

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE
TRIBUNAL,
SOUTH ZONAL BENCH, CHENNAI
COURT HALL No.III**

CUSTOMS APPEAL No.41273 OF 2013

(C/CROSS/42168/2013-by respondent)

(Arising out of Order-in-Appeal C.Cus. No.258/2013 dated 19.02.2013 passed by Commissioner of Customs (Appeals), No. 60, Rajaji Salai, Custom House, Chennai 600 001)

The Commissioner of Customs (Air)

.... Appellant

New Custom House,
Meenambakkam,
Chennai - 600 027.

Versus

M/s.Samsung India Electronics Pvt. Ltd.

...Respondent

2nd, 3rd & 4th Floor, Vipul Tech Square,
Gold Course Road, Sector 43,
Gurgaon - 122 099.

APPEARANCE :

Mr. Harendra Singh Pal, Assistant Commissioner (A.R)
For the Appellant

Mr. Rohan Muralidharan, Advocate
For the Respondent

CORAM :

**HON'BLE MS. SULEKHA BEEVI C.S., MEMBER (JUDICIAL)
HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)**

**DATE OF HEARING : 10.07.2023
DATE OF DECISION : 17.07.2023**

FINAL ORDER No.40571/2023

ORDER : Per Ms. SULEKHA BEEVI, C.S.

This is an appeal filed by the department against the order passed by the Commissioner (Appeals) who set aside the order of the adjudicating authority who redetermined the classification of the goods viz. Samsung Galaxy Tab (GT-P1000) imported vide Bill of Entry dt. 16.03.2011 under CTH 84713090 and rejected the classification under CTH 85171290 as adopted by the importer/respondent herein.

2. Brief facts are that the respondent imported Samsung Mobile Phone GT-P1000CWHINU vide Bill of Entry dt.16.03.2011 claiming classification under CTH 85171290 as applicable to mobile phones. On examination of the documents and packages which showed description of goods as "Samsung Galaxy Tabs", the Department was of the view that the goods are rightly classifiable as 'Tablet Computers' under CTH 84713090 and assessment was accordingly done. Respondent paid the duty under protest. The adjudicating authority passed the Order-in-Original dt. 01.08.2011 rejecting the classification adopted by the importer and held that the goods are classifiable under CTH 84713090 and thereby ordered for vacating the protest. The importer-respondent herein preferred an appeal before the Commissioner (Appeals) who vide order impugned herein set aside the said order and held that the goods are rightly

classifiable under CTH 8517. Hence the department is now before the Tribunal.

3. Ld. A.R Sri Harendra Singh Pal reiterated the grounds of appeal.

4. Ld. Counsel Sri Rohan Muralidharan appeared for the respondent and submitted that pursuant to the Circular No.20/2013-Cus. dt.14.05.2013 issued by CBEC clarifying that the tablet computers are correctly classifiable under CTH 8471, the respondent has adopted the said classification in future imports. It is submitted that pursuant to the re-classification by the original authority, in the present case, the department had issued show cause notice for the previous imports made by the respondent invoking the extended period of limitation. Though the respondent is now accepting the classification, the accede to the issue of classification may be considered without prejudice to the respondent's right to put forward all contentions including the issue of limitation in matters kept in abeyance for adjudication. It is pointed out that the very same issue with regard to import of the same goods was considered by the Tribunal in the respondent's own case as reported in 2019 (4) TMI 915 CESTAT MUMBAI and the Tribunal remanded the matter to the adjudicating authority to reconsider the issue. Ld. Counsel prayed for orders accordingly.

5. Heard both sides and perused the records.

6. The issue is with regard to the classification of 'Samsung Mobile Phone GT-P1000 CHWINU' imported by the respondent. The respondent has classified the goods under CTH 85171290 as applicable to Mobile Phone. According to the Department, the description on the packages revealed that these were Samsung Galaxy Tabs and could not be classified as mobile phone. Accordingly, the goods were assessed as Automatic Data Processing (ADP) Machines / Tablet Computers under CTH 84713090. At the time of hearing, the Ld. Counsel appearing for the respondent submitted that pursuant to the clarification issued by the Board vide circular No.20/2013-Cus. dt.14.5.2013, the respondent has adopted the said classification in their future imports. Their only request is that the said acceptance of classification may be considered as without prejudice to the contentions that may be raised in matters pending before the Department.

7. Taking note of the submissions made by the Ld. Counsel that they have accepted the classification of the impugned goods to be CTH 84713090 as ordered by the original authority, we hold that the appeal of the department on the issue of classification succeeds.

8. Ld. Counsel for respondent has submitted that the acceptance of the classification may be considered without prejudice to the arguments that may be put forward by them in matters pending before the Department. We do take note of the said plea put forward by the respondent. Needless to say, that respondent would be entitled to put forward arguments on all grounds in matters pending before the Department.

9. In the result, the impugned order passed by the Commissioner (Appeals) is set aside. The appeal filed by the Department is allowed. The cross objections filed by respondent is dismissed.

(Pronounced in court on 17.07.2023)

sd/-

(VASA SESHAGIRI RAO)
Member (Technical)

sd/-

(SULEKHA BEEVI C.S.)
Member (Judicial)

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