CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH
BANGALORE

Application(s) Involved:

C/Early Hearing/20739/2016, C/Early Hearing/20740/2016, C/Early Hearing/20741/2016, C/Early Hearing/20742/2016, C/Early Hearing/20743/2016, C/Early Hearing/20744/2016 in C/20491/2016-DB, C/21389/2015-DB, C/21422/2015-DB, C/21423/2015-DB, C/21425/2015-DB, C/21427/2015-DB, C/22070/2015-DB

Appeal(s) Involved:

C/20491/2016-DB, C/21389/2015-DB, C/21422/2015-DB, C/21423/2015-DB, C/21425/2015-DB, C/21427/2015-DB, C/22070/2015-DB

[Arising out of Order-in-Appeal No. COC-CUSTM-000-APP-326-2015-2016 dated 18/12/2015 passed by Commissioner of CUSTOMS , COCHIN (Appeals)]

[Arising out of Order-in-Appeal No. COC-CUSTM-000-APP-470—474-14-15 dated 20/02/2015 passed by Commissioner of CUSTOMS , COCHIN(Appeal)]

[Arising out of Order-in-Appeal No. COC-CUSTM-000-APP-72-75-2015-16 dated 03/07/2015 passed by Commissioner of CUSTOMS , COCHIN(Appeal)]

KCM Appliances Pvt Ltd
19/411z, Rajiv Gandhi Bye Pass Jn, Thurakkal
Manjeri,malappuram
MALAPPURAM - 676121
KERALA

Appellant(s)

Versus

Commissioner of Customs Cochin-cus
CUSTOM HOUSE
COCHIN - 682009
KERALA

Respondent(s)

Appearance:

Shri G. Shivadass, Advocate
LAKSHMI KUMARAN & SRIDHARAN
WORLD TRADE CENTRE NO.404-406, 4TH FLOOR, SOUTH WING BRIGADE GATEWAY CAMPUS NO.26/1, DR. RAJKUMAR ROAD,
BANGALORE - 560 055
KARNATAKA

For the Appellant

Shri N. Jagadish, Superintendent(AR) For the Respondent

Date of Hearing: 12/02/2018
Date of Decision: 12/02/2018

CORAM:
HON'BLE MR. S.S GARG, JUDICIAL MEMBER
HON'BLE MR. V. PADMANABHAN, TECHNICAL MEMBER

Final Order No. 20218-20224 / 2018

Per : S.S GARG

The appellants have filed these 7 appeals against the impugned orders dt. 20/02/2015, 03/07/2015 and 18/12/2015 passed by the Commissioner(Appeals) whereby the Commissioner(Appeals) has classified the goods under Tariff Heading 8519 8100 and 8527 9990. Since the issue involved in all the appeals is identical, therefore, all the appeals are being disposed of by this common order.

The details of all the appeals are given herein below:-

Appeal No.	Impunged order	Period of dispute
C/21422, 21423, 21425, 21427, 21389/2015	OIA No.COC-CUSTM-000-APP-470-474-14-15 dt. 20/02/2015	November 2013 to March 2014
C/22070/2015	OIA No.COC-CUSTM-000-72-75/2015-16 dt. 03/07/2015	April 2014 to February 2015
C/20491/2016	OIA No.COC-CUSTM-000-326/2015-16 dt. 18/12/2015	February 2015 to April 2015

2. Briefly the facts of the present case are that the appellants are traders and engaged in the import of various electronic goods. During the relevant period, the appellant had filed various Bills of Entry for import of

"Multimedia Speakers" which were procured from China. At the time of clearance of goods, the appellant self-assessed the goods under CTH 8518 2200 of the Customs Tariff Act, 1975 which reads as "Multiple Loud Speakers" mounted in the same enclosures. The Department rejected the classification of the appellants and reclassified the goods under CTH 8519 8100 for speakers with USB playback and 8527 9990 for speakers with FM radio, considering its multifunctions and as directed by Board's circular No.27/2013 dt. 01/08/2013. Department has further assessed CVD on the goods by applying Sl.No.101-A of Notification No.49/2008-CE(NT) dt. 24/12/2008. Appellant paid the duty under protest and cleared the goods. Being aggrieved over the reassessment and reclassification of the imported goods, the appellant preferred an appeal before the Commissioner of Customs(Appeals). The stand of the assessee before the Commissioner(Appeals) was that the Department has erred in classifying the goods under CTH 8519 8100 and 8527 9990 instead of 8518 as claimed by the appellant. Appellant also submitted that they have been importing the very same goods for a very long period and in the past, the same goods were classified under CTH 8518 2200 of the CTH 1975 by the Department. After considering the submissions of the appellant, the Commissioner(Appeals) passed the impugned order rejecting the submissions made by the appellant on the issue of classification and confirmed the reclassification of the goods as per the original assessment of Bills of Entry by relying on the Circular No.27/2013. The Commissioner(Appeals) confirmed classification of the goods under CTH

8519 and Tariff item 8527 9900. The Commissioner(Appeals) also rejected the assessment of the goods under Sl.No.101-A of the Notification No.49/2008-CE. Aggrieved by the impugned order passed by the Commissioner(Appeals) to the extent of classification of the goods under CTH 8519 and 8527, the appellant has filed these appeals.

3. Heard both sides and perused the records.

4. The learned counsel for the appellant submitted that the impugned orders are not sustainable in law as the same has been passed without considering the judicial precedents on the same issue. He further submitted that this issue is no more res integra and has been settled in favour of the appellant in their own case in the case of Logic India Trading Co. Vs. CC, Cochin [2016(337) ELT 65 (Tri. Bang.) which has held that 'Multimedia Speaker' are classifiable under 8518 2200 of Customs Tariff Act, 1975 even though they have additional functions of USB port with play back port and facilitation of FM radio along with USB port play back. He further submitted that the Tribunal has further held that the main and the principal function of the product is that of a speaker and mere additional features as aforesaid does not convert a speaker into either into a sound recording / reproducing apparatus or into FM radio. The Tribunal has also noted that the impugned goods are known and sold in the market as speakers only. He further submitted that the decision of the Tribunal has also been confirmed by the Hon'ble Apex Court in Commissioner Vs. Logic

India Trading Co. [2016(342) ELT A34 (SC)]. He also submitted that the said decision has also been followed by the Tribunal in the case of Global Enterprises [2017(354) ELT 548 (Tri. Del.)].

5. On the other hand, the learned AR reiterated the findings of the impugned orders.

6. After considering the submissions of both parties and perusal of material on record, we are of the considered view that this issue is no more res integra and has been settled by the Apex Court in the appellant's own case as reported in 2016(342) ELT A34(SC). We also find that this Tribunal in the appellant's own case cited supra has considered the said issue and has held in para 4.7 and 4.8 as follows:-

> ***4.7*** *As we have already observed that even the lower authorities are not disputing the fact that the goods in question are speakers with added function, as such the main role of the item in question remains amplifying the sound received by it either from outside source or from inbuilt feature. As such, going by the Interpretative Rules and Section Note 3 to Section XVI, the criteria for classifying the product is the principal and the main function it performs, which in the present case remains to be that of a speaker. We accordingly hold that the goods in question are properly classifiable under Chapter Heading 8518 22 00. We may also add that the invoices raised by the seller of the goods stand examined by it and the description stand given as "Multimedia Speaker". This also reflects upon the fact that the goods in question, in common parlance are also traded as speakers. The appellants have also submitted an affidavit of the dealers,*

the invoices raised by them against the customers and the statement of Service Manager of the assessee. Examination of these documents shows that goods are primarily sold as speakers. Even the brochures placed on record indicate that the goods are being traded as speakers only and not as either FM radio or the sound reproduction system.

4.8 *We are also strengthened in our view by the decision of the Hon'ble Supreme Court in the case of Xerox India Ltd. v. Commissioner of Customs, Mumbai - 2010 (260) E.L.T. 161 (S.C.). Though the said decision did not deal with the items under consideration in the present appeal but the ratio of law laid down by the Hon'ble Supreme Court would be squarely applicable to the facts of the present case. It was held that the multifunctional printing machines having fax facility and screening facility would continue to fall under Heading 8471 of the Customs Tariff Act as 'digital printers' only inasmuch as the predominant function of the machine in question was printing.*

7. By following the ratio of the said decision in the appellant's own case which has been upheld by the Supreme Court, we are of the considered view that the impugned orders are not sustainable and therefore are set aside by allowing all the appeals with consequential reliefs, if any. Miscellaneous applications also get disposed of.

(Operative part of this order was pronounced in court
on conclusion of the hearing)

V. PADMANABHAN
TECHNICAL MEMBER

S.S GARG
JUDICIAL MEMBER

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