CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL BANGALORE

REGIONAL BENCH - COURT NO. 2

Customs Appeal No. 20134 of 2020

(Arising out of Order-in-Original No. BLR-CUSTM-AIR-789/2019 dated 10.12.2019 passed by the Commissioner of Customs, Bangalore.)

M/s. Bharat Electronics Ltd.
Jalahalli P.O.,
Bengaluru – 560 013. **........Appellant**

VERSUS

Commissioner of Customs
Devanahalli,
Bangalore – 560 300. **...........Respondent**

Appearance:

Mr. G. Shivadass, Sr. Advocate with Ms. Shradha Rajgiri, Advocate for the Appellant
Mr. Maneesh Akhoury, Asst. Commr. (AR) for the Respondent

Coram:

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

Final Order No. 20980 /2026

Date of Hearing: 09.01.2026
Date of Decision: 08.07.2026

PER: P. A. AUGUSTIAN

The issue in the present appeal is regarding classification of the goods.

2. The brief facts are the Appellant imported Radar Cables, Radar Antenna and Radar Processor vide Bill of Entry No.7657882 dated 30.11.2016. Alleging that the goods imported by appellants are wrongly classified for availing customs duty benefit, proceedings were initiated and show cause notice was issued on 15.02.2019. Adjudication authority as per the impugned order reclassified the goods, confirmed differential duty with applicable interest and also imposed equal amount

of penalty under Section 114A of the Customs Act, 1962. Adjudication authority confirmed the duty along with interest and dropped the proposal for confiscation of the goods and imposition of penalty under section 112(a) of the Customs Act 1962. Aggrieved by the said order, present appeal is filed.

3. When the appeal came for hearing, Learned Senior Counsel for the appellant submits that the Appellant is a Public Sector Undertaking under the Ministry of Defence, Government of India and is engaged in the manufacture of a wide range of state-of-the-art equipment in the fields of Defence communication, radars, naval systems, C4I systems, weapon systems, homeland security, telecom and broadcast systems, electronic warfare, tank electronics etc. During the period 2016-17, the Appellant received a contract for the upgrading of Schilka Weapon Systems from the Ministry of Defence, Government of India. The upgraded Schilka system is an advanced Air Defence system mounted on a battle tank, which is used for attacking enemy aircraft and helicopters. The upgradation included replacing the existing Radar, cable between the Radar Antenna and the Radar Processor. As part of the aforesaid activities, vide Bill of Entry No. 7657882 dated 30.11.2016. the Appellant imported radar components, namely 'Radar Antenna', 'Radar Processor', and 'Radar Cables', from M/s Israel Aerospace Industries Ltd. The aforesaid components would be mounted on and used as parts of the main battle tank. The Appellant classified them under Customs Tariff Heading (CTH) 87100000, i.e., tanks and other armored vehicles, whether or not fitted with weapons, along with parts of such vehicles. Learned counsel further submits that all the goods are classified by the appellant under CTH 8710000 as parts of Main Battle Tank. The description of goods provided under Customs Tariff Heading (CTH) 8710000 reads as- TANKS AND OTHER ARMOURDED FIGHTING VEHICLES, MOTORISED, WHETHER OR NOT FITTED WITH WEAPONS, AND PARTS OF SUCH VEHICLES'. The duty chargeable on goods classifiable under Customs Tariff Heading (CTH) 8710000 is 'Nil'. Learned counsel further submitted that Radar Antenna, Radar Processor and RF Radar cables imported by them are used exclusively for the

upgradation of Schilka Battle Tanks and hence were rightly classifiable as "parts of Main Battle Tank" under Customs Tariff Heading (CTH) 87100000 of the Customs Tariff. These parts are custom-built to interface with the Fire Control Computer, weapon targeting mechanism, and power supply units of the Main Battle Tank. It is submitted that once the said parts are installed, they become an inseparable part of the combat and tracking system of the Main Battle Tank. The Radar Antenna and Radar Processor, instead of functioning as independent radar equipment, are specifically engineered to control, track, and transmit signals in coordination with the Main Battle Tank's fire control and weapon systems, while the Radar Cables serve as the exclusive connecting medium between these sub-systems.

4. Learned Sr. Counsel drew our attention to Para 10-15 of the impugned order where Adjudication Authority has considered the General Rules of Interpretation (GRI) and reproduced the relevant Chapter Notes. However, while reproducing the explanatory notes in Para 14, failed to consider Note 3 of explanatory notes to Chapter 87 and submits that considering the Note 3 of explanatory notes to Chapter 87, the issue regarding classification of such goods is settled as per the judgment of the Hon'ble Supreme Court in the matter of **M/s. Westinghouse Saxby Farmer Ltd. Vs. Commissioner of C.Ex., Calcutta-[2021 (376) ELT 14 (SC)],** wherein, while considering the classification of 'Relay' Hon'ble Supreme Court observed that Relay in generally is an electrically operated switch and used to control a circuit. They may also be used where several circuits must be controlled by one signal. Though essentially Relays are electrical equipment, they may also form part of Railway signaling equipment. While the normal electrical Relays fall under tariff item 85365.90, Railway and Railway signaling equipment fall under Customs Tariff Heading (CTH) 8608. When the dispute was made regarding its classification and after considering the issue in detail, the Hon'ble Supreme Court held that:-

> *"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) xxx

(b) xxxx

(c) xxxx

(d) xxxx

(e) xxxx

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

33. Note 2(1) 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 "ports". 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(1) 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.

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.

38. On the question as to what test would be appropriate in a given case, this court pointed out in A. Nagaraju Bros. v. State of AP [1994 Supp (3) SCC 122 = 1994 (72) E.LT. 801 (S.C.)), as follows:

> *".....there is no one single universal test in these matters. The several decided cases drive home this truth quite eloquently. It is for this reason probably that the common parlance test or*

> *commercial usage test, as it is called, is treated as the more appropriate test, though not the only one. There may be cases, particularly in the case of new products, where this test may not be appropriate. In such cases, other tests like the test of predominance, either by weight of value or on some other basis may have to be applied. It is indeed nor possible, nor desirable, to lay down any hard and fast rules of universal application."*
>
> *Therefore, the respondents ought not to have overlooked the 'predominant use' or 'sole/principal use' test acknowledged by the General Rules for the Interpretation of the Schedule.*

39. As pointed out by the Commissioner (Appeals), the goods were previously classified (before 1993) under sub-heading 8536.90, but a revised classification list, classifying them under sub-heading 8608, submitted by the appellant, was approved by the competent Authority on 27-8-1993. After such specific approval of the classification list, it is not proper on the part of the Authorities to invoke Note 2(f) of Section XVII. Hence question No. 1 is answered in favour of the appellant and against the Revenue".

5. Though the Revenue has filed a Review petition against said judgment, it was also dismissed in the matter of **Commissioner of Central Excise, Calcutta Vs. Westinghouse Saxby Farmer Ltd. – 2022 (382) ELT 292 (SC)**.

6. Learned Sr. Counsel further draws our attention to the letter dated 08.11.2017 issued by DRI and in response to said letter documents were furnished vide letter dated 09.11.2017 and detailed rely was also furnished on 16.01.2018, where it is clarified the detailed use of each equipment and submitted that the declaration made by the Appellants are true as declared. However, show cause notice was issued on 15.02.2019 basically on the ground that while importing similar products in the past, declarations were made as alleged by the Revenue and facts being so, classifying the goods under different category to avail the benefit of Exemption Notification amounts to mis declaration

and fraud on the part of Appellant. Accordingly, demand was made by invoking the extended period of limitation and also imposed penalty. In this regard, Learned Counsel submits that there is no estoppel in the taxation and the entire demand is barred by limitation. In this regard, the Learned Counsel submits that M/s BEL has raised a contention that extended period of time could not have been invoked in the present case. The adjudicating authority has held that; "I do not agree with the contention for the following reasons. From the investigation conducted and the statements recorded, it is clear that they have adopted incorrect classification of the imported goods deliberately with intention to evade payment of duty. The impugned goods classified under CTH 85299090/85442090 were eligible for exemption previously under Notification No.39/1996 dated 23.07.2016. However, the above benefit was withdrawn by amending the notification w.e.f. 01.04.2016. This has prompted M/s. BEL to change the classification of the impugned goods to CTH 87100000 to gain the undue benefit available therein. Such action on the part of the importer is a modus operandi adopted to prevaricate and circumvent to gain unjustified benefit of duty exemption. The DRI has conducted the investigation, recorded the statements of the officials and documented a factual finding that there is suppression of fact with an intent to evade payment of duty. But for the verification of the documents during the investigation, these facts would not have come to light. Therefore, M/s. BEL cannot contend that there was no suppression on their part. It is not the case of them that they made declaration to the Department on their own volition, but it is an admitted fact that the matter was detected at the instance of the Department during the course of verification of the documents and recording of statements from concerned persons."

7. Learned Sr. Counsel relied on the judgment of the Hon'ble Supreme Court in the matter of **M/s. Stemcyte India Therapeutics Pvt. Ltd. Vs. Commissioner of Central Excise and Service Tax, Ahmedabad – III – 2025 (32) Centax 226 / 2025 (394) ELT 3 (SC)** and also considered by this Tribunal in the matter of **M/s.**

Dynamatic Technology Pvt. Ltd Vs. CC, Bengaluru. As per Final Order No.21410/2025 dated 11.09.2025 it is held that:-

> *"8. In view of the above, a part suitable for solely or principally with the articles of CTH 88 (aircraft) which is not disputed cannot be classified under CTH 73, 76 or 82 as parts of general use. Therefore, we find that the impugned products are rightly classifiable under CTH 8803. We also find that the Bills of Entry placed on record show that the appellant had described the products as tools, bolts, washers, aluminium tube assembly, aluminium bushes, flanges etc. and classified them under CTH 8803. Since, the appellant had correctly described the products and the classification is also upheld, the question of penalty does not arise".*

8. Learned Sr. Counsel also draws our attention to the judgment of the Hon'ble Supreme Court in the matter of **Commissioner of Central Excise, Aurangabad Vs. M/s. Videocon Industries Ltd. – 2023 (384) ELT 628 (SC) / (2023) 5 Centax 108 (S.C)** where it is held that:-

> *"24. The correct manner of interpreting the notes, chapters, and the General rules of interpretation was explained by this Court, in Commissioner of Central Excise, Nagpur v. Simplex Mills Co. Ltd. [[2005] 2 S.C.R. 441 (2005) 3 SCC 51 = 2005 (181) ELT. 345 (S.C.) = 2005 taxmann.com 777 (SC)], where the Court held that the Rules for the Interpretation of the Schedule to the CET Act are framed pursuant to the powers under Section 2 of that Act. The Court observed:-*
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> > *"The Rules for the Interpretation of the Schedule to the Central Excise Tariff Act, 1985 have been framed pursuant to the powers under section 2 of that Act. According to Rule 1 titles of sections and chapters in the Schedule are provided for ease of reference only. But for legal purposes, classification 'shall be determined according to the terms of the headings and any relevant section or chapter notes'. If neither the heading nor the notes suffice to clarify the scope of a heading,*

> *then it must be construed according to the other following provisions contained in the Rules. Rule 1 gives primacy to the section and chapter notes along with terms of the headings. They should be first applied. If no clear picture emerges then only can one resort to the subsequent rules. The appellants have relied upon Rule 3. Rule 3 must be understood only in the context of sub-rule (b) of Rule 2 which says inter alia that the classification of goods consisting of more than one material or substance shall be according to the principles contained in Rule 3. Therefore when goods are prima facie, classifiable under two or more headings, classification shall be effected according to sub-rules (a), (b) and (c) of Rule 3 and in that order".*

9. Learned Sr. Counsel also draws our attention to the judgment of the Hon'ble Supreme Court in the matter of **M/s. Intel Design Systems (India) Pvt. Ltd. Vs. Commr. of Cus. & C. Ex. – [2008 (223) ELT 135 (SC)].**

10. As regards the demand confirmed by invoking extended period of limitation and imposition of penalty, learned counsel submits that such demand cannot be invoked as the Appellant had not filed a wrong declaration of imported goods to gain any undue benefit and Appellant being a Public Sector Unit (PSU), no undue benefit can be alleged by suppressing the fact. Further the issue raised is purely a dispute of classification, which is a matter of interpretation of law, and not an act of suppression or misdeclaration. Therefore, demand confirmed by invoking extended period of limitation and imposition of penalty is unwarranted, improper, and liable to be set aside.

11. Learned Authorized Representative (AR) drew our attention to the finding in the impugned order and submits that the appellant has not furnished any reason for changing the classification of the goods from November 2016. Though they have imported the goods for the year 2015-16. Shri. Sandyapogu Raju, in his statement dated 28.11.2017 has, inter alia, stated that he joined M/s. BEL in 1999 as Probationary

Engineer (Development & Engineering Military Radars) and he had been working as Manager (Testing Military Radars) since 2016; his role in the organization is to test radar systems and customer clearance of such systems, training the army personnel (users) and warranty repairs, factory repairs etc.; Radar is Radio Detection and Ranging equipment; it transmits the RF signal and receives the echo from the target, processes it and displays the target information on screen; the target information is range, azimuth and elevation; a Radar System consists of an antenna for transmitter and receiver functions, signal processor and display; the imported 'Radar Antenna', 'Radar Processor' and 'Radar Cables', are technically, components of radar system; the Radar Antenna consists of transmitter and receiver channels; the Radar Antenna and the Radar Processor together are called as Part of Radar System; M/s BEL had upgraded Schilka Weapon System for the Indian Army as part of this upgradation/replacement of old radar, these parts of radar had been imported from Israel along with other sub-systems required for the upgradation; the said components i.e. 'Radar Antenna', 'Radar Processor' & 'Radar Cables were used as a part of Radar System to upgrade Schilka weapon system of the Indian Army.

12. Learned Authorized Representative (AR) further submits that; M/s BEL have submitted in their written submissions that as part of the upgradation, BEL has carried out fitment of new engine, power supply, fitment of radars, fine control systems, communication equipment, display systems for commander and operator, night vision equipment etc. Thus, it is clear that radars were fitted on the battle tanks. This goes to prove that radar system was pre-assembled with the imported goods before fitting the same on the battle tanks. Further, M/s BEL have not disputed the fact that Radar Antenna', Radar Processor' & 'Radar Cables' are main parts/components of a full Radar System.

13. Learned Authorised Representative (AR) for the Revenue also submits that the radar apparatus finds specific mention under Customs Tariff Heading (CTH) 85361000 and the parts suitable for use solely or principally with the apparatus of Chapter Heading 8525 to 8528 is

classifiable under the heading 8529. Since the Radar Cables, Radar Antenna and Radar Processor are parts/ components of the complete radar system, and they are assembled to form the Radar, the Radar Antenna and Radar Processor are specifically classified under Customs Tariff Heading (CTH) 85299090 and all types of coaxial cables find classification under Chapter Heading 8544 therefore, Radar Cables are correctly classifiable under Customs Tariff Heading (CTH) 85442090. Learned AR also drew our attention to the relevant Chapter Hearding 8526 as applicable to radar and submits that the Adjudication Authority adopted the classification after considering the Chapter Note and respective Tariff Entries and General Rules of Interpretation. Further as regards the submission made by appellant regarding Section Note 3, Learned AR submits that under Section Note 3, parts and accessories which are not suitable for use solely or principally with the articles of Chapters 86 to 88 are excluded from those Chapters. The effect of Note 3 is therefore that when a part or accessory can fall in one or more other Sections as well as in Section XVII, its final classification is determined by its principal use. Thus, the steering gear, braking systems, road wheels, mudguards, etc., used on many of the mobile machines falling in Chapter 84, are virtually identical with those used on the lorries of Chapter 87 and since their principal use is with lorries, such parts and accessories are classified in this Section. Further when parts and accessories classifiable in two or more headings of the Section, certain parts and accessories are suitable for use on more than one type of vehicle (motor cars, aircraft, motorcycles, etc.); examples of such goods include brakes, steering systems, wheels, axles, etc. Such parts and accessories are to be classified in the heading relating to the parts and accessories of the vehicles with which they are principally used.

14. As regards invoking the extended period of limitation, Learned AR submits that since the goods are subject to self-assessment, the department was unaware of various declarations made by the appellants. Due to minimal intervention of department, under self-assessment, it is up to the importer to declare, correctly and properly.

This coupled with the fact that they were aware of the RMS facility being extended to them, proves their intent to evade payment of duty. They have paid the differential duty after detection by Department, in itself proves that they were aware of their liability. It is evident from the facts above that there is deliberate and well thought attempt on the part of appellants causing mis-declaration and suppression. Thus, the invoking of extended period and demand of duty thereto was correctly invoked by Adjudication Authority. In this regard reliance is also placed on the following case laws, wherein the Hon'ble Tribunal has upheld the invoking of extended period when goods are cleared under RMS:-

i. **IBM India (P) Ltd. - 2024 (387) E.L.T. 323 (Tri. – Bang)**
ii. **Panasonic Sales & Services India P. Ltd. - 2009 (245) E.L.T. 495 (Tri. - Mumbai)}**
iii. **Interglobe Aviation Ltd. (2022 (379) E.L.T. 235 (Tri. - Bang.)**
iv. **KSE Ltd. - 2017 (352) E.L.T. 46 (Tri. - Bang.)**

15. Heard both sides and perused the records.

16. We note that the appellant is a Public Sector Undertaking (PSU). The appellant upon securing a contract to upgrade the Schilka weapon system mounted on a main battle tank, imported the impugned goods under a bill of entry dated 30.11.2016. Since these components are used exclusively as parts of the main battle tank, the appellant classified them under Customs Tariff Heading (CTH) 87100000. Following the initiation of an investigation, the appellant summitted the supporting documents including letter dated 09.11.2017, followed by a detailed reply on 16.01.2018 explaining the specific use of impugned goods. The appellant explicitly submitted that, upon installation, these parts become inseparable component parts of the main battle tank's compact tracking system. There is no evidence on record to show that the appellant's contentions are factually incorrect or that the goods were diverted for use, elsewhere. Furthermore, though the appellant previously imported similar goods as parts of radar apparatus, it is a

settled principle that there is no estoppel in taxation. In the absence of any contrary evidence regarding actual usage, it cannot be held that all such future or similar imports must solely be classified as radar apparatus parts. We find that this issue is squarely covered by the Hon'ble Supreme Court's judgment in **M/s. Westinghouse Saxby Farmer Ltd. (supra)** where the classification issue of 'Relay' having dual use was considered and after detailed discussion it is held that invoking Note 2(f) in Section XVII, overlooking the 'sole or principal user test' indicated in Note 3 is not justified. In the impugned order, the Adjudication Authority is silent and had overlooked 'sole or principal user test' indicated in Note 3, while classifying the goods. Since it is admitted that the goods are component parts suitable for use solely and principally for Schilka Battle Tank tracking system and meant for upgrading the Main Battle Tank, the declared classification was under Customs Tariff Heading (CTH) 87100000 which covers, "Tanks and other Armored Fighting Vehicles, motorised, whether or not fitted with weapons, and parts of such Vehicles'. We find that the impugned goods namely 'Radar Antenna', 'Radar Processor', and 'Radar Cables', are specifically designed for use, solely and principally in Schilka Battle Tanks' tracking system for upgradation of these tanks. As regards the fact that appellant had earlier imported such parts and cleared the goods classifying them under Customs Tariff Heading (CTH) 85299090/85442090 as parts of Radar does not crystallise the classification as there is no estoppel in the taxation matters. Further the details of the earlier imports cleared under classification under Customs Tariff Heading (CTH) 85299090/85442090 when the details of these imports are not brought on record to examine whether they were parts for use solely and principally in Schilka Battle Tanks' tracking system. Therefore the classification of impugned goods namely 'Radar Antenna', 'Radar Processor', and 'Radar Cables' as per Note 3 to Chapter 87, of the Customs Tariff Act, 1975, being parts for use solely and principally in Schilka Battle Tanks' tracking system are rightly classifiable under Customs Tariff Heading (CTH) 87100000, hence we find that the declared classification by the appellant is legally sustainable. In view of the above, the allegation that the Appellant-Importer has mis-declared the classification with an intention to evade duty is also not sustainable and hence the extended period for demand of duty under proviso to section 28 along with interest and imposition of penalty under section under 114A of the Customs Act 1962 is unsustainable. Hence, the impugned order is liable to be set aside,

17. In view of the above discussion, the impugned order is set aside, and the appeal is allowed with consequential relief, if any, in accordance with law.

(Order was pronounced in open court on 08.07.2026)

(P. A. AUGUSTIAN)
MEMBER (JUDICIAL)

(PULLELA NAGESWARA RAO)
MEMBER (TECHNICAL)

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