods but in the case in hand, the issue pertains to benefit of effective rate of duty under Notification No.50/2017 dated 30.06.2017. Therefore, even going by the contention of the appellant, the issue being benefit by way of an exemption notification, it should be decided in favour of the Revenue in the case of ambiguity.

5. Heard both sides and perused the records.

6. The short question involved in the present case for consideration is: whether the Digital Video Records (DVR) imported by the appellant from BAE is classifiable under CTH 88033000 attracting concessional rate of duty of BCD, SW surcharge and IGST **OR** classifiable under CTH 85219090 alleged by the Revenue assessable to higher rate of 20% BCD, 10% SW surcharge and 18% IGST.

7. Undisputed facts of the case are that the DVRs imported by the appellant have been fixed in the cockpit and records the pilot view along with symbolagies i.e. the displays as seen by the pilot. The camera which is not part of this item is procured separately which is mounted at over the HUD at the front of the cockpit.

8. Before proceeding further in deciding the appropriate classification of the imported goods, it is relevant to reproduce the competing Tariff entries, Section Notes which are reproduced as below:-

CTH 8521 90 90

Tariff Item	Description of goods	Unit	Rate of duty	
			Standard	Preferential areas
(1)	(2)	(3)	(4)	
8521	VIDOE RECORDING OR REPRODUCING APPARATUS, WHETHER OR NOT INCORPORATING A VIDEO TUNER			
... ..	...			
8521 90 90	 Other	u	20%	--

CTH 8803 30 00

Tariff Item	Description of goods	Unit	Rate of duty	
			Standard	Preferential areas
(1)	(2)	(3)	(4)	
8803	PARTS OF GOODS OF HEADING 8801 OR 8802			
... ..	...			
8803 30 00	 Other parts of aeroplanes or helicopters	Kg.	10%	--

SECTION XVI
MACHINERY AND MECHANICAL APPLIANCES;
ELECTRICAL EQUIPMENT; PARTS THEREOF;
SOUND RECORDERS AND REPRODUCERS,
TELEVISION IMAGE AND SOUND RECORDER4S AND
REPRODUCERS, AND PARTS AND ACCESSORIES OF
SUCH ARTICLES

Notes

1. This Section does not cover:

(a)

.. ..

(l) Articles of Section XVII;

SECTION-XVII
VEHICLES, AIRCRAFT, VESSELS AND ASSOCIATED
TRANSPORT EQUIPMENT

Notes

1

2. The expressions “parts” and “parts and accessories” do not apply to the following articles, whether or not they are identifiable as for the goods of this Section:

(a)

.. ..

(f) electrical machinery or equipment (Chapter 85);

.. ..

... ..

3. References in Chapters 86 to 88 to “parts” or “accessories” do not apply to parts or accessories which are not suitable for use solely or principally with the articles of those Chapters. A part or accessory which answers to a description in two or more of the headings of those Chapters is to be classified under that heading which corresponds to the principal use of that part of accessory.

9. The claim of the appellant is that DVRs are parts and accessories of the aircraft classifiable under CTH 88033000 whereas the claim of the Revenue is that as per Section Note 2(f) of Section XVII, electrical machinery or equipment (Chapter 85) has been excluded from the ambit of Chapter 88; hence, the correct classification is CTH 85219090. The exclusion clause contained in Note 2(f) to Section XVII whether to be applicable in understanding the classification of DVR imported by the appellant under CTH 88033000 meant and used Soley and principally in Hawk Military training air craft can be resolved reading the ratio laid down by a three Member Bench of the Hon’ble supreme court in **Westinghouse Saxby Farmer Ltd.’s**

case (supra). More or less, in similar circumstances, interpretation of Note 2(f) and Note 3 to Section XVII has been considered by the Hon'ble Supreme Court, while examining the issue of classification of "Relays" which is used as part of the "Railways and Railways signalling equipment". In the said case, the Revenue has claimed that since Relays are electrical equipment specifically excluded under Note 2(f) to Section XVII being classified under Tariff item 8536.90 would not fall under Chapter 86.08. In that context, interpreting Note 2(f) and Note 3 to Section XVII, their Lordships observed as follows:-

30. In the case on hand, the claim of the assessee was that the relays manufactured by them were part of the railway signalling equipment. But all the Authorities were of the unanimous view that this product is referable to goods of a specific description in Chapter sub-heading 8536.90 and that, therefore, General Rule 3(a) will apply.

31. But in invoking General Rule 3(a), the Authorities have omitted to take note of 2 things. They are : (i) that as laid down by this Court in *Commissioner of Central Excise v. Simplex Mills Co. Ltd.* [(2005) 3 SCC 51 = 2005 (181) E.L.T. 345 (S.C.)] the General Rules of Interpretation will come into play, as mandated in Rule 1 itself, only when no clear picture emerges from the terms of the Headings and the relevant section or chapter notes; and (ii) that in any case, Rule 3 of the General Rules can be invoked only when a particular goods is classifiable under two or more Headings, either by application of Rule 2(b) or for any other reason. Once the authorities have concluded that by virtue of Note 2(f) of Section XVII, 'relays' manufactured by the appellant are not even classifiable under Chapter Heading 8608, we do not know how the Authorities could fall back upon Rule 3(a) of the General Rules. There is a fundamental fallacy in the reasoning of the Authorities, that Rule 3(a) of the General Rules will apply, especially after they had found that 'relays' are not classifiable under Chapter Heading 8608, on account of Note 2(f) of Section XVII.

32. Coming to Section XVII, which precedes Chapter 86, the same contains a few notes, one of which is Note 2, which lists out certain articles to which the

expressions “*parts*” and “*parts and accessories*” mentioned in Chapter 86 do not apply. Note 2(f) reads as follows :-

- “(1) xxxx
- (2) xxx
- (a) xxxx
- (b) xxxx
- (c) xxxx
- (d) xxxx
- (e) xxxx
- (f) electrical machinery or equipment (Chapter 85)”.

33. Note 2(f) is relied upon by the Revenue, in view of the fact that Chapter Heading 8608 uses the words “*parts of the foregoing*” after the words “*Railway or tramway track fixtures and fittings*” etc. Chapter Heading 8608 does not specifically mention “*electrical relays*”. The assessee’s contention is that “*it is part of the railway signalling safety or traffic control equipment*” and that, therefore, Relays manufactured by them would fall under Chapter Heading 8608 due to the usage of the word “*parts*”. It is this contention that is sought to be repelled by the Authorities by relying upon Note 2(f) of Section XVII.

34. Though at first blush, Note 2(f) seems to apply to the case on hand, it may not, upon a deeper scrutiny.

35. Note 3 of Section XVII reads as follows :
 “References in Chapters 86 to 88 to “*parts*” or “*accessories*” do not apply to parts or accessories which are not suitable for use solely or principally with the articles of those Chapters. A part or accessory which answers to a description in two or more of the headings of those Chapters is to be classified under that heading which corresponds to the principal use of that part or accessory.”

36. What is recognized in Note 3 can be called the “*suitability for use test*” or ‘*the user test*’. While the exclusion under Note 2(f) may be of goods which are capable of being marketed independently as electrical machinery or equipment, for use otherwise than in or as Railway signalling equipment, *those parts which are suitable for use solely or principally with an article in Chapter 86 cannot be taken to a different Chapter as the same would negate the very object of group classification. This is made clear by Note 3.(emphasis supplied)*

37. It is conceded by the Revenue that the relays manufactured by the appellant are used solely as part of the railway signalling/traffic control equipment. Therefore, the invocation of Note 2(f) in Section XVII, overlooking the “*sole or principal user test*” indicated in Note 3, is not justified.

Later Review petition filed against the aforesaid judgment has been dismissed by the Hon’ble Supreme Court reported as 2022(382) ELT 92(SC).

10. In the present case, there is no dispute that the DVR imported by the appellant are specifically engineered and designed for Hawk aircraft, interfacing directly with onboard avionics, sensors, and mission systems and cannot function as standalone commercial electronics or general purpose video records, a fact not disputed by the Revenue about its exclusive and principal use in the Hawk military aircraft. Applying the aforesaid principle laid down by the Hon’ble Supreme Court, it can safely be concluded that the imported DVR is classifiable under CTH 88033000. The above principle has been followed by this Tribunal in the case of Dynamatic Technologies Limited (supra) while deciding the classification in the case of aluminium bushes flanges, aluminium fitting, bolts, grommet etc. solely and principally used in the aircraft.

11. The Ld. Commissioner heavily relied on the judgment of the two Member Bench of the Hon’ble Supreme Court in the case of UNI Products India Ltd. (supra). In the said case their Lordships confronted with the question as to whether “Car Matting” would fall under Chapter 57 of CETA, 1985 or under the heading “Carpets and Other Textile Floor Coverings” or classifiable under Chapter 87 which relates to “Vehicles other than Railway or Tramway Rolling Stock and Parts and Accessories thereof”. In other words, the classification dispute

was between Chapter heading 87089900 and 57039090 of CETA,1985. Referring to the relevant Chapter Notes of Chapter 57 and 87, Section Notes 2 of Section 17, relevant HSN Explanatory Notes and the Circular No.117/28/95-CX dated. 17.04.1995 relating to dutiability of Car Matting and Non-woven materials in rolling form, held as follows:-

23. “The common parlance test”, “marketability test”, “popular meaning test” are all tools for interpretation to arrive at a decision on proper classification of a tariff entry. These tests, however, would be required to be applied if a particular tariff entry is capable of being classified in more than one heads. So far as subject-dispute is concerned, we have already referred to Chapter Note 1 of Chapter 57. This note stipulates that carpets and other floor coverings would mean floor coverings in which textile materials serve as the exposed surface of the Article when in use. This feature of the car mats has not really been rejected by the revenue authorities as untrue in the order of the Commissioner, before whom assertion to that effect was made by the respondent.

24. The core issue in these appeals is as to whether car mats come under Chapter-Heading 57.03 or not. In the second appeal, the numerical representation of the product, as claimed by the assessee, was different but that difference is not of much significance. Revenue’s case is that the goods are manufactured in such a way that these can be used as accessories of cars. The Tribunal found that though in common parlance the products involved may not be considered as carpets, in view of the wordings of the chapter, section notes, chapter notes and explanatory notes, the goods were classifiable under chapter Heading 5703.90.90.

Therefore, the principal question before the Hon’ble Supreme Court was whether the Car Mats are classifiable under Chapter heading 5703 or otherwise. Such a situation is not in the instant case; therefore, it is not applicable to the facts of the present case.

12. Besides, the three Member Bench judgment in **Westinghouse Saxby Farmer Ltd.’s case (supra)** was

passed subsequently and the quorum being of higher strength is the binding precedent.

13. In the result, following the aforesaid judgment the impugned order is set aside and the appeal is allowed, with consequential relief, if any, as per law.

(Order pronounced in Open Court on 02.03.2026)

(D.M. MISRA)
MEMBER (JUDICIAL)

(R BHAGYA DEVI)
MEMBER (TECHNICAL)

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