

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH
CHENNAI**

Appeal No.C/109/2010

[Arising out of Order-in-Appeal C.Cus.No.1353/2009 dt. 6.11.2009
passed by the Commissioner of Customs (Appeals), Chennai]

ICOMM Tele Limited

Appellant

Versus

Commissioner of Customs (Airport & Air cargo)
Chennai

Respondent

Appearance:

Shri S.Murugappan, Advocate
For the Appellant

Shri B. Balamurugan, AC (AR)
For the Respondent

CORAM :

Hon'ble Ms. Sulekha Beevi C.S. Member (Judicial)
Hon'ble Shri B. Ravichandran, Member (Technical)

Date of hearing / decision : 15.11.2017

FINAL ORDER No. 42936/2017

Per B. Ravichandran

The appellant is aggrieved by the order dt. 6.11.2009 of
Commissioner of Customs (Appeals), Chennai.

Shri B. Ravichandran



[Signature]

2. The appellants imported items described as "Parts of International Private Leased Circuit (IPLC) Lawful Interception Monitoring (LIM) Networking System" as per purchase order from a client in India. Appellant claimed classification under CTH 85176990 as "Other machines for the reception, conversion and transmission or regeneration of voice, images or other data, including switching and routing apparatus". The Revenue contested this classification and sought to classify the same under CTH 85437099 which is "other items of electrical machines and apparatus having individual functions not elsewhere specified in the chapter". The lower authorities confirmed classification proposed by the Revenue. A differential customs duty was confirmed.

3. The Ld. counsel for the appellant submitted that they have imported telecommunication equipment which is capable of intercepting voice and data transmission and to record the same for further analysis by the agencies. He elaborately referred to technical literature of the imported item. He contested the findings of Commissioner (Appeals) as being cryptic and without analysis. The equipments imported are capable of receiving the voice or data signal for further storage and analysis. This aspect has been missed by the lower authorities. The inference that there is no mechanism for

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transmission or reception of information using this equipment is factually incorrect. He further submitted that residual entry proposed by the Revenue is mainly for electrical equipments which are not anywhere else mentioned. The type of equipments at CTH main Heading 85.43 are like metal detectors, video special equipments, broadcasting amplifiers, audio visual stereo encoders, video controlling units etc. The equipments imported by the appellant are specifically intended for interception / reception of voice or data communication by electronic means. He prayed for setting aside the impugned order.

4. Ld. A.R contested the appeal stating that equipment is not intended for receiving any telecommunication data. These are used in the exchanges through which the voice or data communication is transmitted. These are special equipments having specific function not covered by Heading 85.17 which is with reference to telephone sets, wireless networks and apparatus for transmission or reception of voice, image or other data. The equipments now under import are not used for transmission or reception of voice or data.

5. We have heard both sides and perused the appeal records. On perusal of technical literature submitted by the appellant, we note that the imported items consisted of following components :



"Comprehensive Broadband Support

RELIANT decodes packet data and 3G messages, providing significant insight into criminal and terrorist activity. Emerging technologies, such as multimedia, are intercepted and decoded by RELIANT, providing analysts with access to content, voice and images in a single transaction - elevating investigations to a completely new level.

RELIANT handles the long and data-intensive sessions associated with broadband usage. RELIANT decodes and presents each type of message separately, while maintaining the context of the broadband session. This allows easy access to each decoded product along with its specific protocol and session-related information. In RELIANT, all captured products are displayed in their original format in near real time, exactly as viewed by the target.

In general, RELIANT's core subsystems consist of the following components:

- **Collection** - acts as a termination point for the delivery protocol. The collection device receives the raw call content and certain call information, converts them into RELIANT standards and marks the intercepted call within the system. The protocols used are compliant with CALEA, ETSI and other delivery standards as well as with Verint's proprietary passive tactical probes.
- **Storage** - manages the storage and archiving of operational and management information, including all collected call content, both raw and processed, as well as system entities, such as users, targets and interception specifications. For maximum performance and scalability, RELIANT can be optionally based on central storage technology (SAN and NAS), allowing for terabytes of stored information.
- **Application and Processing Servers** - contains additional tools to further process operational and management information. Examples include advanced indexing, information sharing, advanced protocol decoding and related processes.
- **Application Gateway Server** - receives and transfers all activity requests from the operator workstations. It also operates as a middle tier between the workstations and the RELIANT storage and processing servers.
- **Workstations** - provide the user interface for monitoring, reviewing and archiving sessions, defining users and targets and performing other system activities."

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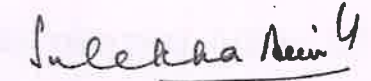
6. From the above description of the impugned goods, it is clear that when connected to the network of voice or data transmission, these equipments are capable of receiving, recording and storing all kinds of communications, voice, image, data between the subscribers. We note the equipments enable the network operator to virtually receive all such communication by such interception and record the same for future analysis. Without reception of these signals no useful purpose can be served by these equipments. In this connection, we note that the Commissioner (Appeals) erred in factual finding. He recorded that the machines imported have no mechanism for reception of information. This is not factually correct. The equipments are attached to telecommunication network and they form part of the network of the telecom apparatus having the capacity to substitute the recipient of information so that they can get all the information which are intended for the receiver. We also note that main Heading 8543 is intended for residual items with specific functions. The nature of items listed under the main heading some of which are already mentioned will make it clear that the items under consideration will not fit into the overall group. The equipments now under consideration are more in the nature of telecommunications, auxiliary equipments which are part and parcel of network for voice or



data transmission and distribution. Accordingly, we find that the classification as claimed by the appellant is more appropriate than what is held by the lower authorities. Accordingly, we set aside the impugned order and allow the appeal, with consequential relief, if any, as per law.

(dictated and pronounced in court)


(B. Ravichandran)
Member (Technical)


(Sulekha Beevi C.S)
Member (Judicial)

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