

**IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL, CHENNAI**

(Both the appeals are arising out of Order in Original No. 67/2020-AIR dated 23.1.2020 passed by the Commissioner of Customs, Chennai – VII)

Customs Appeal No.40392 of 2020

M/s. Flextronics Technologies Pvt. Ltd.

Appellant

Phase II, SIPCOT Industrial Park DTA
Sandavellur C Village, Sriperumbudur
Kanchipuram – 602 106.

Vs.

Commissioner of Customs

Respondent

Chennai VII Commissionerate
New Custom House
Meenambakkam, Chennai – 600 027.

AND

Customs Appeal No.40296 of 2020

and

Customs Miscellaneous Application (Cross) No. 40147/2020

Commissioner of Customs

Appellant

Chennai VII Commissionerate
New Custom House
Meenambakkam, Chennai – 600 027.

Vs.

M/s. Flextronics Technologies Pvt. Ltd.

Respondent

Phase II, SIPCOT Industrial Park DTA
Sandavellur C Village, Sriperumbudur
Kanchipuram – 602 106.

APPEARANCE:

Shri Rohan Muralidharan, Advocate for the Appellant
Shri Rudra Pratap Singh, ADC (AR) for the Respondent

(Both the appeals are arising out of Order in Original No. 804/2019-AIR dated 9.12.2019 passed by the Commissioner of Customs, Chennai – VII)

Customs Appeal No.40184 of 2020

M/s. Flextronics Technologies Pvt. Ltd.

Appellant

Phase II, SIPCOT Industrial Park DTA
Sandavellur C Village, Sriperumbudur
Kanchipuram – 602 106.

Vs.

Commissioner of Customs

Chennai VII Commissionerate
New Custom House
Meenambakkam, Chennai – 600 027.

Respondent

AND

Customs Appeal No.40295 of 2021**Commissioner of Customs**

Chennai VII Commissionerate
New Custom House
Meenambakkam, Chennai – 600 027.

Appellant

Vs.

M/s. Flextronics Technologies Pvt. Ltd.

Phase II, SIPCOT Industrial Park DTA
Sandavellur C Village, Sriperumbudur
Kanchipuram – 602 106.

Respondent**APPEARANCE:**

Shri Ganesh Aravindh, Advocate for the Appellant
Shri Rudra Pratap Singh, ADC (AR) for the Respondent

AND

(Arising out of Order in Original No. 58/2020 dated 21.1.2020 passed by the
Commissioner of Customs, Chennai – VII)

Customs Appeal No.40391 of 2020**M/s. Flextronics Technologies Pvt. Ltd.**

Phase II, SIPCOT Industrial Park DTA
Sandavellur C Village, Sriperumbudur
Kanchipuram – 602 106.

Appellant

Vs.

Commissioner of Customs

Chennai VII Commissionerate
New Custom House
Meenambakkam, Chennai – 600 027.

Respondent

AND

Customs Appeal No.40292 of 2020

and

Customs Miscellaneous Application (Cross) No. 40146/2020**Commissioner of Customs**

Chennai VII Commissionerate
New Custom House
Meenambakkam, Chennai – 600 027.

Appellant

Vs.

M/s. Flextronics Technologies Pvt. Ltd.
Phase II, SIPCOT Industrial Park DTA
Sandavellur C Village, Sriperumbudur
Kanchipuram – 602 106.

Respondent

APPEARANCE:

Shri Rohan Muralidharan, Advocate for the Appellant
Shri Rudra Pratap Singh, ADC (AR) for the Respondent

CORAM

Hon’ble Shri P. Dinesha, Member (Judicial)
Hon’ble Shri M. Ajit Kumar, Member (Technical)

Final Order Nos. 40203-40208/2024

Date of Hearing : 02/30.11.2023
Date of Decision: 28.02.2024

Per M. Ajit Kumar,

1. The appeals of the importer and department arise out of Orders in Original No.67/2020-AIR dated 23.1.2020; No. 804/2019-AIR dated 9.12.2019 and No. 58/2020 dated 21.1.2020 passed by the Commissioner of Customs, Chennai. Since the appeal and cross-objections all pertain to different goods used in the assembly of a mobile phone of the same Appellant, they are being examined and disposed by this common order.
2. The issues examined in this order are listed in the index below:

Sl. No.	Topic	Para No.	Page No.
1.	Facts of the case	3	4
2.	The Classification Principle and Government Policy	5.0	9
3.	The Burden of Proof in the case of Fiscal Exemptions and in the Classification of goods	6.0	13
4.	Receivers	8.0	15
4a	Can an appellant challenge a matter in appeal which they had earlier acquiesced	8.2	17
5.	Microphones	9.0	18
5a	Whether microphones are inputs or parts for use in manufacture of PCBA	9.4	21

5b	Whether general description must yield to a special one	9.6	25
5c	Whether the insertion in notification is clarificatory and retrospective in nature	9.7	26
5d	Boards Circulars and the doctrine of <i>contemporanea exposition</i>	9.10	29
5e	Exemption Notification should be interpreted strictly	9.11	30
5f	Whether intention of Notification to be understood through declared Government Policy	9.13	31
5g	Whether redemption fine can be imposed when goods are not available	9.16	33
5h	CESTAT Judgments on exemption to cellular microphones	9.17	34
6.	Battery cover, back cover, camera lens, front cover	10.0	38
6a	Are department officers always bound to classify goods as per Boards Circular?	10.3	40
7.	Decision	11	46

3. The facts of the case

Receivers

(Order in Original No.67/2020-AIR dated 23.1.2020)

3.1 M/s. Flextronics Technologies Pvt. Ltd. (herein after referred to as Flextronics) are manufacturers of mobile phones. They filed Bills of Entry for clearance of imported goods declared as 'Receivers' during the period July 2017 to January 2018. The goods were classified under CTH 85177090 and were availing the benefit of Customs Notification No.50/2017 (S. No. 499) which attracts BCD @5%. Department was of the view that the 'Receivers' were classifiable under CTH 85181000 attracting 10% BCD which has been increased to 15% with effect from 2.2.2018 vide Customs Notification No.22/2018 dated 2.2.2018. After following the due process the matter was adjudicated and the reclassification of 'Receivers' under Customs Tariff Heading 85181000 ordered. Aggrieved by the demand for short-paid duty amount of Rs.62,97,899/- along with interest and a penalty of Rs.1,00,000/- under sec. 112(a) of the Customs Act, 1962., the importer has filed Appeal No.

C/40392/2020. Department on the other hand is aggrieved by the impugned order for non-imposition of redemption fine and has filed Appeal No. C/40296/2020 against which the importer has filed a cross-objection.

Microphones

(Order in Original No. 804/2019-AIR dated 9.12.2019)

3.2 M/s. Flextronics Technologies Pvt. Ltd. filed Bills of Entry for clearance of the imported goods declared as 'Microphone' and classified them under CTH 85177090, 8518100 and 85183000. They claimed the benefit of Customs Notification No. 57/2017 (S. No. 6A) during the period from June 2018 to December 2018. Department was of the opinion that Customs Notification No. 57/2017 excludes 'Microphone' from the purview of notification benefit and that Microphone being a complete unit and a part of mobile phone is classifiable under CTH 85181000 which attracts BCD at tariff rate. After due process of law, the Adjudicating Authority vide the impugned order rejected the benefit of Notification No. 57/2017 dated 30.6.2017 and classified the goods under CTH 85181000 and demanded differential duty amount of Rs.3,01,28,441/- along with interest and imposed a penalty of Rs.10 lakhs under sec. 112(a) of the Customs Act, 1962. Aggrieved by the demand of differential duty and imposition of penalty, the importer has filed Appeal No. C/40184/2020. Department is aggrieved by the impugned order for non-imposition of redemption fine and has filed Appeal No. C/40295/2021.

Battery Cover, Back Cover, Camera Lens, Front Cover

(Order in Original No. 58/2020 dated 21.1.2020)

3.3 During the period July 2017 to January 2018 the Appellant imported 'Battery Cover, Back Cover, Camera Lens and Front Cover' of

mobile phones, classifying them under CTH 8517 7090 and claimed the concessional rate of duty under S. No. 499 of Notification No. 50/2017 – Cus. dated 30.06.2017. The department however was of the view that the subject goods were rightly classifiable under CTH 3920 9999 and that exemption under Sl. No. 499 of Notification No. 50/2017-Cus. was not available to the imported goods. The learned Commissioner after following the due process confirmed the entire differential duty along with interest. Aggrieved by the demand of differential duty and imposition of penalty, importer has filed Appeal No. C/40392/2020, C/40184/2020 and C/40391/2020. Department being aggrieved by the impugned order for non-imposition of redemption fine and has filed Appeal No. C/40296/2020 and C/40295/2021.

Oral Arguments

4. Shri Rohan Muralidharan Aravindh, learned counsel appeared for the M/s Flextronics and Shri Rudra Pratap Singh, learned Additional Commissioner (AR) appeared for Revenue.

4.1 The learned Counsel for M/s Flextronics stated that it is a settled position that a part is an item without which the whole cannot function. In the present case, the imported goods are indispensable to the functioning of mobile phones. Therefore, they are parts of mobile phones. The Counsel submits that the subject goods are not specifically covered under any heading and therefore recourse must be made to Note 2(b) to Section XVI in order to determine the classification of the subject goods. Therefore, the goods must be held to have been correctly classified by them. The impugned orders may hence be set aside and the classification of the goods as done by them along with notification benefits be allowed. Further arguments presented by the Counsel will be

considered while discussing the classification / exemption claimed for individual goods.

4.2 The learned Additional Commissioner (AR) in his opening remarks stated that the Appellant had acquiesced to the classification of the 'receivers' with reservations expressed only on the proposal for confiscation and penalty before the learned Original Authority and should not be allowed to be re-opened now on merits. Upsetting an accepted legal position after a long time is likely to cause confusion and inconvenience and may bring in its train new disputes. He further stated that Government had launched a special Policy scheme known as PMP (Phased Manufacturing Programme) for the phased manufacturing of mobile phones in India. The policy is dealt with from File No.4(8)/2016-IPHW Government of India Ministry of Electronics and Information Technology Digital Industry (Hardware) Division, dated 28/04/2017. He gave a copy of the Notification which states as under.

NOTIFICATION

Subject: Phased Manufacturing Programme (PMP) to promote indigenous manufacturing of Cellular Mobile Handsets, its sub-assemblies and parts/ sub-parts/ inputs of the sub-assemblies thereof

To promote indigenous manufacturing of Cellular mobile handsets, in the Budget 2015-16, a differential Excise Duty dispensation, i.e. Countervailing Duty (CVD) on imports @12.5% and Excise Duty @1% without input tax credit (or 12.5% with input tax credit) was made available to domestic manufacturers of Cellular mobile handsets. Parts, components and accessories for the manufacture of Cellular mobile handsets; Parts/ sub-parts/ inputs for the manufacture of such parts and components were exempted from Basic Customs Duty (BCD), CVD/ Excise Duty and Special Additional Duty of Customs (SAD). This gave an impetus to the Assembly, Programming, Testing and Packaging (APTP) model of manufacturing Cellular mobile handsets.

2. To promote depth in manufacturing of domestically manufactured Cellular mobile handsets, a phased manufacturing roadmap has been prepared keeping in view the state of play of the design/ manufacturing ecosystem in the country, wherein through appropriate fiscal and financial incentives, indigenous manufacturing of Cellular mobile handsets and various sub-assemblies that go into the manufacturing of

Cellular mobile handsets shall be promoted over a period of time. The intention is to substantially increase value addition within the country.

3. The following Phased Manufacturing Programme (PMP) is notified with the objective of progressively increasing the domestic value addition for establishment of a robust Cellular mobile handsets manufacturing eco-system in India. The PMP shall enable the Cellular mobile handset and related sub-assembly/component industry to plan their investments in the sector.

Year	Sub-Assembly
2016- 17	(i) Charger/ Adapter, (ii) Battery Pack, (iii) Wired Headset
2017-18	(iv) Mechanics*, (v) Die Cut Parts*, (vi) Microphone and Receiver, (vii) Key Pad, (viii) USB Cable
2018-19	(ix) Printed Circuit Board Assembly (PCBA), (x) Camera Module, (xi) Connectors (xii) Display Assembly,
2019-20 *	(xiii) Touch Panel/ Cover Glass Assembly, (xiv) Vibrator Motor / Ringer

*Indicative list at Annexure

4. The PMP shall also be extended to parts/ sub-parts/ inputs of aforesaid sub-assemblies, starting with Charger/ Adapter, as the manufacturing ecosystem evolves over a period of time.

(S.K. Marwaha)
Director I Scientist "F"
Tel: 24365940

New Delhi, Dated 28th April, 2017

Annexure

A. Mechanics

1. Battery Cover (HS 39209999)
2. Front Cover (HS 39209999)
3. Front Cover (with Zinc casting) (HS 39209999)
4. Middle Cover (HS 39209999)
5. GSM Antenna / Antenna of any technology (HS 39209999)
6. Side Key (HS 85389000)
7. Main Lens (HS 39209999)
8. Camera Lens (HS 39209999)
9. Screw (HS 73181500)
10. Mic Rubber Case (HS 40169990)
11. Sensor Rubber Case/ Sealing Gasket including sealing gaskets / cases from Rubbers like SBR, EPDM, CR, CS, Silicone and all other individual rubbers or combination / combinations of rubbers (HS 40169990)
- 11.1 PU Case/Sealing Gasket (HS 39269091) - Other articles of Polyurethane foam like sealing gaskets / cases.
- 11.2 Sealing Gaskets / Cases from PE, PP, EPS, PC and all other individual polymers or combination / combinations of polymers (39269099)
12. SIM Socket / Other Mechanical items (Metal) (HS 73269099)
13. SIM Socket / Other Mechanical items (Plastic) (HS 39269099)
14. Back Cover (HS 39209999)

B. Die Cut Parts

1. Conductive Cloth (HS 39269099)
2. Heat Dissipation Sticker Battery Cover (HS 39199090)
3. Sticker-Battery Slot (HS 39199090)
4. Protective Film for Main Lens (HS 39199090)
5. Mylar for LCD PFC (HS 39199090)
6. LCD Conductive Foam (HS 39269099)
7. Film-Front Flash (HS 39199090)
8. LCD Foam (HS 39269099)
9. BT Form (HS 39269099)

He stated that the programme had a phased roadmap keeping in view the state of play of the design/ manufacturing ecosystem in the country. Appropriate fiscal and financial incentives which include Customs duty exemptions, were planned to help indigenous manufacturing of Cellular mobile handsets and various sub-assemblies that go into the manufacturing of Cellular mobile handsets over a planned period of time in India. A lot of thought had gone into the policy and any disruption to the stated intentions by changing the classification as against the HS mentioned in the notification or by giving unintended exemptions would be determinantal to the policy and upset the certainty of duty that had been notified. The domestic cell phone manufacturing sector faces a lack of a level playing field vis-à-vis competing nations hence allowing unintended exemption to cell phone parts would put domestic industry to considerable hardship. Even as per the Apex Court judgments departmental officers are bound by Boards circulars. He hence prayed that the appeals made by Flextronics may be rejected and the impugned orders, departments appeals be upheld.

The Classification Principle And Government Policy

5.0 In their written submissions after the oral hearing the Appellant has drawn our attention to the judgement of the Principal Bench of the Tribunal in **M/s Vivo Mobile India Pvt. Ltd. Vs Principal Commissioner of Customs, Air Cargo Complex (Import), New**

Delhi [Final Order Nos. 50226-50232 /2024, dated 09/02/2024], i.e. **(Vivo Mobile India - II)**. While the judgment will be examined in the course of discussing the issue on merits, two general issues on classification were also examined by the Tribunal. The questions posed were (i) Can an exemption notification issued by the Government under Section 25 of the Customs Act determine the classification of the goods? and (ii) Can a scheme notified by the MeITY determine the classification of the goods?. It was answered as below:-

46. To sum up, the power to assess duty lies with the importer and the proper officer. Classification, valuation and applying an exemption notification, are all part of the process of this assessment. Hence, the power to decide the classification lies with the importer during self-assessment, with the proper officer during re-assessment and while issuing an SCN under Section 28 and while adjudicating, with the Adjudicating Authority and with any appellate authority in the judicial hierarchy who deals with the appeals. Classification cannot be decided by anybody else (such as a MeITY in these cases) for two reasons. First, they do not have the authority to assess under Section 17 nor have any appellate powers to modify the assessment. Second, their orders, letters, notifications, etc. are executive actions performed at the discretion of the government and are not quasi judicial or appealable decisions. Therefore, any HSN code indicated against any goods in any policy of MeITY or any other Ministry cannot determine the classification of the goods under the Customs Tariff. Of the three grounds on which the classification is proposed to be changed in these SCNs, the policy of MeITY as a ground cannot, therefore, be sustained.

51. Goods must be classified under the Schedule to the Customs Tariff Act, 1975. For this purpose, the Rules of Interpretation have been provided of which Rule 1 reads as follows:

“1. The titles of Sections, Chapters and sub-chapters are provided for ease of reference only; for legal purposes, classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes and, provided such headings or Notes do not otherwise require, according to the following provisions.”

This Rule is followed by Rules of Interpretation 2 to 6 none of which provide for classification either based on any exemption notification or on the basis of any heading mentioned in any policy of any Ministry of the Government. Therefore, the goods cannot be reclassified based on the exemption notification issued under Section 25 or on the basis of any policy of any Ministry. Notifications or policies can be issued, modified or withdrawn but the classification of the goods under the tariff

will remain the same. Only if the tariff itself is amended can the classification change.

(emphasis as in the original order)

We do not dispute the views expressed by the Coordinate Bench of this Tribunal that the power to classify and assess import/ export goods is that of the 'proper officer' and the importer/ exporter under the Customs Act 1962. In case the department wants to change the classification of the goods declared by the importer, the burden of proof is on the taxing authority to show that the particular goods in question is taxable in the manner sought to be done by the authority. Classification is an important component of 'assessment'. However, the issue raised by Revenue in this case is different. The question is whether in a situation of ambiguity the policy of the Government needs to be considered when examining the classification of goods and especially while granting the benefit of an exemption notification.

5.1 Courts have at times resorted to judicial deference of administrative decisions, especially while dealing with economic policy. However, such deference, when it arises, is usually not based on a specific constitutional provision or statute and is a guiding principle as in the case of examining Budget speeches to understand the intention of the Legislature. In **R.K. Garg vs Union of India** [(1981) 4 SCC 675], the Apex Court observed that laws relating to economic activities must be viewed with greater latitude and deference when compared to laws relating to civil rights such as freedom of speech:

"8. Another rule of equal importance is that laws relating to economic activities should be viewed with greater latitude than laws touching civil rights such as freedom of speech, religion etc. It has been said by no less a person than Holmes, J., that **the legislature should be allowed some play in the joints**, because it has to deal with complex problems which do not admit of solution through any doctrinaire or strait-jacket

formula and **this is particularly true in case of legislation dealing with economic matters**, where, having regard to the nature of the problems required to be dealt with, greater play in the joints has to be allowed to the legislature. **The court should feel more inclined to give judicial deference to legislative judgment in the field of economic regulation than in other areas where fundamental human rights are involved.** Nowhere has this admonition been more felicitously expressed than in *Morey v. Doud* [351 US 457 : 1 L Ed 2d 1485 (1957)] where Frankfurter, J., said in his inimitable style:

“In the utilities, tax and economic regulation cases, there are good reasons for judicial self-restraint if not judicial deference to legislative judgment. The legislature after all has the affirmative responsibility. The courts have only the power to destroy, not to reconstruct. When these are added to the complexity of economic regulation, the uncertainty, the liability to error, the bewildering conflict of the experts, and the number of times the judges have been overruled by events – self-limitation can be seen to be the path to judicial wisdom and institutional prestige and stability.”

(emphasis added)

5.2 Hence we feel that if the need arises to understand the intention of Government in issuing an exemption notification in the impugned matter, we could refer to the phased manufacturing policy of Government, to the extent relevant. It is also a fact that in technical matters pertaining to electronics and information technology the Board apart from a reference to the HSN also from time to time consulted the **Department of Electronics and Information Technology**, Ministry of Communication and Information Technology, before issuing clarificatory Circulars for the sake of uniformity and for guiding assessing officers and the trade. Though this may not be binding on Tribunals, it has persuasive value. As stated by the Hon’ble Supreme Court in **K.P. Varghese vs The Income Tax Officer, Ernakulam** [1981 AIR 1922 / 1982 SCR (1) 629] (supra)], ‘this is in accord with the recent trend in juristic thought not only in Western countries but also in India that interpretation of a statute being an exercise in the ascertainment of meaning, everything which is logically relevant should be admissible.’

The Burden of Proof in the case of Fiscal Exemptions and in the Classification of goods.

6.0 In **Union of India v. Wood Papers Ltd** [(1990) 4 SCC 256] the rule as to exemption notifications in tax statutes was stated as follows:

“4. . . . Literally exemption is freedom from liability, tax or duty. Fiscally it may assume varying shapes, specially, in a growing economy. For instance tax holiday to new units, concessional rate of tax to goods or persons for limited period or with the specific objective etc. That is why its construction, unlike charging provision, has to be tested on different touchstone. In fact an exemption provision is like an exception and on normal principle of construction or interpretation of statutes it is construed strictly either because of legislative intention or on economic justification of inequitable burden or progressive approach of fiscal provisions intended to augment State revenue.”

(emphasis added)

6.1 The objectives of a tax systems though primarily aimed at mobilizing revenue is not restricted to the said activity. It has been understood as a powerful tool that can be used to remove distortions in the economy and shape Government policy aimed at accelerating the country's growth. However, whether goods or a transaction fall within the scope of an exemption notification, at times leads to a dispute due to their intricate nature, necessitating inquiry and debate. This has led to the emergence of principles for interpretation of fiscal exemptions, from no less than a **Constitutional Bench** consisting of five judges of the Hon'ble Supreme Court in **Commissioner of Customs (Import) Vs M/s Dilip Kumar and Company & Ors.** [Civil Appeal No. 3327 of 2007 / AIR 2018 SUPREME COURT 3606 / AIRONLINE 2018 SC 73]

6.2 In the said judgment in **Dilip Kumar and Company** the Hon'ble Court has overruled its earlier verdict in **Sun Export Corporation, Bombay Vs Collector of Customs, Bombay [2002-TIOL-118-SC-CX-LB]** and held that benefit of any ambiguity in notification related to tax exemptions must be interpreted in favour of the State. The Hon'ble Court examined the question as to what is the interpretative rule to be

applied while interpreting a tax exemption provision/ notification when there is an ambiguity as to its applicability with reference to the entitlement of the assessee or the rate of tax to be applied? It held:

“52. To sum up, we answer the reference holding as under

(1) Exemption notification should be interpreted strictly; the burden of proving applicability would be on the assessee to show that his case comes within the parameters of the exemption clause or exemption notification.

(2) When there is ambiguity in exemption notification which is subject to strict interpretation, the benefit of such ambiguity cannot be claimed by the subject/assessee and it must be interpreted in favour of the revenue.

(3) The ratio in Sun Export case (supra) is not correct and all the decisions which took similar view as in Sun Export Case (supra) stands overruled.”

The Hon’ble Supreme Court having declared the law on exemption notifications, it is binding on all judicial bodies to apply the same whenever an ambiguity exists in the application of a notification.

6.3 To recapitulate (i) While availing the benefit of an exemption notification the burden of proving applicability would be on the assessee/importer. He has to show that his case comes within the parameters of the exemption clause or exemption notification and that in case where there is ambiguity in an exemption notification which is subject to strict interpretation, the benefit of such ambiguity cannot be claimed by the subject/assessee and it must be interpreted in favour of the revenue. (ii) As regards the classification of goods the situation is the opposite. The burden of proof is on the taxing authorities to show that the particular case or item in question is taxable in the manner claimed by them. Mere assertion in that regard is of no avail.

Classification of ‘Parts’

Section Note 2 to Section XVI of the Customs Tariff lays down the rules to be followed while classifying parts of machines falling under

Chapters 84 and 85. The said Note is reproduced below for easy reference:

"2. Subject to Note 1 to this Section, Note 1 to Chapter 84 and to Note 1 to Chapter 85, parts of machines (not being parts of the articles of heading 8484, 8544, 8545, 8546 or 8547) are to be classified according to the folio-wing rules:

(a) parts which are goods included in any of the headings of Chapter 84 or 85 (other than headings 8409, 8431, 8448, 8466, 8473, 8487, 8503, 8522, 8529, 8538 and 8548) are in all cases to be classified in their respective headings;

(b) other parts, if suitable for use solely or principally with a particular kind of machine, or with a number of machines of the same heading (including a machine of heading 8479 or 8543) are to be classified with the machines of that kind or in heading 8409, 8431, 8448, 8466, 8473, 8503, 8522, 8529 or 8538 as appropriate. However, parts which are equally suitable for use principally with the goods of heading 8517 and 8525 to 8528 are to be classified in heading 8517;

(c) all other parts are to be classified in heading 8409, 8431, 8448, 8466, 8473, 8503, 8522, 8529 or 8538 as appropriate or, failing that, in heading 8487 or 8548.

(emphasis added)

7. We may now examine the classification and eligibility of the impugned goods for exemption, product wise.

I RECEIVERS

8.0 The buildup to this case is that, during **Post Clearence Audit** of the Appellant's Bills of Entry it was felt that the 'Receivers' imported by them which had been self-assessed and classified under CTH 85177090 was correctly classifiable under CTH 85181000. An **Audit Consultative letter** dated 13/02/2019 was issued to them by the Custom House. No reply was received from the Appellant. Then a **Pre-Show Cause Notice Consultation letter** dated 16/07/2019 was issued to the Appellant. Again, no reply was received from the Appellants end. Accordingly, the Appellant was issued with a **Show Cause Notice** (SCN) dated 30/07/2019 on the subject matter. The Appellant filed their reply dated 06/11/2019 to the SCN. The reply contested the SCN on the grounds of

penalty and confiscation but did not challenge the merits of the classification proposed. The Appellant availed the third opportunity for a **personal hearing** during which they submitted a **TR6 challan** copy dated 05/11/2019 evidencing payment of duty involved and requested for dropping penalty proceedings. The learned Commissioner after examining the issue has vide the **impugned order** confirmed the duty with interest. Although she found the goods liable for confiscation, she did not impose a fine in lieu of confiscation of the same as the goods had been cleared for home consumption, in the light of the Hon'ble Supreme Court's judgment in **Commissioner of Customs Vs. Chinku Exports** [2005 (184) ELT A36 (SC)], she was not inclined to impose a heavy penalty on the importer for their blame worthy conduct, as the importers had voluntarily paid the duty.

8.1 A preliminary objection has been raised by the Department that since the Appellant has acquiesced to the classification, they should not be allowed to re-open the matter at the appellate stage. The Appellant had during arguments stated that the Tribunal has jurisdiction to examine a question of law even if it was not taken up during the initial stage. We find that the Apex Court in **National Thermal Power Co. Ltd. vs Commissioner Of Income Tax** [1998 (99) ELT 200 SC, 1998 229 ITR 383 SC, (1997) 7 SCC 489] had held as follows:

'8. The reframed question, therefore, is answered in the affirmative, i.e., the Tribunal has jurisdiction to examine a question of law which arises from the facts as found by the authorities below and having a bearing on the tax liability of the assessee. We remand the proceedings to the Tribunal for consideration of the new grounds raised by the assessee on the merits.'

The preliminary objection merits examination for if it succeeds the challenge on merits will fail.

8.2 Can an Appellant challenge a matter in appeal which he had earlier acquiesced?

We find that the power of the Tribunal to permit a new question of law or fact to be raised before it even if it was not taken up during the initial stage, is a discretionary one. But the question here is that when the appellant deliberately acquiesced or forewent his right to rebut the charge for proper classification of the goods during three stages of the dispute resolution mechanism, can he be allowed to raise it at the Appellate stage. The Tribunal has an inherent power to prevent the right of appeal being abused by an appellant who keeps back till the stage of appeal, points of law or fact which he could have raised before the lower authority, without showing any reason and thus places the other side at a disadvantage. Persons with good causes of action should pursue the remedy with reasonable diligence at every available opportunity. In a literal sense, the term acquiescence means silent assent, tacit consent, concurrence, or acceptance, which denotes conduct that is evidence of an intention of a party to abandon a right and also to denote conduct from which another party will be justified in inferring such an intention. The normal rule is that in any litigation the rights and obligations of the parties are adjudicated upon as they obtain at the commencement of the lis. However, we find that the Appellant has filed an appeal within time, whereby the acceptance or acquiescence at the pre order stage has not become final and the rights of the opposite party has not crystalised. The Appellant however should have stated the compelling reason for the change in legal stand or risk the rejection of their pleadings, for at times it may be considered unfair to the other side in sending back the dispute to the starting point after a lapse of many years. However, we feel that

in the circumstances of this case and in the interest of justice the appellant can be allowed to resile from their earlier position and prove their case by rebutting the charges in the SCN, in their appeal before the Tribunal for the first time, so long as the relevant facts which are on record are not sought to be altered. Due to the initial stand taken by the Appellant, including the paying of duty, a complete or effectual adjudication of the proceedings, did not take place on merits before the Original Authority who was also lulled into imposing a light penalty considering the payment of duty. There was no examining of the evidence by the Original Authority, after taking into account the shifting onus of proof depending on the degree of probative evidence adduced by the Appellant and their arguments on facts and law. For these reasons the acquiescence by the Appellant initially, has put Revenue at a disadvantage now, as it did not get a chance to respond to the rebuttal by the Appellant, if it so desired at the original stage. We thus feel that this is a fit case for remand with all contentions on this issue being left open.

II MICROPHONES

Department's View:

9.0 The following points have been made by Revenue:

- a) The microphones are complete and distinctly identifiable commodities imported as such. As per Boards Circular 09/2016- Customs dated 11/03/2016 all microphones are classifiable under tariff item 85181000.
- b) Microphone, receiver etc. are known in trade parlance as distinct commodities and not as parts of PCBAs.

- c) 'Microphones' are not eligible for concessional rate of duty under S. No. 6A of Notification No. 57/2017-Cus. dated 30.06.2017 as they are not a part of PCBA. Further S. No. 18 of the same Notification, specifically denied exemption from the tariff rate to microphones of cellular mobile phones. They do not form the basic construction component of a PCBA and are not inputs or parts for use in manufacture of PCBA's. The claim to exemption must be viewed in light of the whole Notification applying the principle of harmonious construction.
- d) The specific exclusion of microphones from S. No. 6A brought in by Notification No. 24/2019-Cus. dated 06.07.2019 is to make the exclusion clear.
- e) PMP Notification issued from File No.4(8)/2016-IPHW dated 28/04/2017 and D.O letter of TRU No 334/4/2018-TRU dated 01/02/2018 (??) [Circular DOF No. 334/3/2019-TRU dated 05/07/2019] issued at the time of introduction of the Finance Bill, 2009 and subsequent tariff changes bring out the intention and object of the legislative change.
- f) The benefit under S. No. 427 of Notification No. 50/2017-Cus. dated 30.06.2017 is not applicable to microphones as it is a general provision which is applicable to all goods as opposed to Notification No. 57/2017-Cus. which applies to electronic items with specific entries pertaining to mobile phone parts like microphones, receivers, etc. The entry at Sl. No. 4 in List No. 20 "Microphones, Microphone cartridges" deals with microphones per se (standalone and not mobile parts).

Appellant's Averments

9.1 The following pleadings have been made by the Appellant:

(i) All microphones, irrespective of whether they are used in cellular mobile phones or otherwise are covered in List 20 (S. No. 427) of Notification No. 50/2017-Cus. dated 30.06.2017

(ii) The 'microphones' imported by Flextronics are transducers/variable capacitors that convert acoustic pressure waves to electric signals. They are parts mounted on Printed Circuit Board Assembly (PCBA) of cellular mobile phones using Surface Mounting Technology (SMT) and are therefore eligible for exemption under S. No. 6A of Notification No. 57/2017-Cus. dated 30.06.2017.

(iii) Exemption to microphones under S. No. 6A of Notification No. 57/2017-Cus. dated 30.06.2017 has been withdrawn only after issuance of Notification No. 24/2019-Cus. dated 06.07.2019 amending Notification No. 57/2017-Cus.

(iv) It cannot be presumed that the amendment dated 06.07.2019 was only clarificatory and retrospective in nature.

(v) It had been decided by the Tribunal in **Vivo Mobile India - I** (supra) that the exemption under Sl. No. 427 of Notification No. 50/2017-Cus. read with List 20 would squarely apply to microphones of mobile phones.

9.2 We find that the classification of the imported goods i.e, 'microphones' is not under challenge. The question which arises for consideration in this appeal relates to the interpretation of exemption notifications and the eligibility of the goods to concessional duty.

9.3 The first dispute relates to whether 'microphones' are eligible for concessional rate of duty under S. No. 6A of Notification No. 57/2017-

Cus. dated 30.06.2017 as part of PCBA or should be denied exemption as they are not parts of PCBA's and are also specifically covered under S. No. 18 of the same Notification, which specifically denied exemption to microphones of cellular mobile phones. S. No. 6A and 18 of the said Notification are extracted below:

S. No.	Chapter or Heading or Sub-heading or tariff item	Description of goods	Standard rate	Condition No.
(1)	(2)	(3)	(4)	
6A	Any Chapter	(a) Inputs or parts for use in manufacture of Printed Circuit Board Assembly (PCBA) of cellular mobile phones. (b) Inputs or sub-parts for use in manufacture of parts mentioned in (a) above.	Nil	1

If the importer follows the procedure set out in the Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017

S. No.	Chapter or Heading or Sub-heading or tariff item	Description of goods	Standard rate	Condition No.
(1)	(2)	(3)	(4)	
18	8518	All goods other than the following parts of cellular mobile phones, namely:- (i) Microphone (ii) Wired Headset (iii) Receiver	10 %	-

9.4 Whether microphones are inputs or parts for use in manufacture of PCBA

The question which arises is whether microphones are inputs or parts for **use in manufacture** of Printed Circuit Board Assembly (PCBA) of cellular mobile phones. Revenue has taken us through a diagrammatic representation of the PCBA, it is their contention that microphone does not form the basic construction input or part of a PCBA. They are only soldered onto a PCBA circuitry and are a distinct product and are not

inputs or parts for use in manufacture of PCBA's. The test of understanding, according to Revenue, is as to what is meant by inputs or parts for use in manufacture of a PCBA in the commercial sense. We find that PCBA's are electronic boards which incorporate fundamental electronic components like resistor, SMD capacitor, processors, diode, ICs etc. to create a functional circuit. It provides for a MIC interphase. PCBA is a part of the cellular phone just as a microphone, camera, LCD etc are. All these items, mentioned are at some stage of manufacture of cellular phones soldered onto the PCBA circuitry, for they require power supply from the battery to function among other things, but that does not make them a part of the PCBA. A microphone is a distinct commodity and is not known in trade parlance as a part of a PCBA. Their integration with the PCBA contributes to the functionality of the cellular phone. Just as typewriter ribbon is not an essential part of a typewriter, microphone is neither a basic construction component or an essential part of a PCBA, and they are commercially not known to be a part of PCBA. They play a crucial role in devices such as cellular phones, headsets, audio recording equipment etc. to capture sound waves and convert them into electrical signals. Just because a microphone is required for functional testing of the PCBA circuitry it does not mean that it is a part of the PCBA. It was also pointed out by Revenue during arguments that while the period of dispute in the case of microphones is from June 2018 to December 2018, PCBA's have been defined in notification no 57/2017-Cus as per insertion made by Notification No.22/2018-Cus Dated 02/02/2018 to read as under:

(b) "Printed Circuit Board Assembly (PCBA)" means printed circuit board assembled with electronic components such as resistors, capacitors,

diodes, inductors, ICs and mechanical components such as contact springs or connectors of charger or adapter of cellular mobile phones.

They do not include a microphone and the use of the word "means" in the insertion shows that the definition is exhaustive. As has been observed in **Feroze N. Dotiwala v. P. M. Wadhwani [(2003) 1 SCC 433, 442]**:

"Generally, when the definition of a word begins with "means" it is indicative of the fact that the meaning of the word has been restricted; that is to say, it would not mean anything else but what has been indicated in the definition itself."

The learned Counsel for the Appellant has stated that this insertion should be read with SI no's 7A, 7B and 7C of the notification only as mentioned in the notification and is not applicable to SI no 6A. We find that while the Appellant is correct, the definition though not binding has persuasive value.

9.5 Goods not defined must be understood in common parlance or commercial parlance.

Further in **M/s Indo International Industries v. Commissioner of Sales Tax, Uttar Pradesh**, [1981 (2) SCC 528], it has been held that "if any term or expression has been defined in the enactment then it must be understood in the sense in which it is defined but in the absence of any definition being given in the enactment the meaning of the term in common parlance or commercial parlance has to be adopted". Since PCBA's were not defined for the purpose of SI no 6A, the commercial parlance test has to be resorted to without going for their scientific and technical meaning. In **Plasmac Machine Manufacturing Co. Pvt. Ltd. v. Collector of Central Excise, Bombay** [1991 (51) E.L.T. 161 (SC) = 1991 Suppl (1) S.C.C. 57], it was held by the Apex Court :

“It is an accepted principle of classification that the goods should be classified according to their popular meaning or as they are understood in their commercial sense and not as per the scientific or technical meaning. Indo International Industries v. CST [1981 (2) SCC 528] and Dunlop India Ltd. v. Union of India [1976 (2) SCC 241] have settled this proposition. How is the product identified by the class or section of people dealing with or using the product is also a test when the statute itself does not contain any definition and commercial parlance would assume importance when the goods are marketable as was held in Atul Glass Industrial (Pvt.) Ltd. v. CCE [1986 (3) SCC 480] and Indian Aluminium Cables Ltd. v. Union of India [1985 (3) SCC 284]. In Asian Paints India Ltd. v. CCE [1988 (2) SCC 470] which was a case of emulsion paint, at para 8, it was said:

“It is well settled that the commercial meaning has to be given to the expressions in tariff items. Where definition of a word has not been given, it must be construed in its popular sense. Popular sense means that sense which people conversant with the subject matter with which the statute is dealing, would attribute to it.”

Again in Court in **C.I.T. Andhra Pradesh v. M/s. Taj Mahal Hotel Secunderabad**, ([1972] 1 SCR 168) stated that in incorporating items in the statutes like Excise, Customs or Sales-tax whose primary object is to raise revenue and for which to classify diverse products, articles and substance resort should be had not to the scientific and technical meaning of substance but to their popular meaning viz., the meaning attached to these expressions by those dealing in them. Further in **Ramavatar Budhaiprasad v. Assistant Sales Tax Officer** [(1962) 1 SCR 279], the Hon'ble Apex Court was concerned with the meaning of the word 'vegetable' occurring in C.P. and Berar Sales Tax Act, 1947. It referred to the Excise Tax Act in **Planters Nut Chocolate Co. Ltd. v. The King** [(1952) 1 Bom. L.R. 385. 389], where the Exchequer Court had observed as follows :-

“Now the statute affects nearly everyone, the producer or manufacturer, the importer, wholesaler and retailer, and finally the consumer who, in the last analysis, pays the tax. Parliament would not suppose in an Act of this character that manufacturers, producers, importers, consumers, and others who would be effected by the Act, would be botanists. The object of Excise Tax Act is to raise revenue, and for this purpose to class substances according to the general usage and known denominations of trade. In my view, therefore, it is not the botanist's conception as to what constitutes a 'fruit' or 'vegetable' which must govern the interpretation to be placed on the words, but, rather what would ordinarily

in matters of commerce in Canada be included therein. Botanically, oranges, and lemons are berries, but otherwise no one would consider them as such.” (emphasis added)

The Apex court stated:

“But this word must be construed not in any technical sense nor from the botanical point of view but as understood in common parlance. It has not been defined in the Act and being a word of everyday use it must be construed in its popular sense meaning ‘that sense which people conversant with the subject-matter with which the statute is dealing would attribute to it’. It is to be construed as understood in common language.”

Hence the learned Adjudicating Authority stated position that microphone are known in the trade parlance as distinct commodities and are treated so in the various extant notification cannot be faulted.

9.6 General description must yield to those of a special one.

The presumption in law is that the legislature does not intend to enact a law which is contradictory in nature. The burden to prove contra is on the Appellant. The provisions of the notifications are required to be examined carefully to find whether it is purported to have that effect. The issue of the valid prevalence of two contradictory positions in the same notification would fail even if the test for reasonability is that of the "prudent man". One way to resolve the issue is by expanding on the Latin maxim *generalia specialibus non derogant* which means that general law shall not derogate from specific law or the provisions of a general statute must yield to those of a special one. A similar view was held by the Apex Court in **J.K. Cotton Spinning & Weaving Mills Co. Ltd. vs State of U.P.**, [(1961) 3 SCR 185], where it was clarified that not only does this rule of construction resolve the conflicts between the general provision in one statute and the special provision in another, it also finds utility in resolving a conflict between general and special provisions in the same legislative instrument too and observed that:

“9. ... The rule that general provisions should yield to specific provisions is not an arbitrary principle made by lawyers and Judges but springs from the common understanding of men and women that when the same person gives two directions one covering a large number of matters in general and another to only some of them his intention is that these latter directions should prevail as regards these while as regards all the rest the earlier direction should have effect.”

(emphasis added)

In **CCE v. Jayant Oil Mills (P) Ltd.**, (1989) 3 SCC 343 the Apex Court has accepted the aforesaid rule as “the basic rule of construction” that is to say “a more specific item should be preferred to one less so.” In this light, the listing of special or declared goods in the very same notification seems to be that as far as cellular phones are concerned the object was to treat microphones which are parts of cellular phones differently as against parts of PCBA. When the SI no of a notification denies concessional rate of duty to a specific part of a cellular phone, like a microphone, it cannot be held in terms of strict interpretation to be eligible for exemption under another SI no of the same notification by elaborate discussions on what constitutes inputs or parts of a PCBA.

9.7 Whether the insertion in notification is clarificatory and retrospective in nature

We find that Notification No. 24/2019 Cus dated 06.07.2019 amending Sl. No 6A of Notification No. 57/2017-Cus. inserted a ‘proviso’ to negativate the inclusion of specific goods under Sl. No. 6A. An insertion clarifying the legal position with respect to goods which was earlier not correctly understood, puts it beyond any possibility of controversy. By describing the given goods with a hard and fast exclusion, whereby no other meaning can be assigned to the goods in dispute, is clarificatory in nature and will be effective from the inception of the notification. In **Commissioner of Income Tax, Bombay & Ors. v. Podar Cement**

Pvt. Ltd. & Ors. [AIR 1997 SUPREME COURT 2523 / (1997) 5 SCC 482]

it was held that a clarificatory statute would be retrospective in nature.

If two views on an existing provision were not prevailing or possible, in such a situation the amendment would not be held to be clarificatory. In

Commissioner of Income Tax-I, Ahmedabad v. Gold Coin Health

Foods Pvt. Ltd. [(2008) 11 SCALE 497], a three Judge Bench of the

Apex Court held :

"As noted by this Court in Commissioner of Income Tax, Bombay & Ors. v. Podar Cement Pvt. Ltd. & Ors. [(1997) 5 SCC 482 = 2002-TIOL-445- SC-IT] the circumstances under which the amendment was brought in existence and the consequences of the amendment will have to be taken care of while deciding the issue as to whether the amendment was clarificatory or substantive in nature and, whether it will have retrospective effect or it was not so."

Since Notification No. 24/2019 Cus. dated 06.07.2019 amending Sl. No 6A of Notification No. 57/2017-Cus. by way of a 'proviso' seeks to remove the confusion which pertains to two Sl. Nos. of the same notification it is hence only clarificatory in nature. A harmonious reading of the notification shows that it could never have been intended by the Legislature to have taxed the same goods at two different rates of duty, more so in the very same notification, for the Appellant to choose the Sl. No. which is more beneficial to him. In the case of **M/s Rohit Pulp and Paper Mills Ltd Vs Collector of Central Excise**, reported in [1990 (47) ELT 491 (SC)], the Apex Court held that 'in interpreting the scope of any notification, the Court has first to keep in mind the object and purpose of the Notification. All parts of it should be read harmoniously in aid of, and not in derogation of that purpose'. Further the circumstances under which the amendment was brought in existence and the consequences of the

amendment would have to be understood in terms of government policy on cellular phones which is discussed below.

9.8 This being so microphones will not be eligible for exemption under Sl. No. 6A of Notification No. 57/2017-Cus. dated 30.06.2017, being part of a cellular mobile phone specifically mentioned under Sl. No. 18 and are also excluded from Sl. No. 6A of the said Notification. The insertion made by Notification No.22/2018-Cus only clarifies this position and would be effective retrospectively.

9.9 Onus of proof of fulfilment of condition subject to which an exemption may be admissible lies on the assessee

The Appellant has contended that it is not the case of the learned Principal Commissioner, that even without the impugned microphones being mounted, the PCBAs will be complete. We find that the Learned Adjudicating Authority has stated in the impugned order that microphones are distinct commodities as known in trade parlance and are treated so in various extant notifications. Implicit in that reasoning is the fact that microphones are not part of PCBA's and are distinct. Further as held by a Constitutional Bench Apex Court in **M/s Dilip Kumar and Company** (supra), the onus of proof of fulfilment of condition subject to which an exemption may be admissible lies on the assessee or upon a party claiming benefit under the Notification. There is no murmur by the Appellant of having followed the procedure set out in the Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017 as applicable to the goods imported and claiming exemption as per Sl. No. 6A of Notification No. 57/2017-Cus. dated 30.06.2017. By choosing not to lead evidence on the classification heading of PCBA's under the Customs Tariff,

whether under an independent tariff line/ heading or as a part of cellular phones, the classification of microphones as a part of PCBA or that of a cellular phone is left in doubt.

9.10 Boards circulars and the doctrine of *contemporanea expositio*

Boards circulars are not binding on the Tribunal however the doctrine of *contemporanea expositio* is from time to time evoked by courts to cull out the intendment of the legislature and for removing ambiguity in its understanding of the statute. In **Desh Bandhu Gupta and Ors v. Delhi Stock Exchange** [[1979] 3 SCR 373] the Apex Court held that this principle can be invoked, though the same will not always be decisive on the question of construction. But the contemporaneous construction placed by administrative or executive officers charged with executing the statute, although not controlling, is nevertheless entitled to considerable weight as highly persuasive. **TRU DOF No. 334/3/2019-TRU** dated 05/07/2019 at sl 16 under Chapter 84 and 85 of Annexure 'A' hence is of relevance. It states:

“(16) Microphones, receivers and SIM sockets of mobile phones attracts 15% BCD by tariff rate. Further, in general speakers attracts 15% BCD by tariff rate. Also, connectors for use in cellular mobile phones attracts concessional 10% BCD [S. No. 5B of the notification No. 57/2017-Customs., dated 30th June, 2017 refers]. Now all these items have been explicitly excluded from scope of entry at Sr. No. 6A of the Notification No. 57/2017-Cus.”

(emphasis added)

The circular makes it clear that the intention of the amendment was to make explicit what was considered implicit and remove any confusion there may have been in this regard. The TRU's DO reflects the position as discussed above.

9.11 Exemption notification should be interpreted strictly.

Further the Appellant has claimed full BCD exemption under of S. No. 427 of Notification No. 50/2017-Cus. dated 30.06.2017. S. No. 427 as it stood during the relevant period is extracted below for ease of reference:

S.No.	Chapter or Heading or sub-heading or tariff item	Description of goods	Standard Rate
(1)	(2)	(3)	(4)
427	84, 85 or 90	The goods specified in List 20	Nil

List 20 (See S. No. 427 of the Table)

1. Ferrite parts including memory cores and ferrite magnets
2. Switches with contact rating less than 5 amperes at voltage not exceeding 250 Volts AC or DC
3. Connectors other than those of cellular mobile phones
4. **Microphones /Microphone cartridges**
5. Relays of contact rating upto 7 amperes
6. Microwave passive parts
7. "

It is the contention of Revenue that Notification No. 50/2017-Cus. is a general exemption notification covering standalone microphones, whereas Notification 57/2017 dated 30/06/2017, applies to electronic items with specific entries for mobile phone parts. The learned AR has taken us to the HSN notes for Chapter 85.18 wherein it has been stated that there are many varied applications of microphones (e.g., in public address equipment, telephony; sound recording; aircraft or submarine detectors; trench listening devices; study of heart beats). Microphone does not refer to a single application product hence when a specific reference is made to a particular microphone in the notification it would have to prevail over a notification giving a general description of microphones. Exemption notification should be interpreted strictly. It is noted that both notifications i.e. 50/2017-Cus. and 57/2017-Cus. were issued on the same date. Hence there is some degree of ambiguity in the language used as there could not be an intention to tax the same goods

differently on the same day and the notifications should be interpreted in favour of Revenue. Further in this situation as discussed above, general description in notification 50/2017-Cus. must yield to those of a specific description in 57/2017-Cus.

9.12 In the situation, it cannot be said that the dispute was one where two equally applicable exemptions were involved and the assessee was eligible to the benefit of that exemption notification which gives him greater relief. As discussed, the impugned goods are not eligible for concessional duty under either of the notifications.

9.13 Whether intention of Notification to be understood through declared Government Policy

The matter can be looked at from another angle. Language is an imperfect vehicle of thought and the ability of written language to precisely convey technical information and description of products as done by mathematical symbols and formula, especially in the case of legal matters, enactment or notifications, may not at all times be achieved. This inexactitude of words at times makes it necessary as discussed above, to understand the legislative intent in issuing these notifications by looking at the subject of legislation and object of the law, when an ambiguity exists. As held by the Hon'ble Supreme Court in **R.K. Garg vs Union of India** (supra), laws impacting economic activities must be viewed with greater latitude and deference. We can hence examine the policy of Government with regard to the Phased Manufacturing Programme (PMP) for promoting indigenous manufacturing of Cellular Mobile Handsets, its sub-assemblies and parts/ sub-parts/ inputs of the sub-assemblies relied upon by Revenue in the impugned order and during oral arguments.

9.14 It is seen that PMP was notified with the objective of progressively increasing the domestic value addition for establishment of a robust Cellular mobile handsets manufacturing eco-system in India. The PMP is intended to enable the Cellular mobile handset and related sub-assembly/component industry to plan their investments in the sector. It covers microphones also. The policy is hence a major initiative for promoting indigenous manufacturing of Cellular mobile handsets in India. In matters relating to Information Technology, Board has from time to time issued clarificatory Circulars in consultation with the Department of Electronics and Information Technology, Ministry of Communication and Information Technology. This shows the importance of aligning revenue objective with the policy directions of the government. It is thus clear that the legislature intended to treat cellular mobile handset and related sub-assembly/component is part of a well-orchestrated policy and differently from that of other general products of similar description. The notifications where a distinct reference to cellular mobile handset and related sub-assembly/component have been made have to prevail over a general description.

9.15 Further as stated at the beginning of the discussion on 'microphones', the classification of the product was not in dispute. The list centered around the correct exemption notification for microphones. We have found that microphones were not eligible for exemption under S. No. 6A of Notification No. 57/2017-Cus. dated 30.06.2017 nor under S. No. 427 of Notification No. 50/2017-Cus. dated 30.06.2017. However, it is settled law that the extended period cannot be invoked when the case involves a genuine interpretative issue, which is not merely an excuse given by an Appellant when confronted for non-payment of duty. In such

a situation the Appellant is not involved in a blame worthy act and no fine can be levied and penalty imposed. No mis-declaration or suppression of facts can be alleged in such a situation. The demand will have to be confined to the normal period with applicable interest. This view has also been held by the Apex Court in ***Northern Plastic Ltd. v. Collector of Customs & Central Excise [1998 (101) E.L.T. 549 (S.C.)]***. We hold accordingly in this case too.

9.16 Whether redemption fine can be imposed when goods are not available.

As regards the Department's appeal against the impugned order for non-imposition of redemption fine, the Hon'ble Supreme Court in ***Asstt. Collector v. Bussa Overseas and Properties Pvt. Ltd.*** [2004 (163) E.L.T. A160 (S.C.)], dismissed the SLP against the judgment and order dated 04/08/1992 of the Bombay High Court in ***Bussa Overseas and Properties Pvt. Ltd. v. C.L. Mahar, Asstt. Collector*** [2004 (163) E.L.T. 304 (Bom.)] The High Court had held that once the imported goods are cleared for home consumption they cease to be 'imported goods' as defined in Section 2 of the Customs Act, 1962 and are consequently not liable to confiscation. This needs to be differentiated from the Supreme Court judgement in the case of ***Weston Components Ltd. Vs Commissioner of Customs, New Delhi*** [2000 (115) ELT 278 (SC)], wherein the Hon'ble Supreme Court, had earlier upheld confiscation of goods and consequently imposition of redemption fine on the goods not physically available but the same (goods) were allowed provisional release under Bond. In the present case no bond has been executed by the Appellant for the clearance of goods. The Hon'ble Supreme Court again in ***Commissioner Vs Finesse Creation Inc.*** [2010 (255) E.L.T.

A120 (S.C.)], dismissed the SLP filed by Commissioner of Customs (Import) against the Judgment of the High Court of Bombay in **Commissioner Vs Finesse Creation Inc** [2009 (248) E.L.T. 122 (Bom.)]. The High Court had distinguished the Apex Court decision in case of Weston Components Ltd. (supra), while holding that concept of redemption fine arises in the event the goods are available and are to be redeemed, and if goods are not available, there is no question of redemption of goods. In any case the Appellant has not been found committing a blame worthy act and the demand has been restricted to the normal period. Hence the appeal filed by Revenue is rejected.

9.17 Judgments on exemption to cellular microphones

The learned counsel for the Appellant submits that the issue has been decided in favour of the importer by the Tribunal in **Vivo Mobile India - I** (supra) wherein it has been held that the exemption under Sl. No. 427 of Notification No. 50/2017-Cus. read with List 20 would apply to microphones of mobile phones. In **Sennheiser Electronics India Pvt. Ltd. v. CC** [2017 (356) E.L.T. 277 (Tri. - Del.)], the Tribunal has held that Notification No. 21/2002-Cus. exempts all 'microphones' including wireless microphones since there is no specific mention of the category to which the exemption should be extended.

9.18 In **Vivo Mobile India - I** (supra) a Coordinate Bench of this Tribunal examined a similar matter pertaining to exemption for microphones used in cellular phones. The matter in the judgment on merits was confined to exemption for cellular microphones under Notification No. 57/2017-Cus. dated 30.06.2017. The discussions were limited to microphones being part of a PCBA and hence being eligible for exemption as per sl no 6A of the said notification. In the case of Notification No. 50/2017-Cus. dated

30.06.2017, the matter was discussed in the context of the eligibility of the appellant claiming the exemption at the Appellate stage. The Sennheiser Electronics India (supra) the judgment of a Coordinate Bench lacks a detailed discussion on the issue which deprives it of precedential value. The onus of proof, for being eligible for the exemption, being on the appellant, they should have led the discussion on the accepted principles of law in this regard and shown that they satisfied the same. We find that when faced with ambiguity, the judgments have not examined the conflict in two sl nos of the same notification or between two notifications issued on the same date with regard to the impugned goods that are a subject matter of a specific policy formulation of the government and try to resolve it by considering the law as per the statute and also as declared by the Apex Court in a number of cases, in as much as;

(i) while dealing with goods falling under statutes like the Customs Act 1962 whose primary object is to raise revenue and for which to classify diverse products, articles and substance arises, resort should be had not to the scientific and technical meaning of the substance but to their popular meaning viz., the meaning attached to these expressions by those dealing in them. [**Ramavatar Budhaiprasad v. Assistant Sales Tax Officer** [(1962) 1 SCR 279]]

(ii) Notification No. 24/2019 Cus dated 06.07.2019 amending Sl. No 6A of Notification No. 57/2017-Cus. by introducing a 'proviso' only seeks to remove the confusion which pertains to two Sl. Nos. of the same notification and is only clarificatory in nature and will hence have retrospective effect. The Appellant in this case agrees that the amendment removes the exemption benefit for the impugned goods, but

only prospectively. [**Commissioner of Income Tax, Bombay & Ors. v. Podar Cement Pvt. Ltd. & Ors.** [AIR 1997 SUPREME COURT 2523 / (1997) 5 SCC 482]]

(iii) that there could not be an intention to exempt the same goods differently on the same day. As held by the Apex Court, when the same person gives two directions one covering a large number of matters in general and another to only some of them, his intention is that the latter directions should prevail as regards these while as regards all the rest the earlier direction should have effect. [**J.K. Cotton Spinning & Weaving Mills Co. Ltd. vs State of U.P.**, [(1961) 3 SCR 185]]

(iv) if the inexactitude of words used in a notification at times leads to ambiguity and makes it necessary to understand the legislative intent in issuing these notifications, then it has to be done by looking at the subject of legislation and object of the law. [**M/s Rohit Pulp and Paper Mills Ltd Vs Collector of Central Excise** [1990 (47) ELT 491 (SC)]]

(v) that the interpretation of a statute being an exercise in the ascertainment of meaning, everything which is logically relevant should be admissible. Hence the policy of Government with regard to the Phased Manufacturing Programme (PMP) for promoting indigenous manufacturing of Cellular Mobile Handsets, its sub-assemblies and parts/ sub-parts/ inputs of the sub-assemblies needs to be looked into for its persuasive value. [**K.P. Varghese vs The Income Tax Officer, Ernakulam** [1981 AIR 1922 / 1982 SCR (1) 629]]

(vi) that a Constitutional Bench of the Apex Court held that the burden of proof would be on the assessee to show that his case comes within the parameters of the exemption clause or exemption notification.

[Commissioner of Customs (Import) Vs M/s Dilip Kumar and Company & Ors. [AIR 2018 SUPREME COURT 3606 / AIRONLINE 2018 SC 73]]

(vii) again, it was held that when there is ambiguity in exemption notification which is subject to strict interpretation, the benefit of such ambiguity cannot be claimed by the subject/ assessee and it must be interpreted in favour of the revenue. **[Commissioner of Customs (Import) Vs M/s Dilip Kumar and Company & Ors. [AIR 2018 SUPREME COURT 3606 / AIRONLINE 2018 SC 73]]**

(viii) that laws relating to economic activities must be viewed with greater latitude and deference when compared to laws relating to civil rights such as freedom of speech. This to our mind gains even greater importance where persons including industry are guided to arrange their affairs on the basis of the legal position as obtaining in Government policy that is cemented through appropriate fiscal exemptions, a few of which have become a matter of interpretational disputes as in the impugned matter. **[R.K. Garg vs Union of India, [(1981) 4 SCC 675]]**

9.19 From the issues and judgements detailed above, we find that the appellant in the said cases have not led evidence on facts and important points of law involved so as to prove their eligibility for the exemption. These were not placed before the Coordinate Bench for consideration nor was it independently perceived before arriving at a conclusion on the points of the lis. The Bench thus had decided in favour of the appellant based on the limited issues considered. The decisions are hence felt not to be an authority on the eligibility of microphones for exemption from

duty as the decisions came to pass sub silentio. The judgments are hence distinguished.

III BATTERY COVER, BACK COVER, CAMERA LENS, FRONT COVER

Department's view:

10.0 The following points have been stated by Revenue:

- (i) The subject goods are parts of general use and made of plastic, like other plates, sheets, films, foil and strips of plastic. They have a regular geometric shape and hence fall under CTH 3920 9999.
- (ii) The impugned items are classified under CTH 3920 9999 and excluded from the concessional duty clearly to give effect to the phased manufacturing programme (PMP) of mobile parts through various Notifications. In the Annexure to the PMP Notification No.4(8)/2016-IPHW dated 28/04/2017 an indicative list of Mechanics is given where in the subject items are classified under CTH 3920 9999. [Example: Battery Cover (HS 39209999), Front Cover (HS 39209999), Camera Lens (HS 39209999), Back Cover (HS 39209999)]
- (iii) Boards clarification vide TRU DO No 334/4/2018-TRU dated 01/02/2018 has clarified the increase of BCD on the said items falling under CTH 3920 9999 by increasing the Tariff rate.
- (iv) Therefore, the Appellant is not eligible to claim the benefit under S. No. 499 of Notification No. 50/2017 – Cus. dated 30.06.2017.

Appellants averments.

10.1 The following pleadings have been made by the Appellant:

- (i) the imported goods viz. 'Battery Cover, Back Cover, Camera Lens and Front Cover' are integral parts tailor made to specifically fit the mobile phones and are used in the manufacture of mobile phones. They are not entirely made of mere plastics nor are they mere plates, sheets,

etc., but are specifically manufactured in order to be used in mobile phones.

(ii) the subject goods are classifiable under CTI 8517 7090.

(iii) classification must be made as per the terms of Headings, Section Notes and Chapter Notes in the Customs Tariff. Classification of parts can be done in terms of Note 2(b) or 2(c) to Section XVI only if classification of such part cannot be made as per Note 2(a) to Section XVI. Thus, Clauses (a), (b) and (c) of Note 2 are to be applied in a sequential manner.

(iv) since the subject goods are manufactured solely to be used with a mobile phone and are not specifically covered elsewhere by nomenclature under Chapter 84 or 85, they are correctly classifiable under CTI 8517 7090 by virtue of Section Note 2(b) to Section XVI.

(v) S. No. 499 of Notification No. 50/2017 – Cus. dated 30.06.2017 provides for exemption to parts of mobile phones falling under CTH 851770. Therefore, the subject goods are eligible to the benefit available under the said serial number.

(vi) It is also submitted that Note 2(s) to Chapter 39 specifically excludes Articles of Section XVI. In the present case, the subject goods which are used in the manufacture of Mobile Phones, become parts of mobile phones classifiable under CTI 8517 7090. Therefore, the said article are specifically covered under Section XVI (Chapter 84 & Chapter 85). Hence, the same are excluded from the purview of Chapter 39.

(vii) classification cannot be adopted based on the document issued by any other authority, who is not an expert in customs classification. Ministry of Electronics and Information Technology (MEITY). is not an expert in classification of goods. Hence, without

prejudice to any other submissions, the MEITY Notification cannot be the basis for discarding the classification of phone covers under CTI 8517 70 90 of Customs Tariff.

(viii) It is a settled position of law that when a tax demand is raised on the Assessee, the burden of proof to establish such a levy is on the Department.

(ix) the Principal Bench of the Tribunal in **M/s Samsung India Electronics Pvt. Ltd. Vs Principal Commissioner of Customs** [Final order No. 51665/2023, **dated 20/12/2023**] and in the latest order of the Principal Bench in **Vivo Mobile India - II** (supra) have upheld the classification of the goods under CTI 8517 70 90.

10.2 We find that the dispute involves both an issue of classification and the applicability of an exemption notification. The Burden of Proof in the case of fiscal exemptions and in the classification of goods has been enumerated at para 6 above. We shall examine the issue of classification first in the light of the same.

Are Department Officers Always Bound to Classify Goods as per Boards Circular?

10.3 We find that the burden to prove the classification in the sense of adducing evidence in this case is on Revenue. It has to show that the items in question is taxable in the manner claimed by them. As stated in the impugned order, the SCN relies on TRU DO No 334/4/2018-TRU dated 01/02/2018 and PMP Notification dated 28/04/2017. The learned Adjudicating Authority has felt herself bound by the Boards Circular in deciding the classification of the goods. This view is not correct. Boards Circulars are issued for the purposes of better administration of levy and collection of duty and for purpose of uniformity in the classification of

goods and laying down of standard procedures, providing convenience to trade and industry. However in **Commissioner Of Central Excise, Bolpur vs M/S. Ratan Melting & Wire Industries** [2008-TIOL-194-SC-CX-CB], a five judge Bench of the Hon'ble Supreme Court had after examining the Constitutional Bench judgment in **Collector vs Dhiren Chemical Industries** [2002 (139) E.L.T. 3 (S.C.)], felt that the judgment was being misunderstood and that a circular which is contrary to the statutory provisions has really no existence in law. The same position was restated in a recent judgment of the Supreme Court in **Commissioner v. Merino Panel Product Ltd.** [2023 (383) E.L.T. 129 (S.C.)] which held that;

“27. Based on our reliance on Ratan Melting (supra) and Ahmedabad Urban Development (supra) we have no reason to doubt that if a circular has been issued contrary to statutory provisions or in defiance of the interpretation of such provisions by a judicial forum, the circular in question would be stripped of any binding force.”

10.4 We have earlier noted with approval the question answered by a Coordinate Bench of this Tribunal in **Vivo Mobile India - II** dated 09/02/2024 (supra) to the question, can a scheme notified by the MeITy determine the classification of the goods?. We have agreed that goods cannot be reclassified based on the exemption notification issued under Section 25 of the Customs Act 1962 or based on any policy of any Ministry. We however observed in our discussions that in a case of ambiguity in understanding a statutory provision or notification, recourse could be had to Government policy like the phased manufacturing policy of Government (PMP), to the extent relevant, in line with the Hon'ble Supreme Courts observations in **R.K. Garg** (supra). The same would also apply while trying to understand the scope of a classification heading, for “it is difficult to expect the Legislature carving out a classification which

may be scientifically perfect or logically complete or which may satisfy the expectations of all concerned". But this is not the same as saying that classification made under a government policy can be transplanted into a decision by the Proper Officer without discussing how the said classification dovetails into the legal requirements of the Customs Tariff. If the classification suggested by any Circular or policy of any Ministry, is found to be not commensurate with the statutory provisions or classification principles as discussed above, the officer cannot incorporate it into the Customs Tariff as Departmental officers do not have the power to legislate. Perceived hardship and inconvenience to domestic industry cannot be the basis to alter the classification by bypassing statutory provisions. While department officers are bound to classify goods as per Boards Circular when it does not run afoul of the law as declared by Constitutional Courts, they are not bound by circulars issued contrary to statutory provisions or in defiance of the interpretation of such provisions by Constitutional Courts. While a reference to Government policy can help provide some play in the joints, it can't replace the joints.

10.5 There is no dispute that the imported goods are parts of cellular phones and unless they are parts which are goods included in any of the specific headings of the Customs Tariff, they merit classification as 'parts' as per the relevant Section Notes etc. Even the TRU's DO refers to the goods being imported as parts or sub-parts or accessories of cellular mobile phones. Revenue has not alleged that the impugned goods are included in any of the specific headings of the Customs Tariff. This being so and cellular phones being classifiable under chapter 85 the classification of the impugned goods cannot be done under Note 2(a) to Section XVI and should be examined in the light of Note 2(b) of the said

section, which states that parts suitable for use solely or principally with a particular kind of machine, or with a number of machines of the same heading are to be classified with the machines of that kind. The learned counsel for the Appellant has stated that Note 10 to Chapter 39 excludes goods which are further worked upon from Chapter 39. Relevant portion is extracted below for ease of reference:

“10. In headings 3920 and 3921, the expression “plates, sheets, film foil and strips” applies only to plates, sheets, film, foil and strip (other than those of Chapter 54) and to blocks of regular geometric shape, - whether or not printed or otherwise surface-worked, uncut or cut into rectangles (including squares) but not further worked (even if when so cut they become articles ready for use).”

10.6 The reasoning given in the impugned order to classify the goods under chapter 39 is rather thin. Goods which are not disputed as being parts of cellular phones and which are made specifically to fit the design and measurements of a particular model of phone cannot be held to be articles of plastic in the nature of other plates, sheets, films, foil, strips of plastic and blocks of regular geometric shape.

10.7 We find that the matter has been discussed elaborately by a coordinate bench of this Tribunal in **Vivo Mobile India – II**, (supra) dated 09/02/2024.

“65. After considering the submissions on both sides on the question of classification, we find that the front cover, middle cover battery cover, back cover, front cover housing, middle cover housing and back cover housing of mobile phones are undisputedly, made of plastic and are parts of mobile phones and are not articles of general use. The case of the Revenue is that even if they become articles ready for use, if they are manufactured from plates, sheets, film foil or strips, whether or not they are printed or otherwise surface-worked, uncut or cut into rectangles (including squares) but not further worked they should be classified under CTH 3920 in view of Chapter note 2(s) to Chapter 39. Since they are made of sheets of plastic, printed and surface worked and not further worked, they should be classified under 3920. The case of the appellants is that the manufacture of these goods involves extrusion, printing, physical vapor deposition, second set of printing, hard coating, thermoforming and CNC milling and therefore, further work has clearly been done on the plastic sheets after cutting and therefore, they do not fall under Chapter note 2(s) to Chapter 39. The manufacturing process of described by the appellants is not disputed

by the Revenue and therefore, considering this manufacturing process, we proceed to decide if these fall under 3920 by virtue of Chapter note 2(s).

66. We find that CTH 3920 covers “other plates, sheets, film, foil and strip of plastics, not cellular and not re-imposed, laminated, supported a similarly by with other materials. The first step of manufacture - extrusion, involves pressing together two sheets of plastic- Polymethyl Methacrylate (PMM) and Polycarbonate (PC) into a single sheet of plastic. What emerges after this process is still a sheet of plastic. The second and fourth steps are printing which also make no difference and Chapter note 2(s) would still apply. The third step vapor deposition, is a process of depositing a thin layer of material to give the covers the glossy finish. According to the appellants, this is similar to lamination. Lamination takes the goods out of the scope of CTH 3920 because it covers only such goods which are “not re-imposed, laminated, supported similarly by with other materials”. According to the appellants, the middle covers also have a layer of zinc to help dissipate the heat. The fifth step of thermoforming changes the shape of the article from a plain sheet of plastic to one with the required shape and dimensions including the rounded edges. Thermoforming is a common industrial process which involves heating of a plain plastic sheet and moulding it into articles -such as inner panels of a refrigerators, panels in a car or disposable food trays. In our considered view, this is a process beyond mere cutting and surface working and this process also takes it out of the purview of chapter note 2(s) to Chapter 39. The sixth and the last process is CNC milling to cut holes in these covers to install various components. CNC or Computerised numerically controlled machines, as is well known, are modern, automated versions of lathe machines which are used to cutting, grinding, etc. to work on a piece of material to convert it into desired articles. In our considered view, CNC milling also goes beyond mere cutting and surface processing of the sheet.

67. Thus, applying the first Rule of Interpretation, they cannot be classified under CTH 3920- the vapor deposition (lamination) takes them out of the description of CTH 3920 and thermoforming and CNC milling, being processes beyond printing and surface working take them out of the scope of chapter note 2(s) . We also find that a specific entry (parts of mobile phones) prevails over a general entry (articles of plastic) as per Rule 3(a) of Interpretation and the later entry (Chapter 85) in the tariff prevails over the earlier entry (Chapter 39) as per Rule 3(c). However, it is a well settled legal principle that the Interpretative Rules must be applied sequentially. Once Rule 1 decides the classification, it is not even necessary to go through the other Rules of Interpretation such as Rule 3(a) and 3(c)

75. As far as the classification of lenses is concerned, we find no reason to even consider them as being classifiable under 39209999 as plastic sheets, blocks, etc. because, these are not in geometric shapes at all and therefore, cannot be classified under CTH 3920. In the case of Vivo, the appellant had even submitted test reports showing that the lenses that it had imported were made of crystal and not plastic. The learned Commissioner, however, dismissed the test report and classified them as articles of plastic under CTH 3920 without giving any reasons for doubting the assertion of the appellant

that they were made of crystal or the test report produced by the appellant. No samples were drawn or tested by the Customs to demonstrate that they were made of plastic. In the absence of any evidence from the Revenue, the appellant importer's declaration regarding the nature of the goods and the test reports that it had submitted must be accepted. If Revenue had a doubt regarding the declaration or the reports, it is for the Revenue to produce evidence in support and there is none whatsoever in this case. Thus, we find no justification whatsoever to classify lenses of mobile phones under 39209999 in the impugned orders regardless of which material they are made of. The impugned orders insofar as they relate to classification of lenses also need to be set aside."

Since our views coincide with that of the Coordinate Bench in **Vivo Mobile India - II** (supra), we follow the same and hold that the department has not been able to prove its allegations for classifying the impugned goods under CTH 3920 9999 and the classification of the said goods under CTH 8517 7090 as done by the Appellant holds good. We have not examined the alternate classification of the goods under any other specific tariff head. This is because the burden of proof regarding classification is on Revenue, if they fail the classification as adopted by the assessee succeeds. In this we also follow the judgment of a Coordinate Bench of this Tribunal in **Sunrise Traders v. Commissioner of Customs, Mundra** [2022 (381) E.L.T. 393 (Tribunal)] which has held as under:

"2.5 Without prejudice to above findings, it is a settled legal position that if the goods are not classifiable under the chapter heading proposed by the revenue thereafter even the goods is classified under the chapter heading claimed by the assessee is correct or not, the case of the department will fail. This gets support from the following judgments :

- *Pepsico Holdings Pvt. Ltd. - 2019 (25) G.S.T.L. 271 (Tri. - Mum.)*

"8. In the light of the above, we cannot decide on a classification that has not been pleaded before us. Once the classification proposed by Revenue is found to be inappropriate, that claimed, while clearing the goods, will sustain even if it may appear to be inappropriate. We cannot also, in our appellate capacity, direct or accord the latitude for invoking Section 11A of Central Excise Act, 1944 by obliteration of the proceedings leading to the impugned order. The mandate of the law pertaining to recovery of duties not paid or short-paid will have to be followed to the letter."

The above decision of the Tribunal is based on the view taken by the Hon'ble Supreme Court in the case of *Warner Hindustan Limited* - (1999) 6 SCC 762 = 1999 (113) E.L.T. 24 (S.C.) wherein the Hon'ble Supreme Court has held as under:

“In our opinion, the Tribunal was quite wrong in these circumstances in allowing the appeal of the Excise Authorities and classifying the mint tablets as items of confectionary under Heading 17.04. The correct course for the Tribunal to have followed was to have dismissed the appeal of the Excise Authorities making it clear that it was open to the Excise Authorities to issue a fresh show cause notice to the appellant on the basis that the tablets were classifiable under Heading 17.04 as items of confectionary. This would have given the appellant the opportunity to place on record such material as was available to it to establish the contrary. It is impermissible for the Tribunal to consider a case that is laid for the first time in appeal because the stage for setting out the factual matrix is before authorities below.”

In view of the above settled law, irrespective whether the classification claimed by the appellant is correct or not since the classification proposed by the Revenue is absolutely incorrect, the entire case of the Revenue will not sustain.”

(emphasis added)

The said order has been upheld by the Hon'ble Apex Court in **Commissioner of Customs Mundra Vs Sunrise Traders** [2022 (382) E.L.T. 23 (S.C.)]. Since notification no 50/2017 (SI no 499) as amended is applicable to parts of cellular phones falling under CTH 851770, the impugned goods are eligible for the benefit of the same. The impugned order hence merits to be set aside.

11. We accordingly decide as under:-

(I) RECEIVERS -

(Appeal No.C/40392/2020 filed by the assessee and Appeal No. C/40296/2020 filed by the department and cross-objection filed by the assessee in C/Misc./40147/2020 against Order in Original No.67/2020-AIR dated 23.1.2020)

The impugned Order in Original is set aside and the matter is remanded for denovo adjudication with all issues left open. The matter may be re-examined by the Adjudicating Authority on merits and a speaking order passed, after affording the Appellant a reasonable opportunity to submit

their written submissions if they so desire and after hearing them afresh within ninety days of receipt of this order. The appellant should also co-operate with the Adjudicating Authority in completing the process expeditiously.

(II) MICROPHONES -

(Appeal No.C/40184/2020 filed by the assessee and Appeal No. C/40295/2021 filed by the department against Order in Original No.804/2019-AIR dated 9.12.2019)

We have found that microphones were not eligible for exemption under S. No. 6A of Notification No. 57/2017-Cus. dated 30.06.2017 nor under S. No. 427 of Notification No. 50/2017-Cus. dated 30.06.2017. However, it is settled law that the extended period cannot be invoked when the case involves a genuine interpretative issue, which is not merely an excuse given by an Appellant when confronted for non-payment of duty. In such a situation the Appellant is not involved in a blame worthy act and no fine can be levied and penalty imposed. No mis-declaration or suppression of facts can be alleged in such a situation. The demand will have to be confined to the normal period with applicable interest. The impugned order stands modified accordingly.

(III) BATTERY COVER, BACK COVER, CAMERA LENS, AND FRONT COVER –

(Appeal No.C/40391/2020 filed by the assessee and Appeal No. C/40292/2020 filed by the department and cross-objection filed by the assessee in C/Misc./40146/2020 against Order in Original No.58/2020 dated 21.1.2020)

The department has not been able to prove its charge of classifying the impugned goods under CTH 3920 9999 and hence the classification of the same under CTH 8517 7090 as done by the Appellant holds good. Since notification no 50/2017 (SI no 499) as amended is applicable to parts of

cellular phones falling under CTH 851770, the impugned goods are eligible for the same. The impugned order hence merits to be set aside.

11.1 The appeals filed by Flextronics and the Department along with the cross objection relating to this issue are disposed of with the aforementioned directions. Flextronics is eligible for consequential relief, if any as per law.

(Pronounced in open court on 28.02.2024)

(M. AJIT KUMAR)
Member (Technical)

(P. DINESHA)
Member (Judicial)

Rex