

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

REGIONAL BENCH - COURT No. III

Customs Appeal No.40503 of 2022

(Arising out of Order-in-Original No.02/2022-COMMR. dated 29.07.2022 with corrigendum dt. 19.08.2022 passed by Commissioner of Customs (Preventive) No.1, Williams Road, Cantonment, Tiruchirppalli 620 001)

M/s. TPV Technology India Pvt. Ltd. **... Appellant**
501-588, 5th Floor, Bestech Chamber,
B-Block, Sushank Lok, Phase-I, Section 27,
Gurgaon,
Haryana 122 002.

VERSUS

**The Commissioner of
Customs (Preventive)** **... Respondent**
No.1, Williams Road, Cantonment,
Tiruchirappalli 620 001.

WITH

Customs Appeal No.40129 of 2024

(Arising out of Order-in-Original No.103564/2023 dated 07.11.2023 passed by Commissioner of Customs, No. 60, Rajaji Salai, Chennai – 600 001.)

M/s. TPV Technology India Pvt. Ltd. **... Appellant**
501-588, 5th Floor, Bestech Chamber,
B-Block, Sushank Lok, Phase-I, Section 27,
Gurgaon,
Haryana 122 002.

VERSUS

**The Commissioner of
Customs II** **... Respondent**
No. 60, Custom House,
Rajaji Salai,
Chennai – 600 001.

AND

Customs Appeal No. 40503 of 2022
 Customs Appeal No. 40129 of 2024
 Customs Appeal No. 40455 of 2024

Customs Appeal No.40455 of 2024

(Arising out of Order-in-Appeal No.08/2024 dated 07.03.2024 by Commissioner of GST and Central Excise (Appeals), No. 1, Williams Road, Cantonment, Trichy – 620 001)

M/s. TPV Technology India Pvt. Ltd. ... Appellant
 501-588, 5th Floor, Bestech Chamber,
 B-Block, Sushank Lok, Phase-I, Section 27,
 Gurgaon,
 Haryana 122 002.

VERSUS

**The Commissioner of GST and
 Central Excise (Appeals) ... Respondent**
 No.1, Williams Road, Cantonment,
 Tiruchirappalli 620 001.

APPEARANCE :

Shri S. Jaikumar, Advocate for the Appellant
 Shri M. Karthikeyan, Advocate

Shri Anoop Singh, Authorized Representative for the Respondent

CORAM :

HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)
HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)

FINAL ORDER Nos. 41514-41516 / 2024

DATE OF HEARING : 07.10.2024
DATE OF DECISION : 27.11.2024

Per: Shri Vasa Seshagiri Rao

Customs Appeal Nos. C/40503/2022,
 C/40129/2024, C/40455/2024 have been filed by M/s. TPV
 Technology India Pvt. Ltd., Gurgaon, Haryana (hereinafter

referred to as 'Appellants') who are importing various models of Multimedia Speaker Systems of different configurations which are being marketed under the Brand Name-'Philips'.

1.2 Appeal No. C/40503/2022 was directed against the Order-in-Original No. 02/2022 dated 29.07.2022 passed by the Commissioner of Customs (Preventive), Tiruchirapalli, wherein the imported various models of Multimedia Speaker Systems of Philips Brand were determined to be classified under CTH 85182100 / 85182200 / 85182900 and confirmed recovery of differential Customs Duty of Rs.7,35,01,826/- along with interest and also imposed a penalty of Rs.150,00,00,000/- under Section 114AA of the Customs Act, 1962 for mis-classifying the imported goods whereas the Appeal No. C/40129/2024 was directed against the Order-in-Original No. 103564/2023 dated 07.11.2023 passed by the Commissioner of Customs, Custom House, Chennai, wherein the declared classification of '2.5/5.1 Convertible Multimedia Speaker System of various Models' under CTH 85279900 was rejected and confirmed the classification under CTH 85182900 demanding differential duty of Rs.4,48,42,036/- along with interest under Section 28(8) of the Customs Act, 1962 read with Section 28AA of the Customs Act, 1962 and confiscation of the imported goods and imposed fine and penalty. Finally, Appeal No. C/40455/2024 was filed assailing the Order-in-Appeal No. 08/2024-TRY(CUS) dated 07.03.2024 passed by the Commissioner of GST and Central Excise (Appeals), Trichy whereby the declared classification of imported goods under

CTH 85279900 was rejected and ordered to be re-classified under CTH 85182200 / 85182900. It appears the applicable duty rates for goods classifiable under CTH 85279900 were BCD @10%, SWS @10% and IGST @ 18%. If the imported goods were to be classifiable under CTH 85182100 / 85182200 / 85182900, the BCD rate applicable would be 15% *Ad valorem*.

2.1 The main issue involved in all these appeals is whether the imported goods i.e, Multimedia Speakers Systems of different configurations are classifiable under CTH 8527 or under CTH 8518 and hence being taken up together for disposal by this common order.

2.2 The Appellants import various 5.1 and 2.1 Channel Multimedia Speakers Systems and market the same under the Brand-'Philips'. The imported goods were classified by the Appellants under CTH 8527 whereas the Department has proposed classification under CTH 8518 of the Customs Tariff Act, 1975.

3.0 The Ld. Advocates Shri S. Jaikumar and Shri M. Karthikeyan appeared before us and their submissions are summarized as follows: -

3.1 The Multimedia Speaker Systems (MSS) imported by the Appellants are not mere speakers but a composite and a HIFI audio system having either 5.1 or 2.1 configurations. Whereas in a 5.1 Channel MS, the audio is played in 5 channels namely, Left, Right, Centre, Left

Surround and Right Surround along with a sub-woofer which plays Low Frequency audio signals, namely, Bass. In a typical 2.1 channel MS, the audio is played through 2 channels namely, Left and Right channels, along with a sub-woofer which plays the Low Frequency signals.

3.2 All the Multimedia Speaker Systems imported by the Appellants, be it a 5.1 channel MS or a 2.1 channel MS, they would incorporate the following audio-input interfaces, namely,

1. FM Radio
2. Bluetooth/Wireless audio input
3. CD audio input
4. Analogue audio input
5. SD-card port
6. USB port

3.3 All the MSS imported would be powered by a normal Alternating Current (AC) which would be converted into desired AC by an inbuilt step-down transformer (ranging from 5V to 15V) and subsequently converted into a 12V Direct Current (DC) using an appropriate AC to DC convertor, which would power the entire MS including the input interfaces as well as the inbuilt amplifier.

3.4 The audio signals are generally received in the MSS either in the digital form through USB/SD/Wireless/Bluetooth interfaces or in the analogue form through an analogue port available at the rear. Upon receipt of the digital signals, the Digital to Analogue

Converter (DAC) converts the digital signals so received into analogue signals and transmits the same to the inbuilt amplifier in the MSS, where the analogue signals are amplified and are finally transmitted to the respective speakers as electrical audio signals which fires the speaker coil, and the source sound is reproduced.

3.5 According to the Ld. Counsel, sole reliance of the Revenue is on the decision of the Bangalore Tribunal in *Logic India Trading Co. [2016 (337) ELT 65]* and in the said case, the appellants were importing "multi-media speakers" and were classifying the same CTI 85182200, but the department contended that the speakers being imported by them are classifiable under CTI 85198100 and CTI 85279919 depending on the fact whether the said speakers had USB play back or FM Radio or both.

3.6 It was argued that, in the *Logic* case, the consideration was with respect to multimedia speakers more appropriately to be called as Multiple Speakers / Loud Speakers and the same has not considered the products in question, namely, 2.1 channel/5.1 channel Multimedia Speaker Systems (MSS) which are products of advanced technology. They also argued that, the *Logic* case considered only speakers with or without USB port/ FM radio and not a stereo system incorporating an amplifier, multiple speakers and a sub-woofer, equaliser which forms "a 2.1/5.1 stereo channel stereo system", and hence, the ratio of the *Logic* case as well as the other subsequent decisions based on the *Logic* case, are totally distinguishable and shall not have any

relevance with respect to the classification of the imported goods on hand.

3.7 Referring to Para 8 of the impugned Order-in-Original No. 02/2022-Commr. passed by the Commissioner of Customs (Preventive), Tiruchirapalli, they would submit that, it is not in dispute that the imported goods are not mere mono-loud speakers but an integrated stereo-system and there is a fundamental difference between a mono speaker and a stereo-speaker system. While a mono speaker is a standalone speaker which is capable of converting linear analogue signals into an audible sound, a stereo system comprises of two or more speakers and also has in-built drivers to decode multiple channels, amplify the same and reproduce the same in multiple channels. Further, they submitted that, a stereo system would also generally incorporate a Sub-woofer for low frequency signals.

3.8 They also referred to the Clause (5) of Chapter heading 8527 in the Explanatory Notes to HSN which reads as follows: -

"(5) Stereo systems (hi-fi systems) containing a radio receiver, put up in sets for retail sale, consisting of modular units in their own separate housing, e.g., in combination with a CD player, a cassette recorder, an amplifier with equalizer, loudspeakers, etc. The radio receiver gives the system its essential character."

It has been submitted, the MSS imported are nothing but a Stereo System (Hi-fi systems) containing a radio receiver (FM radio) and connected to multiple loudspeakers (2 or 5),

in a separate housing and thus a simpliciter classification under CTI 85279900 is appropriate.

3.9 They would also draw attention to Para 6 of the Circular No. 27/2013-CUS dated 14.05.2013 issued by the Central Board of Excise and Customs, which reads as follows: -

"6. During discussions held at the time of Conference, there was a general agreement that in case of :

(a) "Speaker with USB port but without USB playback or FM radio", the product would be classified in heading 8518, by application of General Rules 1. Speakers classified under heading 8518 include both passive speakers and active speakers. Active speakers, like many subwoofers, contain a built-in audio amplifier. The subheading under which speakers are classified depends on the number of 'drive units' - the actual loudspeaker cones or ribbons - in each cabinet or enclosure. Speakers with a single drive unit in each cabinet are classified under subheading 851821. Speakers with more than one drive unit in each cabinet - for example one woofer and one tweeter - are classified under subheading 851822. Speakers that are not mounted in a cabinet or enclosure are classified under subheading code 851829.

(b) "Speaker with USB Port having USB playback but without FM radio", the principal function of the device is imparted by USB playback facility. Therefore the said multifunction speaker system is classifiable in subheading 851981 of the Harmonized Customs Tariff, which provides for Sound recording or reproducing apparatus : Other

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*apparatus : Using magnetic, optical or semiconductor media
 : Other : Other.*

(c) "Speaker with USB port having FM radio but without USB playback" the principal function of the device is imparted by Radio (reception apparatus for radio-broadcasting) and hence the multifunction speaker system classifiable under subheading 852799 by virtue of General Rules 1, Note 3 to Section XVI and 6.

(d) "Speaker with FM, USB port and USB playback", if it is held that the principal function of the device is imparted equally by Radio (reception apparatus for radio-broadcasting) and USB playback facility then it would be classified by sequential application of GRI, according to Rule 3(c). According to this rule, of all the possible heading or subheading that could equally apply the heading/subheading that comes last in numerical order is used to classify the goods. Hence the said product is classifiable under subheading 852799 by virtue of General Rules 1, Note 3 to Section XVI, 3(c), and 6."

3.10 Reliance was also placed on the corresponding export shipping bill filed by the foreign supplier in their case, which would reveal the classification adopted at the discharge port for the said goods were under CTH 8527. Further reliance was also placed on the US Customs Ruling issued under Part 177 of the Customs Regulations (19 C.F.R. 177), wherein, identical products have been classified under CTH 8527 against CTH 6518.

3.11 They also argued that the Tribunal in *Logic* case, has placed reliance on common / trade parlance alone to conclude the classification under CTH 8518 as against CTH 8527 and would submit that the common parlance test is a generic and residual principle when it relates to classification based on scientific parameters/technical specifications. In the instant case, the products in question are high-end audio-video equipment with precise technical specifications and hence to be classified based on the functionality and not on common parlance, and even if a common parlance test has to be pressed into service, then the MSS imported by them are marketed, sold, purchased and used only as multichannel (2.1/5.1) multimedia stereo systems and not as mono speakers and thus would merit classification under CTH 8527 and not under CTH 8518. In support of this connection, they have placed reliance on the decision of the Apex Court in the case of *Akbar Badruddin Jiwani Vs. Collector of Customs [1990 (47) ELT 161 (SC)]* as well as in the case of *Acer India Pvt. Ltd vs Commissioner of Customs, Chennai [2024 10 TMI 147 (CESTAT-Chennai)]*.

3.12 They would also submit that it is a well settled legal principle that the Revenue cannot challenge the assessments made already and reopen only on the basis of a change in the mind of the authority and based on a different interpretation, when all the material facts were within the knowledge of the officers. In this connection, reliance was sought to be placed on the decision of Tribunal in case of *PSL. Ltd., M/s. Ratnamani Metals & Tubes Ltd & Ors vs Commissioner of Customs, Kandla*, which was subsequently

upheld by the Hon'ble Supreme Court and the review petition filed in the Apex Court against the same has also been dismissed.

3.13 The Ld. Advocates have further submitted that unlike in the case of *Logic case supra*, in the instant case, the Department is challenging the classification of the impugned goods against their own Circular No. 27/2013 dated 1.08.2013 and submitted that the Revenue cannot argue against their own Circular, which is still in vogue, as per the ratio of the Hon'ble Supreme Court in the case of *Collector of C.Ex vs Dhiren Chemical Industries [2002 (139) ELT 3 (SC)]*, wherein it has been categorically held that the Revenue cannot argue against their own Circulars despite any decision, and they are binding on the Revenue.

3.14 The Ld. Counsel have argued that, notwithstanding their case on merits, the invocation of Section 111(m) of the Customs Act, 1962 with an imposition of Redemption fine to the tune of Rs. 3.5 crores under Sec. 125 of the Customs Act, 1962 with a consequential penalty of Rs. 40,00,000/- under Sec. 112(a) of the Customs Act, 1962 is not warranted in Appeal No. C/40503/2022 as all the material particulars were very much in the know of the Department and there has been no element of suppression of facts or wilful mis-statement by them and the same is endorsed by the fact that there is no iota of allegation in the SCNs or the impugned Orders-in-Original dated 29.07.2022 and 07.11.2023 that the Appellants have suppressed or misstated any facts and also

the demand is not under Section 28(4) of Customs Act, 1962.

3.15 Placing reliance on the case of *MIOT Hospitals Pvt. Ltd vs Commissioner of Customs, Chennai [2023 (9) TMI 464 CESTAT CHENNAI]* it was argued that, when the goods are not available for confiscation, the same can neither be confiscated nor any redemption fine could be imposed.

3.16 The Ld. Counsel have also vehemently argued against the imposition of penalty to the tune of Rs.150 crores against them under Section 114AA of CA, stating that, there is no iota of finding in the impugned Order-in-Original No. 02/2022-Commr. dated 29.07.2022 passed by the Commissioner of Customs (Preventive), Trichy against the Appellants for invocation of Section 114AA of Customs Act, 1962 at the first place.

3.17 In this connection, reference was also drawn to the detailed decision of the Tribunal in the case of *Suresh Kumar Aggarwal vs. Commissioner of Customs III, Raigad [2024 (6) TMI 779- CESTAT MUMBAI]* wherein it has been held that Sec 114AA of Customs Act, 1962 can be invoked only in the absence of physical export of goods. Further reliance is also placed on *LEWEK ALTAIR SHIPPING PVT. Ltd vs. CC, Vijayawada 2019 (1) TMI 1290 CESTAT HYDERABAD* which is affirmed by the SC in *2019 (7) TMI 516-SC*.

3.18 They also relied on the decision of the Hon'ble High Court of Madras in the case of *Commissioner of Customs (Air), Chennai vs. WIPRO LTD [2019 (368) ELT 901 (Mad)]* as to imposition of penalty under Sec 112(a) of Customs Act, 1962.

4.0 The Ld. Authorised Representative Shri Anoop Singh, Joint Commissioner appeared on behalf of the Revenue and argued as detailed in his Written Submissions, as follows: -

4.1 First, he has referred to the description of imported item in subject Bills of Entry which is "Multimedia Speaker" and same description finds mention in the Catalogues. Then, he has discussed about the characteristics of the Multimedia Speaker System in detail. The goods have a main system, which usually sub-woofer is equipment with a USB port, and/or SD card reader, and/or FM Radio and/or MP3 Player along with a LED display for operation, on the front panel. Such systems are also accompanied by sophisticated remote control with interactive Interface. The main systems contain Printed Circuit Boards (PCBs) with complex internal circuitry to retrieve, read and to produce audio files or MP3/WMA audio formats stored on a USB memory device, such as USB flash drives/flash players / SD Cards and also to play FM Radio. It is also incorporated with a built-in amplifier and various terminals that allow connectivity with the help of audio jacks to various audio sources such as CD players, DVD players, Blu-ray players etc. The main system is connected to an external source of

power and is interconnected to other speakers (satellite speakers). These products, which are new generation speaker systems, are not just simple loudspeakers/audio speakers. Therefore, the main system, i.e., the sound reproducing device embodied with the above stated features, imparts the essential character to the entire system.

4.2 He has submitted referring to Pages 72-75 in Appeal C/40455/2024 which is the User Manual and Pg. 128 of Appeal No. C/40503/2022, that, the Main System is a Speaker, Sub-Woofer, Satellite Speaker etc. with added functions like connectivity/compatibility with TV, DVD, Mobile Phone, Computer, USB, FM Radio etc.

4.3 Then, he has drawn our attention to Note 3 to Section XVI, which reads as follows: -

"3. Unless the context otherwise requires, composite machines consisting of two or more machines fitted together to form a whole and other machines designed for the purpose of performing two or more complementary or alternative functions are to be classified as if consisting only of that component or as being that machine which performs the principal function"

HSN explanatory notes are clear that only if radio receiver gives the system its essential character, the same should be classified under CTH 8527. The same has been discussed at Pg 62 of Appeal C/40129/2024. Essential character of goods in question are "Speakers with added functionalities" and not Radio receiver with Speaker facility. Further, the General Rules of Interpretation (GRIs) to the Harmonized System govern the classification of goods in the tariff schedule. GRI-1 states, in pertinent part, that for legal purposes, classification shall be determined according to the terms of the heading and any relative section or chapter notes.."

4.4 He has further argued that the products are multifunction speaker systems and as per Section Note 3 above, the criterion for classifying the product is the principal and main function it performs. The items in question are convertible to sound bar and the main function remains to be that of a speaker. As per HSN Explanatory Notes to heading 8518, this heading covers microphones, loudspeakers, headphones, earphones and audio-frequency electric amplifiers of all kinds presented separately, regardless of the particular purpose for which such apparatus may be designed (e.g., telephone microphones, headphones and earphones, and radio receiver loudspeakers). The goods are declared in the Bill of Entry as Multimedia Speaker Systems and known in common parlance as Speakers. The product catalogue depicts the product as a speaker rather than Radio receiver apparatus. He further submits that, the subject imported items with description of Multimedia Speakers Philips Brand are being sold in the market as Multimedia Speakers and the same are speakers with additional features like connectivity through Wi-Fi, Bluetooth, HDMI cable and USB. Accordingly, these speakers are rightly classifiable under tariff reading 8518. The imported goods are known in the market as speakers and they are traded as speakers.

4.5 Next contention of the Ld. Authorised Representative is that it is a well settled principle of law that a product needs to be classified under the heading as it is generally known in the market. The subject goods namely multimedia speakers are not known in the trade parlance as reception apparatus for radio-broadcasting with sound recording or reproducing apparatuses required for a product to be classified under tariff heading 8527.

4.6 He also placed reliance on various judicial pronouncements as under: -

- i. *CCE Vs Shree Baidyanath Ayurveda Bhawan Ltd.* [2009(237)E.L.T (225)]
- ii. *Ms. United Offset Procoss Pvt. Ltd, Vs. Asst. Collector of Customs.* [1989 Sup. (1) SCC 131]
- iii. *Nagaraju Bros vs. State of Andhra Pradesh* [(1994) 95 STC 1 (SC)]
- iv. *New Prasantht Automobiles Company Vs. State of Kerala* [1993 (91) STC 565]
- v. *Camlin Limited* [(2015) (55 taxmann.com 369) Rajasthan High Court]
- vi. *Chemical and Fibres of India vs. Union of India & Ors.* [1997 (89) BLit 633 (S.C)]
- vii. *Logic India Trading Co Versus Commissioner of Customs* [2016 (337) E.L.T. 65 (Tri. - Bang.)]
- viii. *Commissioner Versus Logic India Trading CO.* [2017 (1) TMI 477 SC ORDER]
- ix. *Commissioner of Customs, Cochin Versus M/s. KCM Appliances (P) Ltd.* [2024 (8) TMI 857 CESTAT BANGALORE]
- x. *M/s. Omsai Shipping And Clearing Agency and Rohit Kumar Uppal Versus Commissioner of Customs (Port), Kolkata* [2020 (1) TMI 597 CESTAT KOLKATA]
- xi. *M/s. V 3 International Versus Commissioner of Customs New Delhi (ICD TKD)* [2019 (10) TMI 505 CESTAT NEW DELHI]
- xii. *M/s. Global Enterprises Vs. C.C.E., Delhi-II* [2017 (354) E.L.T. 548 (Tri. - Del.)]
- xiii. *Commr. of Customs (Port), Kolkata Vs. M/s. Santosh Radio Products* [2018 (5) TMI 1956-CESTAT Kolkata]
- xiv. *Xerox Ltd. Vs. Commissioner of Customs, Mumbai* [2010 (11) TMI 20 SUPREME COURT OF INDIA]

4.7 Further, it is submitted that the issue of classification of multimedia speakers with an additional facility such as USB playback or FM radio etc. has already been decided by Tribunal in the case of *M/s. Logic India Trading Co Vs CC, Cochin [2016 (337) ELT 65 (Tri-Bang)]* wherein it has been held that even the Multimedia speakers having additional facilities such as USB port, FM radio etc. will not alter the classification of the product as the primary function of the imported machine systems is that of a speaker and therefore, same deserves to be classified under the Tariff Heading 8518 of the Customs Tariff Act, 1975. Further, the Hon'ble Supreme Court has also endorsed the above decision of the Tribunal by dismissing the appeal filed by the Department vide its judgement in the case of *Commissioner Vs Logic India Trading Co. [2016 (342) ELT A 34 (SC)]*. In view of the above, it is stressed that the imported goods viz., "Various models of Multimedia Speakers Philips Brand" are specifically covered under tariff heading 8518 because there is a specific entry for Loudspeakers under tariff heading 8518 and as per Rule 3 (a) of the General Rules of Interpretation of Import Tariff, a specific entry has to be preferred over a general description while classifying a particular product under import; that heading 8527 is a general tariff entry for RECEPTION APPARATUS FOR RADIO.

4.8 On the issue of applicability of Board's Circular, he has referred to Pg 66 / Para 22 of OIO/Appeal C/410129/2024. The Circular has provided for classification

subject to the condition in respect of Primary function to be satisfied. On the issue of Board's Circular dated 14.05.2013 (Para 3.9) which was examined by Bangalore Tribunal, he has submitted that Tribunal's view was endorsed by Apex Court. Moreover, even assuming without admitting that there appears to be some ambiguity, it is stated that it is well settled that the Circular issued by the Board is not binding on the Courts, be it judicial or quasi-judicial. Though there are plethora of judgments to that count but one such reference can be made to Hon'ble Supreme Court's decision in the case of *CCE, Bhopal vs. Minwool Rock Fibres Ltd.* [2010 (278) E.L.T. 581 (S.C.)]. Further, the Larger Bench of the Tribunal in the case of *Bimetal Bearings Ltd. vs. CCE, Chennai* [2008 (232) E.L.T. 790 (Tri.-LB)] has also held that the circulars which are against statutory provisions cannot be followed and cannot allow to override the statutory provisions in case of conflict. The classification of goods is to be determined by application of the General Rules for the Interpretation (GRIs) of the First Schedule to the Customs Tariff Act (CTA), 1975. GRI requires that, "in classifying articles, for legal purpose it shall be determined according to the terms of the headings and any relative Section or Chapter Notes,..". Hence, all relevant legal texts must be considered. In this regard, Note 3 to Section XVI stipulates that, "unless the context otherwise requires, composite machines consisting of two or more machines fitted together to form a whole and other machines designed for the purpose of performing two or more complementary or alternative functions are to be classified as if consisting

only of that component or as being that machine which performs the principal function".

5. We have carefully heard both sides and perused their written submissions and documentary evidence as available on records.

6. In short, the dispute in the instant appeals is as to:-

- i. Whether the classification of the MSS, imported by appellants, would fall under CTI 85279900/ 85279990 of the Customs Tariff Act, 1975 as claimed by the appellants or under CTI 85182100/ 85182200/ 85182900 as proposed by the Revenue?
- ii. In the facts and circumstances of the case, whether the goods imported by the appellants are liable for confiscation and the levy of a penalty under Section 114AA of Customs Act, 1962 as well as Section 112(a) of the Customs Act, 1962 is warranted or not?

7.1 The Learned Counsel and the Ld. Authorised Representative have explained in detail about the imported product in question with respect to their architecture and configurations. They also showed us the sample 2.1 speaker system in the Court room. As rightly claimed by the appellants, the MSS shown to us had the following incorporated in the main system, namely,

1. FM Radio
2. Bluetooth/Wireless audio input
3. CD audio input

- 4. Analogue audio input
- 5. SD-card port
- 6. USB port

7.2 Further, it was reportedly powered by a normal Alternating Current (AC) which gets converted into desired AC by an inbuilt step-down transformer) and subsequently converted into a 12V Direct Current (DC) using an appropriate AC to DC convertor, which powers the entire MSS including the input interfaces as well as the inbuilt amplifier.

7.3 Before proceeding further, for ease of understanding, the competing classifications are reproduced hereunder along with HSN Explanatory Notes for these Headings: -

CTH

8518	Microphones and stands therefor; loudspeakers, whether or not mounted in their enclosures; headphones and earphones, whether or not combined with a microphone, and sets consisting of a microphone and one or more loudspeakers; audio-frequency electric amplifiers; electric sound amplifier sets			
8518 10 00	- Microphones and stands therefor	u	15%	-
	- Loudspeakers, whether or not mounted in their enclosures :			
8518 21 00	-- Single loudspeakers, mounted in their enclosures	u	15%	-
8518 22 00	-- Multiple loudspeakers, mounted in the same enclosures.	u	15%	-
8518 29 00	-- Other	u	15%	-
8518 30 00	- Headphones and earphones, whether or not combined with a microphone, and sets consisting of a microphone and one or more loudspeakers	u	15%	-
8518 40 00	- Audio-frequency electric amplifiers	u	15%	-
8518 50 00	- Electric sound amplifier sets	u	10%	-

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8518 90 00	- Parts	[u]	10%	-
8519	Sound recording or reproducing apparatus			
8519 20 00	- Apparatus operated by coins, banknotes, bank cards, tokens or by other means of payment.	u	10%	-
8519 30 00	- Turntables (record-decks)	u	10%	-
8519 50 00	- Telephone answering machines	u	Free	-
	- <i>Other apparatus :</i>			
8519 81 00	-- Using magnetic, optical or semi-conductor media	u	10%	-
8519 89	-- <i>Other :</i>			
8519 89 10	--- Audio Compact disc player	u	10%	-
8519 89 20	--- Compact disc changer including mini disc player or laser disc player	u	10%	-
8519 89 30	--- Time Code recorder	u	10%	-
8519 89 40	--- MP-3 player	u	10%	-
8519 89 90	--- Others	u	10%	-

8527	Reception apparatus for radio-broadcasting, whether or not combined, in the same housing, with sound recording or reproducing apparatus or a clock			
	- <i>Radio-broadcast receivers capable of operating without an external source of power :</i>			
8527 12 00	-- Pocket-size radio cassette-players	u	10%	-
8527 13 00	-- Other apparatus combined with sound recording or reproducing apparatus	u	10%	-
8527 19 00	-- Other	u	10%	-
	- <i>Radio-broadcast receivers not capable of operating without an external source of power, of a kind used in motor vehicles :</i>			
8527 21 00	-- Combined with sound recording or reproducing apparatus	u	10%	-
8527 29 00	-- Other	u	10%	-
	- <i>Other :</i>			
8527 91 00	-- Combined with sound recording or reproducing apparatus	u	10%	-
8527 92 00	-- Not combined with sound recording or reproducing apparatus but combined with a clock	u	10%	-
8527 99	-- <i>Other :</i>			
	- <i>Radio communication receivers :</i>			
8527 99 00	-- Other	u	10%	-

HSN

85.18 - Microphones and stands therefor; loudspeakers, whether or not mounted in their enclosures; headphones and earphones, whether or not combined with a microphone, and sets consisting of a microphone and one or more loudspeakers; audio-frequency electric amplifiers; electric sound amplifier sets.



8518.10 - Microphones and stands therefor

- Loudspeakers, whether or not mounted in their enclosures :

- 8518.21 - - Single loudspeakers, mounted in their enclosures
- 8518.22 - - Multiple loudspeakers, mounted in the same enclosure
- 8518.29 - - Other
- 8518.30 - Headphones and earphones, whether or not combined with a microphone, and sets consisting of a microphone and one or more loudspeakers
- 8518.40 - Audio-frequency electric amplifiers
- 8518.50 - Electric sound amplifier sets
- 8518.90 - Parts

This heading covers microphones, loudspeakers, headphones, earphones and audio-frequency electric amplifiers of all kinds presented separately, regardless of the particular purpose for which such apparatus may be designed (e.g., telephone microphones, headphones and earphones, and radio receiver loudspeakers).

The heading also covers electric sound amplifier sets.

(A) MICROPHONES AND STANDS THEREFOR

...

...

(B) LOUDSPEAKERS, WHETHER OR NOT MOUNTED
IN THEIR ENCLOSURES

The function of loudspeakers is the converse of that of microphones : they reproduce sound by converting electrical variations or oscillations from an amplifier into mechanical vibrations which are communicated to the air. They include the following types :

- (1) **Moving iron or moving coil loudspeakers.** In the moving iron loudspeaker an armature or reed of soft iron is placed in the field of a permanent magnet and under the influence of the coils in which the current passes. The field varies in accordance with this current, and a diaphragm fixed to the armature or reed sets up corresponding vibrations in the air. Moving coil loudspeakers consist essentially of a coil which is placed in the field of a permanent or electro-magnet and which is energised by the varying current. The coil is rigidly connected to a diaphragm.
- (2) **Piezo-electric loudspeakers,** based on the principle that certain natural or artificial crystals are subject to mechanical distortion when an electric current is applied to them. Such loudspeakers are usually known as “ crystal loudspeakers ”.
- (3) **Electrostatic loudspeakers** (also known as **condenser-type loudspeakers**). These depend on the electrostatic reactions between two plates (or electrodes), one plate serving as a diaphragm.

Matching transformers and amplifiers are sometimes mounted together with loudspeakers. Generally the electrical input signal received by loudspeakers is in analogue form, however in some cases the input signal is in digital format. Such loudspeakers incorporate digital to analogue converters and amplifiers from which the mechanical vibrations are communicated to the air.

Loudspeakers may be mounted on frames, chassis or in cabinets of different types (often acoustically designed), or even in articles of furniture. They remain classified in this heading **provided** the main function of the whole is to act as a loudspeaker. Separately presented frames, chassis, cabinets, etc., also fall in this heading **provided** they are identifiable as being mainly designed for mounting loudspeakers; articles of furniture of Chapter 94 designed to receive loudspeakers in addition to their normal function remain classified in **Chapter 94**.

The heading includes loudspeakers designed for connection to an automatic data processing machine, when presented separately.

(C) HEADPHONES AND EARPHONES, WHETHER OR NOT COMBINED
WITH A MICROPHONE, AND SETS CONSISTING OF A MICROPHONE
AND ONE OR MORE LOUDSPEAKERS

...

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(D) AUDIO-FREQUENCY ELECTRIC AMPLIFIERS

Audio-frequency amplifiers are used for the amplification of electrical signals of frequencies falling within the range of the human ear. The great majority are based on transistors or integrated circuits, but some are still based on thermionic valves. They are generally powered by a built-in power pack which may be fed from the mains or, particularly in the case of portable amplifiers, from electric accumulators or batteries.

The input signals to audio-frequency amplifiers may be derived from a microphone, a laser optical disc reader, a pick-up cartridge, a magnetic tape head, a radio feeder unit, a film sound track head or some other source of audio-frequency electric signals. Generally speaking, the output is fed into a loudspeaker, but this is not always the case (pre-amplifiers can feed into a succeeding amplifier or be incorporated in an amplifier).

Audio-frequency amplifiers may contain a volume control for varying the gain of the amplifier, and also commonly incorporate controls (bass boost, treble lift, etc.) for varying their frequency response.

The heading includes audio-frequency amplifiers used as repeaters in telephony or as measurement amplifiers.

High or intermediate frequency amplifiers are classified in heading 85.43 as electrical appliances having an individual function. Audio mixers and equalisers are also classified in heading 85.43.

(E) ELECTRIC SOUND AMPLIFIER SETS

This heading also covers amplifier sets consisting of microphones, audio-frequency amplifiers and loudspeakers. This type of equipment is extensively used for public entertainment, public address systems, advertising vehicles, police vehicles or with certain musical instruments, etc. Similar systems are also used on large lorries (particularly those with trailers) for enabling the driver to hear irregular noises or sound signals from behind, which otherwise he could not hear above the sound of the engine.

PARTS

Subject to the general provisions regarding the classification of parts (see the General Explanatory Note to Section XVI), parts of the goods of this heading are also classified here.

*
* * *

The heading also excludes :

- (a) Airmen's headgear incorporating headphones with or without a microphone (heading 65.06).
- (b) Telephone sets (heading 85.17).
- (c) Hearing aids of heading 90.21.

85.19 - Sound recording or reproducing apparatus (+).

- 8519.20 - Apparatus operated by coins, banknotes, bank cards, tokens or by other means of payment
- 8519.30 - Turntables (record-decks)
- 8519.50 - Telephone answering machines
- Other apparatus :
- 8519.81 - - Using magnetic, optical or semiconductor media
- 8519.89 - - Other

This heading covers apparatus for recording sound, apparatus for reproducing sound and apparatus that is capable of both recording and reproducing sound. Generally, sound is recorded onto or reproduced from an internal storage device or media (e.g., magnetic tape, optical media, semiconductor media or other media of heading 85.23).

Sound recording apparatus modify a recording medium so that **sound reproducing apparatus** can subsequently reproduce the original sound-wave (speech, music, etc.). This includes recording based on the receipt of a sound-wave or by other methods, e.g., by recording data sound files, downloaded from an Internet page or a compact disc by an automatic data processing machine, onto the internal memory (e.g., flash memory) of a digital audio device (e.g., MP3 player). Devices which record sound as digital code generally are not capable of reproducing sound unless they incorporate a means for converting the recording from digital code to an analogue signal.

(I) APPARATUS OPERATED BY COINS, BANKNOTES, BANK CARDS, TOKENS OR BY OTHER MEANS OF PAYMENT

These apparatus operate by coins, banknotes, bank cards, tokens or other means of payment and allow for the selection and playing of audio recordings in a chosen sequence or randomly. They are commonly referred to as "juke boxes".

(II) TURNTABLES (RECORD-DECKS)

These apparatus rotate the discs mechanically or electrically. They may or may not incorporate a sound-head, but they do not include an acoustic device nor electrical means of amplifying sound (see "record players" below). They may be fitted with an automatic device enabling a series of records to be played in succession.

(III) TELEPHONE ANSWERING MACHINES

These apparatus are designed to operate in conjunction with a telephone set (but not forming an integral part of the set). They transmit a previously recorded message and may have the capability to record incoming messages left by callers.

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(IV) OTHER APPARATUS USING MAGNETIC, OPTICAL OR SEMICONDUCTOR MEDIA

The apparatus of this group may be portable. They may also be equipped with, or designed to be attached to acoustic devices (loudspeakers, earphones, headphones) and an amplifier.

(A) Apparatus using magnetic media

This group includes apparatus which use tapes or other magnetic media. Sound is recorded by altering the magnetic properties of the media. The sound is reproduced by passing the medium in front of a magnetic sound-head. Examples include cassette-players, tape recorders and cassette recorders.

(B) Apparatus using optical media

This group includes apparatus which use optical media. Sound is recorded as digital code converted from amplified currents of variable intensity (analogue signal) onto the surface of the recording medium. Sound is reproduced using a laser to read such medium. Examples include compact disc players and minidisc players. These types also cover apparatus which uses media combining magnetic and optical technologies. An example of such an apparatus uses magneto-optical discs, on which the areas of varying reflectivity are created using a magnetic technology but are read using an optical (e.g., laser) beam.

(C) Apparatus using semiconductor media

This group includes apparatus which use semiconductor (e.g., solid-state non-volatile) media. Sound is recorded as digital code converted from amplified currents of variable intensity (analogue signal) on the recording medium. Sound is reproduced by reading such medium. The semiconductor media may be permanently installed in the apparatus or may be in the form of removable solid-state non-volatile storage media. Examples include flash memory audio players (e.g., certain MP3 players) which are portable battery operated apparatus consisting essentially of a housing incorporating a flash memory (internal or removable), a microprocessor, an electronic system including an audio-frequency amplifier, an LCD screen and control buttons. The microprocessor is programmed to use MP3 or similar file formats. The apparatus can be connected to an automatic data processing machine for downloading MP3 or similar files.

(D) Apparatus using any combination of magnetic, optical or semiconductor media

These apparatus incorporate devices which are capable of recording or reproducing by using any two or all of magnetic, optical or semiconductor media.

(V) OTHER SOUND RECORDING OR SOUND REPRODUCING APPARATUS

This group includes :

- (1) **Record players.** These apparatus produce sound from records (grooved discs) by electric amplifiers and loudspeakers, mechanical vibrations being converted into electrical vibrations by a sound-head (pick-up cartridge). They may be fitted with an automatic device enabling a series of records to be played in succession.
- (2) **Cinematographic sound recording apparatus** which record sound by **photoelectrical methods**. Sound may be photoelectrically recorded on film as a strip, either (a) of variable area or (b) of variable density.
 Cinematographic sound recording apparatus comprises, in addition to the sound recording head, a magazine for holding the film, a motor driving mechanism for synchronising the speed of the film with that of the cinematographic camera working with it, and a film transport mechanism.
- (3) **Cinematographic sound reproducers.** These are equipped with a reader which incorporates a photoelectric sound-head and a charge-coupled device.
- (4) **Re-recording apparatus, for cinematography,** used, for example, for photoelectric or digital rerecording of sound tracks recorded by other means, e.g., magnetically, optically, or electronically.

* * *

Subheading Explanatory Note.

Subheading 8519.81

This subheading covers apparatus using one or more of the following : magnetic, optical or semiconductor media.

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85.27 - Reception apparatus for radio-broadcasting, whether or not combined, in the same housing, with sound recording or reproducing apparatus or a clock.

- Radio-broadcast receivers capable of operating without an external source of power :

8527.12 -- Pocket-size radio cassette-players

8527.13 -- Other apparatus combined with sound recording or reproducing apparatus

8527.19 -- Other

- Radio-broadcast receivers not capable of operating without an external source of power, of a kind used in motor vehicles :

8527.21 -- Combined with sound recording or reproducing apparatus

8527.29 -- Other

- Other :

8527.91 -- Combined with sound recording or reproducing apparatus

8527.92 -- Not combined with sound recording or reproducing apparatus but combined with a clock

8527.99 -- Other

The sound radio-broadcasting apparatus falling in this heading must be for the reception of signals by means of electro-magnetic waves transmitted through the ether without any line connection.

This group includes :

- (1) Domestic radio receivers of all kinds (table models, consoles, receivers for mounting in furniture, walls, etc., portable models, receivers, whether or not combined, in the same housing, with sound recording or reproducing apparatus or a clock).
- (2) Car radio receivers.
- (3) Separately presented reception apparatus for incorporation in relay apparatus of heading 85.25.
- (4) Pocket-size radio cassette-players (see Subheading Note 1 to this Chapter).
- (5) Stereo systems (hi-fi systems) containing a radio receiver, put up in sets for retail sale, consisting of modular units in their own separate housing, e.g., in combination with a CD player, a cassette recorder, an amplifier with equaliser, loudspeakers, etc. The radio receiver gives the system its essential character.

PARTS

Subject to the general provisions regarding the classification of parts (see the General Explanatory Note to Section XVI), parts of the apparatus of this heading are classified in heading 85.29.

*
* *

The heading excludes, *inter alia* :

- (a) Articles of heading 85.17 or 85.25.
- (b) Special purpose vehicles permanently equipped with radio-broadcasting receivers of this heading (generally heading 87.05).

7.4 A perusal of the above entries would reveal that, while CTH 8518 seeks to classify all kinds of loudspeakers, CTH 8519 covers sound recording and reproducing

apparatus and CTH 8527 classifies "reception apparatus incorporating a sound recording or reproducing or a clock. The main argument of the appellants is that the Imported goods are neither mere loudspeaker but an integrated stereo system which incorporates a radio reception apparatus (FM) as well as a sound reproduction apparatus.

7.5 To decide the classification, first of all we need to examine whether the products in question are mere loudspeakers or much more than a loudspeaker, at the first place. It was not only argued but was also demonstrated to us in the court room, that the MSS imported by the appellants are Hi-Fi stereo systems incorporating various add-on features including but not limiting to a radio reception but also integrated amplifiers to decode the audio signals and amplify them before reproduction through the two (or five) attached speakers. Further, the main unit, which houses the stereo system, and its amplifiers and other input reception also houses a sub-woofer for reproduction of LFE signals (Bass), thus making it a comprehensive 2.1 multimedia speaker system. It is not a mere reproduction of sound but also "a system, which is capable of converting digital to analog signals and also decoding the input signals into various channels (two or five, as the case maybe), amplify and send such amplified analog signals to the attached speakers, through audio cables for reproduction of sound. In fine, the MSS are not mere loudspeakers either with an add on feature (like FM/USB output) but they are integrated stereo-systems with much more sophisticated and hi-fi audio functionalities.

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7.6 The above observations are further reinforced by the findings in the impugned Order-in-Original No. 02/2022-Commr passed by the Commissioner of Customs (Preventive), Tiruchirapalli, at paragraph 8 which is reproduced below: -

"8.0 Without prejudice to the above, in Para 14 of the subject notice, after a study of the relevant product catalogue of the imported products in question it has been observed that

- a) the imported products in question are various models of multimedia speakers Philips brand.*
- b) the main system, usually sub-woofer is equipped with a USB port, and/or SD card reader, and/or FM radio, and / or MP3 player along with a LED display for operation on the front panel.*
- c) such systems are also accompanied by sophisticated remote control with interactive interface.*
- d) the main system contains Printed Circuit Boards (PCBs) with complex internal circuitry to retrieve, read and to produce audio files of MP3/WMA audio formats stored on a USB memory device, such as USB flash drives/flash players/SD Cards and also to play FM Radio.*
- e) It is also incorporated with a built-in amplifier and various terminals that allow for connectivity with the help of audio jacks to various audio sources such as CD Players, DVD Players, Blu-ray Players, etc.*
- f) the main system is connected to an external source of power and is inter-connected to other speakers (Satellite Speakers) and depending on the source, the sound is reproduced by the entire speaker system.*
- g) Prima facie, these products which are new generation speaker systems are not just simple loudspeakers/audio speakers and they are multi-function devices that are meant essentially for reproducing sound and providing wholesome entertainment. (Emphasis supplied)."***

All the above facts are not disputed as to the detailed description of imported goods.

7.7 First, we need to consider the relevant notes of the HSN with respect to CTH 8527, which is reproduced hereunder: -

"Ch Hdg: 8527: (5) Stereo systems (hi-fi systems) containing a radio receiver, put up in sets for retail sale, consisting of modular units in their own separate housing, e.g., in combination with a CD player, a cassette recorder, an amplifier with equaliser, loudspeakers, etc. The radio receiver gives the system its essential character."

As the imported Multimedia Speakers are possessing all these features of sound producing apparatus along with the Radio, the importer sought classification under CTH 8527.

7.8 On the other hand, it is the case of the Department that the issue has been already decided in the case of *Logic India Trading Co. Vs. Commissioner of Customs, Cochin [2016 (337) ELT 65 (Tri. Bang.)]*, which has been affirmed by the Hon'ble Supreme Court. As the Revenue is relying heavily on the *Logic* case, it would be prudent to extract the facts and decision of the said case which is as given below: -

Logic India Trading Co. Vs. Commissioner of Customs, Cochin [2016 (337) ELT 65 (Tri. Bang.)]: -

"2.1 The appellant was importing three types of "Multimedia Speakers". The first type of speakers which is without USB port or a F.M. Radio was admittedly a plain speaker having no other function. There is no dispute about the classification of the said speaker. The second type of speaker being imported by the appellant were having additional functions of USB Port with playback port, which the Revenue intends to classify under Chapter Heading 8519 and the third type of speakers is where there was facility of FM Radio along with USB port playback, which the Revenue intends to classify it under Chapter Heading 8527.

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2.2 For better appreciation of contending entries, the same are being reproduced below :

8518	Microphones and stands therefor; loudspeakers, whether or not mounted in their enclosures, headphones and earphones, whether or not combined with a microphone, and sets consisting of a microphone and one or more loudspeakers, audio-frequency electric amplifiers; electric sound amplifier set.
8518 10 00	
8518 21 00	
8518 22 00	Multiple loudspeakers, mounted in the same enclosure.
8519	Sound recording or reproducing apparatus
8519 20 00	
8519 30 00	
8519 50 00	
8519 81 00	Using magnetic, optical or semiconductor media
8527	Reception apparatus for radio-broadcasting, whether or not combined, in the same housing, with sound recording or reproducing apparatus or a clock.
8527 99 19	Others

2.3 The lower authorities have classified the speakers being imported by the appellant as under :

(i) CTH 8518 22 : Speakers having USB port but with no USB playback or Radio

(ii) CTH 8519 81 : Speakers having USB port with USB playback but without radios

(iii) CTH 8527 99 : Speaker having radio (irrespective of whether they were having USB playback facility or not)

It is not disputed that what is being imported by the appellant is a speaker. However, inasmuch as some of the speakers have additional functions of USB playback as also of FM radio, the same are being held as "other products" and classifiable under separate headings. The appellant's contention is that the prime and the utmost function of the product imported by them is a speaker only which amplifies the sound signals received by it. However, as a technology advancement, some additional features stand introduced in the said speakers which are to the effect that instead of receiving the sound from an outside source, it has inbuilt technology wherein a pen drive can be inserted in the USB port or inbuilt FM radio can be operated from the same speaker. It is their contention that such inbuilt facilities given in the speakers will not convert the speakers into

either FM radio or reproducing apparatus. Reading of the above entries, according to the learned advocate, clearly shows that items intended to be covered by Chapter Heading 8519 and 8527 are entirely different products. For the above propositions, he also relies upon various circulars of the Board as also to various decisions. Learned advocate submit that the lower authorities have merely relied upon a circular of the Board being No. 27/2013-Cus., dated 1-8-2013. However, he fairly agrees that the said circular deals with an identical product being imported by the appellants but submits that the interpretation given in the said circular is not appropriate. It is his argument that the circular issued by the Board are not binding upon the Courts and as such, independent interpretation has to be adopted and ruling is required to be given. For the said proposition, he also refers to various decisions laying that circulars issued by the Board cannot overrule statutory provisions.

3. *Countering the arguments, learned Commissioner (AR) appearing for the Revenue draws our attention to the impugned orders passed by the authorities below and submits that the goods imported by the appellant are not speakers simpliciter but as they contain additional feature of having a USB port with playback and a radio facility, it has to be held that they cannot be classified as speakers falling under Chapter Heading 8518. He also draws our attention to the Circular of the Board being Circular No. 27/2013-Cus., dated 1-8-2013 wherein the issue was discussed in the Conference of Chief Commissioners and as per their opinion, classification was opined. He also submits that when a speaker is fitted with the radio, the principal function of the speaker would get converted from merely amplifying the sound received by it to a radio. As such, as per the Rules of Interpretation, the speakers having USB port or radio are required to be classified under Chapter Headings 8519 and 8527 as held by the lower authorities.*

4. *We have considered the submissions made by both the sides. We have also gone through the contending tariff entries which stand reproduced by us in the preceding paragraphs. There is no dispute on the facts that some of the speakers being imported by the appellant have USB port with USB playback in addition and some of them have the facility of F.M. radio also. As is seen from the above reproduced entries, Heading 8518 22 00 covers "Multiple Loudspeakers, mounted in the same enclosure". The product in question has been shown to us in the Court Room. The loudspeakers are in different sizes and some of them are the typical loudspeaker sizes seen in most of the functions where the sound received from outside sources*

gets amplified, as per requirement of the user. Of course the Revenue is not disputing the classification of the same.

However, wherever the speakers have an additional facility of USB port, which has been explained to us as a facility wherein a pen drive can be inserted and the sound recorded in the pen drive can be amplified by the speaker, Heading 8519 covers "Sound recording or reproducing apparatus". The question which is required to be decided is as to whether introducing such facility of USB port for USB playback is otherwise admittedly speaker can be considered to be a reproducing apparatus or not. The reading of the various sub-headings of the said Heading reveals that it covers the products like Audio CD player, CD players, MP3 players, time code recorders, etc. In our opinion, the speaker is primarily a speaker and some additional feature or facility for use of USB playback will not convert the same into a product equivalent to the products covered by Heading 8519. Similarly, Heading 8527 takes into its ambit the "Reception apparatus for radio-broadcasting, whether or not combined, in the same housing". The additional feature of FM radio in the speaker, in our opinion, would again not convert the huge speaker into a FM radio. Even going by the common parlance test, nobody would buy a huge speaker for the purpose of FM radio.

4.1 *At this stage, we may advert to the Circular No. 27/2013-Cus., dated 1-8-2013 which alone stands relied upon by the lower authorities for coming to the conclusion against the assessee. The said circular stands given by the Ministry of Finance on the representations received from the industry in respect of the identical products being imported. The opinion as expressed in the said circular is based upon the outcome of the Conference of Chief Commissioners of Customs and Directorate General on the Customs Tariff and allied matters. Relevant paras of the said circulars are reproduced :-*

"3. The competing headings are :

8518 - *Loudspeakers, whether or not mounted in their enclosures : headphones and earphones, whether or not combined with a microphone, and sets consisting of a microphone and one or more loudspeakers: audio-frequency electric amplifiers: electric sound amplifier sets;*

8519 - *Sound recording or reproducing apparatus;*

8527 - Reception apparatus for radio-broadcasting whether or not combined, in the same housing, with sound recording or reproducing apparatus or a clock.

4. The view that in case of a "multifunction speaker system", the "reception apparatus for radio-broadcasting (heading 8527)" or "reproduction function of sound as provided by USB playback (heading 8519)" is less important than the function of amplification and relay of sound, thereby leading to the inference that such products are classifiable in heading 8518, overlooks the fact that the HS nomenclature only mentions functions and does not refer to the complexity or sophistication of these functions. It appears that any sound reproducing playback device or reception apparatus for radio-broadcasting will need speakers for its effective functioning.

5. The classification of goods is to be determined by application of the General Rules for the Interpretation (GRIs) of the First Schedule to the Customs Tariff Act (CTA), 1975. GRI 1 requires that, "in classifying articles, for legal purpose it shall be determined according to the terms of the headings and any relative Section or Chapter Notes,..". Hence, all relevant legal texts must be considered. In this regard, Note 3 to Section XVI stipulates that, "unless the context otherwise requires, composite machines consisting of two or more machines fitted together to form a whole and other machines designed for the purpose of performing two or more complementary or alternative functions are to be classified as if consisting only of that component or as being that machine which performs the principal function".

6. During discussions held at the time of Conference, there was general agreement that in case of :

(a) "Speaker with USB port but without USB playback or FM radio", the product would be classified in heading 8518, by application of General Rules 1. Speakers classified under heading 8518 include both passive speakers and active speakers. Active speakers, like many subwoofers, contain a built-in audio amplifier. The sub-heading under which speakers are classified depends on the number of 'drive units' - the actual loudspeaker cones or ribbons - in each cabinet or enclosure. Speakers with a single drive unit in each cabinet are classified under sub-heading 8518 21.

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Speakers with more than one drive unit in each cabinet - for example one woofer and one tweeter - are classified under sub-heading 8518 22. Speakers that are not mounted in a cabinet or enclosure are classified under sub-heading code 8518 29.

(b) "Speaker with USB Port having USB playback but without FM radio", the principal function of the device is imparted by USB playback facility. Therefore the said multifunction speaker system is classifiable in sub-heading 8519 81 of the Harmonized Customs Tariff, which provides for Sound recording or reproducing apparatus : Other apparatus : Using magnetic, optical or semi-conductor media : Other : Other.

(c) "Speaker with USB port having FM radio but without USB playback" the principal function of the device is imparted by Radio (reception apparatus for radio-broadcasting) and hence the multifunction speaker system classifiable under sub-heading 8527 99 by virtue of General Rules 1, Note 3 to Section XVI and 6.

(d) "Speaker with FM, USB port and USB playback", if it is held that the principal function of the device is imparted equally by Radio (reception apparatus for radio-broadcasting) and USB playback facility then it would be classified by sequential application of GRI, according to Rule 3(c). According to this rule, of all the possible heading or sub-heading that could equally apply the heading/sub-heading that comes last in numerical order is used to classify the goods. Hence the said product is classifiable under sub-heading 8527 99 by virtue of General Rule 1, Note 3 to Section XVI, 3(c), and 6."

As is seen from the above, the products considered in the said circular are identical to the products being imported by the assessee. For arriving at the conclusion that the speaker with the USB playback would fall under Heading 8519 and the speakers with FM radio would fall under Heading 8527, the Board has referred to the General Rules for the Interpretation specifically to Rule 1 and to Section Note 3 to Section XVI. The said Note is to the effect that where composite machine consists of two or more machine, the classification would be decided depending upon the machine which performs the principal function. However, we find that the principal function of the 'Multimedia Speaker' is amplification of the sound and the USB port or

FM radio is an additional feature introduced to such speakers. Looking at the speakers produced before us, and by appreciating the fact that the lower authorities have admittedly held the goods in question to be "Multimedia Speaker", though with additional facilities, it leads to inevitable conclusion that the main and principal function of the product is as speaker. As such, according to us, even in accordance with Section Note 3 to Section XVI, the items in question have to be classified as speakers as admittedly that is the principal function of the product. The interpretation adopted in the said circular is, in fact, contrary to the interpretation adopted by the Board in other circulars, though not dealing with the same items but expressing opinions on the items with advanced multifunctions.

4.2 *Reference can be made to Circular No. 17/2007-Cus., dated 19-4-2007 wherein the classification of 'higher technology featured mobile/cellular handsets or telephones' was the subject matter of consideration. The cellular phones are classifiable under Heading 8517 12 of the Customs Tariff Act. It was observed that as a result of advanced technology, the cellular phones have additional features of word processing, email, internet, global positioning system, personal digital assistant (PDA), GPS receivers, camera and many other features. After taking into account the various provisions of law, it was observed as under :*

"2. It is represented that mobile, cellular handset/telephone has the essential characteristic of transmission and reception apparatus, such as aerial, display screen, keypad and that the same should be of small size so that it can be hand-held and is of lightweight for use as telephone instrument. The other functions such as radio receivers, music players, e-mail, net browsers, calculators, stopwatch, alarm, computing on software platform are subsidiary to the main function of transceiver.

3.

4.

5. In terms of the First Schedule to the Customs Tariff, 'telephones for cellular networks or other wireless networks, push-button type or other', would be classifiable under sub-heading 8517 12. Similarly, 'portable automatic data processing machine weighing not more than 10 kgs., consisting of at least a CPU, a key board and a display'

would be classifiable under sub-heading 8471 30; and 'radio navigational aid apparatus' would be classifiable under sub-heading 8526 91. From the scope of the headings/sub-headings. Board found that all mobile or cellular telephones whether working on the Global System for Mobile Communications (GSM) standard, Code Division Multiple Access (CDMA) cellular systems, Wireless Local Loop (WLL) or any other Mobile technologies, principally used as communication device would get covered under sub-heading 8517 12. These are essentially communication devices working on the basis of towers and base stations arranged into a network of cells, which send and receive radio signals for the cellular/mobile phone for communication. In view of the above, Board clarifies that sub-heading 8517 12 will cover all types of telephones that work on cellular networking technology or other wireless network.

6. Further, such cellular/mobile phones may contain certain facilities such as storage of contact information such as phone numbers (dialed/received/ missed call), names and addresses, to-do lists, notes, appointments, E-mail address, facility for Short Message Service (SMS)/Multimedia Messaging Service (MMS), calculator, alarm clock, calendar, games and other similar facilities as a standard feature. These facilities assist the user to make calls to desired person, identify the caller, keep track of his calls, send/receive messages and enhanced use of communication using any of the above facility. Hence, these features of cellular/mobile phones do not change the principal function of such equipment i.e., 'telephony'.

7. Certain cellular/mobile phones called as 'smart phones' may also have other additional features such as accessing the Internet, sending and receiving E-mails, video recording/camera, word processing, radio or audio capabilities with color screens, QWERTY keyboard, touch screen. It may also run application software and synchronize with PCs, function as Global Positioning System (GPS) receiver. These devices work on operating systems (software) like Symbian OS, Microsoft Windows Mobile OS, Linux OS, which are similar to the software used in desktop PC/laptop. All these functionalities grouped as PDA or pocket PC or camera or GPS receiver, contained in cellular/mobile phones, though represent as composite machine, for the purpose of classification, it will be governed by the Customs Tariff Act and the General Rules for Interpretation (GRI) as explained in para 4 above. Accordingly, in terms of Section Note 3 to Section Note XVI when the goods satisfy the following conditions these would

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be characterized as transmission apparatus in cellular/wireless network rather than as an Automatic Data Processing (ADP) machine or camera or GPS receiver.

i. use transmission of signals (representing speech, messages, data or pictures) by means of electromagnetic waves which are transmitted through the ether without any line connection i.e., wireless, in any of the bandwidth allotted to mobile/cellular networks say 850 MHz to 1900 MHz; and

ii. consist of transmission and reception hardware such as transceivers, antenna, microphone, speaker, battery, radio-frequency chip, basic band chip, power management chip, Subscriber Identity Module (SIM), International Mobile Equipment Identity (IMEI) or other unique identity for cellular/mobile phone as well as radio-frequency transmission software such as GSM, General Packet Radio Service (GPRS) and Enhanced Data rates for GSM Evolution (EDGE) etc.,

Hence, such cellular/mobile phones remain classified in sub-heading 8517 12, as the principal function of these equipments remain as 'telephony'.

8. It is further explained that cellular/mobile phones can also be employed as data modems to form a wireless access point connecting a personal computer to the Internet. In this use, the mobile phone is providing a gateway between the cellular service providers data network and PCs. In terms of Chapter Note 5D(ii), it is made clear that such mobile phones shall not be classified under Heading 8471 when they are presented separately. In other words, only when such phones are presented along with ADP machine or when composite machines consisting of ADP and mobile phones, where ADP is the principal function, these would be classified under Heading 8471. Further, it is clarified that GPS receivers having phone function that does not operate through any of the cellular network or mobile technologies for the transmission or reception of signals, but operates exclusively through direct satellite connection or differential GPS (on the longwave radio frequencies between say 285 kHz to 325 kHz) is however classifiable under sub-heading 8526 91 as other radio navigational aid apparatus.

9. In trade parlance too, it is noticed that the goods are sold as cellular or mobile phones with various additional facilities, the use of which is dependant on the cellular

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service provided. Further consumers purchase such cellular phones mainly because of their ability to transmit data in all situation and locations, and at all times, not just in specified places that offer Wireless/Wi-Fi access. In short, it is found that goods are marketed and consumers purchase a smart phone or other similar cellular/mobile phone, because of the phone function with additional facilities and not for their PDA or GSM capabilities alone; as such these additional facilities will not become operational without subscribing to a cellular phone service plan. Hence, it is clarified that these instruments are to be categorized as mobile/cellular phones from the point of trade parlance."

As is seen from the above, the Ministry itself, while expressing opinion on the classification of the mobile phones having a number of additional features, concluded that inasmuch as the essential purpose of the mobile phone is to communicate, the additional features of having so many other functions will not convert the phones into any other item. As the goods are being marketed and being purchased by the consumers as smart phone or other similar cellular or mobile phone, the additional facilities will not convert the phones into any other item.

4.3 *In fact to the same effect is another circular of the Board being Circular No. 20/2013-Cus., dated 14-5-2013 wherein it was held that the classification of the 'Tablet Computer' having an additional facility of connecting to an cellular network to make a voice calls will not make the Table Computer divert from its main function and Table Computer would remain so.*

4.4 *When all the three circulars are viewed together, it is seen that the opinion expressed by the Board in Circular dated 1-8-2013 in respect of 'multifunctional speaker system' is diagonally opposite to the opinion expressed in the earlier two circulars being Circular No. 17/2007-Cus., dated 19-4-2007 and Circular No. 20/2013-Cus., dated 14-5-2013. In the other two circulars, the same Interpretative Rules have been taken into consideration and the same Section Note 3 to Section XVI stands taken note of and the products have been held to be classifiable according to their main and principal and essential function. We really fail to understand as to how subsequent circular stands issued wherein a different view stands expressed without assailing the fact that a speaker remains a speaker but with some additional facilities and features.*

4.5 We find that the lower authorities have solely and mainly relied upon the said circular of the Board. It is well settled that the circular issued by the Board are not binding on the Courts, be it judicial or quasi-judicial. Though there are plethora of judgments to that count but one such reference can be made to Hon'ble Supreme Court's decision in the case of CCE, Bhopal v. Minwool Rock Fibres Ltd. - [2012 \(278\) E.L.T. 581](#) (S.C.). Further, the Larger Bench of the Tribunal in the case of Bimetal Bearings Ltd. v. CCE, Chennai - [2008 \(232\) E.L.T. 790](#) (Tri.-LB) = [2010 \(18\) S.T.R. 539](#) (Tribunal-LB) has also held that the circulars which are against statutory provisions cannot be followed and cannot allow to override the statutory provisions in case of conflict.

4.6 In fact, there cannot be any dispute about the above legal proposition as it stands fully settled.

4.7 As we have already observed that even the lower authorities are not disputing the fact that the goods in question are speakers with added function, as such the main role of the item in question remains amplifying the sound received by it either from outside source or from inbuilt feature. As such, going by the Interpretative Rules and Section Note 3 to Section XVI, the criteria for classifying the product is the principal and the main function it performs, which in the present case remains to be that of a speaker. We accordingly hold that the goods in question are properly classifiable under Chapter Heading 8518 22 00. We may also add that the invoices raised by the seller of the goods stand examined by it and the description stand given as "Multimedia Speaker". This also reflects upon the fact that the goods in question, in common parlance are also traded as speakers. The appellants have also submitted an affidavit of the dealers, the invoices raised by them against the customers and the statement of Service Manager of the assessee. Examination of these documents shows that goods are primarily sold as speakers. Even the brochures placed on record indicate that the goods are being traded as speakers only and not as either FM radio or the sound reproduction system.

4.8 We are also strengthened in our view by the decision of the Hon'ble Supreme Court in the case of Xerox India Ltd. v. Commissioner of Customs, Mumbai - [2010 \(260\) E.L.T. 161](#) (S.C.). Though the said decision did not deal with the items under consideration in the present appeal but the ratio of law laid down by the Hon'ble Supreme Court would be squarely applicable to the facts of the present case. It was held that the multifunctional printing machines having

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fax facility and screening facility would continue to fall under Heading 8471 of the Customs Tariff Act as 'digital printers' only inasmuch as the predominant function of the machine in question was printing.

5. *As such, we find no merits in the Revenue's stand. In view of the above, the impugned order is set aside and all the three appeals are allowed with consequential relief to the appellants."*

7.9 On careful examination of the above decision, it would reveal that, the products dealt in the said case are multiple speakers mounted in the same enclosures which is evident from the facts that goods as set out in para 2.1 and 2.3 of the said decision as well as the classification decided under CTH 85182200. In the above case, the Tribunal had an occasion to examine as to whether the added functions like FM radio and USB playback inbuilt in an enclosure would change the essential character of the speaker and thus decided that the classification of the said goods to be under CTH 85182200. Whereas in the instant case, admittedly, the goods are "not mere speakers" but 2.1/5.1 channel Multimedia Speaker Systems, with not only transformer, digital to analog converter but incorporate a decoder which splits and amplifies the digital / analog signals to the respective audio tracks and then amplifies and transmits to the loudspeakers which are connected to the main system through cables. The imported goods described as Multimedia Speaker Systems have in-built amplifier and sub-woofer which receive audio signals through Bluetooth, HDMI Cable, USB, etc. In addition, they have F.M. Radio with digital display and interactive remote control. These systems are connectable to T.V. through an optical cable and have the

capability for CD playback, USB playback, etc. The main function of this sound producing apparatus is to retrieve, read and reproduce audio files of MP3 / WMA audio formats stored in memory devices such as USBs / Flash Drives / SD cards and these are easily connectable to various audio sources such as CD players, DVD players and Blu-ray players. Thus MSS are designed to give a complete hi-fi stereo audio experience.

8.1 The Fulcrum of the Revenue's contentions are as reflected at paras 7 & 8 of the SCN, which are reproduced herein below for convenience: -

"7. Put it clearly, the imported goods are classified by the FAG under Loud Speakers- Others (CTH 85182900). As per the above classification, the imported goods are liable for payment of duty (BCD) of 15%. Accordingly, the importer was informed to pay duty@15% adopting above classification for their imported goods. The importer paid the duty amount @15% under protest.

8. After the FAG comments dated 19-6-2021, another BE of the importer under FAG scrutiny of Nhava Sheva, Mumbai was directed to be assessed by Port of import (ICD Pulichapallam) at CTH 85182900. This office was able to contact the officers of Nhava Sheva and they reported that an SCN has already been issued to an another importer in Mumbai, proposing to reclassify their similar items of import under CTH 85182900 and the proposal for reclassification has been confirmed by them vide Order No. 6/21-21/Commr/NS-V/CAC/JNCH dated 29-6-2021 based on the CESTAT, Bangalore in the case of Logic India Trading Co vs Commissioner of Customs, Cochin reported in 2016(337)ELT65(Tri-Bang). The above CESTAT verdict has been confirmed by the Apex court."

8.2 Thus, the Department has essentially relied upon this decision to revise the classification of imported MSS to CTH 8518.

8.3 In the *Logic Trading* case, the coordinate bench noted that there were three types of speakers under consideration **[Para 2.1]**. The first type was described as a plain speaker having no other function. The second type was described as having an additional function of a USB port playback, which the Revenue intended to classify under 8519. The third type was described as having the facilities of FM radio along with USB port playback which the Revenue intended to classify under 8527. The question of classification in that case arose only in respect of the second and third types aforesaid. In that case, the Revenue sought to classify the goods in question therein under tariff heading 8519 8100 & 8527 9919 which, as it stood for the period, considered in that appeal, are reproduced below: -

CTH 8519 81 : Speakers having USB port with USB playback but without radios

CTH 8527 99 : Speaker having radio (irrespective of whether they were having USB playback facility or not)

On the other hand, the importer claimed that the goods were classifiable under CTH 8518 2200 which reads as follows: -

CTH 8518 2200 : Multiple Loud Speakers, mounted in the same enclosures.

9.1 In the present appeal, neither the Department nor the Appellant have argued for the classification of imported goods under 8519. Nevertheless, it would not be proper for us to lightly brush aside the above order of a coordinate bench. We must endeavor to determine whether the order directly or indirectly covers the question before us, or otherwise assists us in reaching a conclusion. In that spirit, the relevant passage of the ratio of the coordinate bench is reproduced below: -

"4...

.....

However, wherever the speakers have an additional facility of USB port, which has been explained to us as a facility wherein a pen drive can be inserted and the sound recorded in the pen drive can be amplified by the speaker, Heading 8519 covers "Sound recording or reproducing apparatus". The question which is required to be decided is as to whether introducing such facility of USB port for USB playback is otherwise admittedly speaker can be considered to be a reproducing apparatus or not. The reading of the various sub-headings of the said Heading reveals that it covers the products like Audio CD player, CD players, MP3 players, time code recorders, etc. In our opinion, the speaker is primarily a speaker and some additional feature or facility for use of USB playback will not convert the same into a product equivalent to the products covered by Heading 8519. Similarly, Heading 8527 takes into its ambit the "Reception apparatus for radio-broadcasting, whether or not combined, in the same housing". The additional feature of FM radio in the speaker, in our opinion, would again not convert the huge speaker into a FM radio. Even going by the common parlance test, nobody would buy a huge speaker for the purpose of FM radio."

9.2 A speaker simpliciter produces sound by converting electricity into sound. Speakers are often equipped with some additional features such as amplification, equalizer, etc. However, the task of reading

from multiple sources such as CDs, USB, SD cards, Flash player, MP3 player, connectivity *via* Bluetooth and with different audio sources such as CD/DVD/Blu-ray players *etc.*, is a task that goes well beyond the function of a speaker simpliciter. This is the function of what is referred to in common parlance as a "Multimedia Speaker System". A speaker is merely one of the constituent ingredients of an MSS, which emit sounds on the instructions of the rest of the system.

9.3 Multimedia Speakers / Loudspeakers are typically designed for providing decent sound quality of music on a single device, whereas Multimedia Speaker Systems are built for a more immersive surround sound experience with multiple speakers including sub-woofer and amplifier to enhance Movie watching or for its stereo sound effects having dedicated audio channels i.e, 2.1 / 5.1 surround sound, as in this case. Multimedia Speakers referred to as Multiple Speakers in the tariff, usually consists of just two speakers, sometimes with a sub-woofer while MSS includes multiple speakers for different channels (Front Left, Front Right, Surround Left, Surround Right, Centre & Sub-woofer as in 5.1 system). Multimedia Speaker may come as standalone unit or as a set of two speakers, offering basic audio enhancement, whereas MSS are more complex and more versatile and adaptable, and they are designed to be compatible with a range of electronic devices such as Computers, Mobile Phones, T.V.s, *etc.* In our view, MSS of the kind imported in the present appeal too can be properly described as Multimedia Speaker Systems (MSS). However,

we note, once again, that it is nobody's-neither the Appellant's nor the Department's case that the MSS imported in this appeal are classifiable under heading 8519.

9.4 Nevertheless, respectfully relying on the ratio of the coordinate bench's decision, we cannot persuade ourselves to conclude that the MSS imported in the present appeal can be classified under heading 8518 as contended by the Revenue. There is no doubt in our minds that the goods imported in the present case are much more than loudspeakers, amplifiers, or speakers of any kind which are referred to in 8518. The goods imported in the present appeal, as per the bills of entry placed on the record, are multimedia speaker systems, the word "systems" being of particular importance. These goods, in addition to performing the function of speakers, are also equipped to incorporate different audio input interfaces.

10. When we talk of a 'speaker', it is undoubtedly just an output device, which is clearly and distinctly different from an input device. It certainly cannot take any commands directly, but only through its controlling unit which is called the 'system' which is like the brain since, it is the 'system' which has the capability to multi-tasking depending upon the command it receives. To be precise, it is capable of reciprocating/reacting to multiple commands including input as well as output, at the same time. Hence, 'speaker' simpliciter cannot be equated with 'system' at any stretch of imagination, which is otherwise performing the functions of a motherboard. Technically, a monitor of a computer can

never become 'computer' since 'computer' as such is the collection of CPU/motherboard, keyboard and monitor. Stretching the logic a bit more, with the advancement in the technology, we have 'ALL-IN-ONE' computers where the monitor is itself embedded with CPU, input & output features etc. That therefore by itself cannot be called as a 'monitor' even colloquially. Speaker is therefore just an output device just like the monitor *per se*. The difference has been recognized by the law markers and therefore, we have many Tariff headings for classification. In the case of *Logic India [supra]*, the emphasis has always been on speakers/loudspeakers and naturally therefore, we do not find any discussions on the MSS in the order. When we talk of a multifunctional speaker system/MSS, the reference and emphasis is on 'system' including speakers also. We are therefore required to consider the classification of not the speaker but 'multifunctional speaker system'.

11. The Hon'ble Supreme Court in the case of *Collector of Customs & Central Excise Vs. Lekhraj Jessumal & Sons [1996 (82) ELT 162 (SC)]* has observed that static interpretation cannot be given ignoring the advancement of technology. Relevant extract is reproduced below: -

"3. *The High Court in the impugned order noted that the stand of the Customs authorities was that the words "switches, miniaturised" as component parts of hearing aids should be understood to mean only those types of switches which were generally used in the manufacture of hearing aids at the time of publication of the Import Policy for the relevant year, namely 1977, and that these words could not be said to include any other type of switch even if such other type of switch could be used in the manufacture of hearing aids. **The Division Bench observed, in our view,***

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very rightly, that such an interpretation overlooked that industry was not static and that there was continuous technical progress therein. New processes and new methods developed from time to time and new material and components or types of components superseded others. **It was unreasonable to give a static interpretation to words used in a tariff schedule ignoring the rapid march of technology.** Having regard to the technical opinion that reed switches would improve the performance of hearing aids, the High Court held that reed switches were covered by the tariff entry. The High Court also noted that it was not the case of the Customs authorities that the respondent was trying to divert the imported reed switches from the manufacture of hearing aids to another purpose.

4. We do not think that we can put it better. Progress cannot be stifled by an over-rigid interpretation of Import Policy or Customs Tariff. Both must be read as they stand on the date of importation and whatever is reasonably covered thereby must be allowed to be imported regardless of the fact that it was not in existence or even contemplated when the policy or tariff was formulated."

[Emphasis supplied by us]

12. Also, in the case of *Hewlett Packard India Sales Pvt. Ltd. Vs. Commissioner of Customs (Import), Nhava Sheva* [2023 (2) CENTAX 236 (SC)], Apex Court highlighted the impact of technological advancement on law. Relevant portion of the decision is reproduced below: -

"21. Furthermore, we must also **use this opportunity to highlight the impact of technological advancement on law.** It's a matter of fact that at the time when the relevant entries of the First Schedule came into effect, weight was definitely an important criterion for deciding whether any ADPs was 'portable'. Scientific progress has greatly reduced the weight associated with high performance in the context of ADPs. It is not surprising that the advent of LED technology, faster microchips, etc. has made it possible for mobile phones to have performance specifications which merely a decade ago was possible only on high end laptops. We must therefore be cognizant of such an impact on the consumer's understanding of any good or trade."

[Emphasis added by us]

13. The binding ratio of the above judgements clearly is that interpretation is required to be drawn keeping in mind the developments in the technology.

14. The discussion in the above paras is of much relevance and importance, since at para 34 of the impugned order, the Ld. Adjudicating Authority / Commissioner of Customs (Preventive), Tiruchirapalli has himself understood the difference between the goods at hand and 'speakers or loudspeakers' simpliciter. The said para reads as below: -

"34. From the catalogues furnished by the importer pertaining to the models in the subject case and as per the details available in public domain. In the internet, it appears that the subject goods are multimedia speakers which can be connected through various sources such as CD playback, FM radio USB playback, Bluetooth, TV connected through optical wire. On further study of relevant product, multimedia speakers – Phillips brand, it appears that the main system, usually sub – woofer is equipped with a USB port and/or SD card, reader, and/ or FM radio and/ or M player along with LED display for operation on the front panel. Such systems are also accompanied by sophisticated remote control with interactive interface. The main system contains printed circuit boards(PCBs) with complex internal circuitry to retrieve, read and to produce audio files of MP3/WMA audio formats stored on a USB memory device, such as USB flash drives/flash player/SD cards and also to play FM radio.....

Depending on the source, the sound is reproduced by the entire speaker system. Prima facie, these products which are new generation speaker systems, are not just simple, loudspeakers/audio speakers. They are multifunctional devices that are essentially for reproducing sound and providing wholesome entertainment. It, therefore, appears that the main system, i.e. the sound reproducing device, embodied with the above stated features, which interact with the users of the audio system or speaker system through the remote, while governing the satellite

speaker is attached thereto, imparts the essential character to the entire system.

*35. In view of the above facts and submissions and on study of relevant product literature of the consignments under import which are 'Various types of speakers', it appeared that the main system, usually sub – woofer is equipped with a USB port, and/ or SD card reader, and / or FM radio and/ or MP3 player along with a LED display operation on the front panel..... The main system is connected to an external source of power and is interconnected to other speakers (satellite speakers). Depending on the source, the sound is reproduced by the entire speaker system. Prima facie, these products which are new generation speaker systems, **are not just simple loudspeakers/audio speakers. They are multi-function devices that are meant essentially for reproducing sound and providing wholesome entertainment.** It, therefore, appears that the main system, i.e. the sound reproducing device embodied with the above stated features, which interacts with the users of the audio system or speaker system through the remote while governing the satellite (dummy) speakers attached there to, imparts the essential character to the entire system."*

15. We may hasten to add here, that in terms of the HSN Notes, devices coming under 8519 having a feature of a radio could merit classification under 8527 instead of 8519. The peculiarity of tariff structure is therefore such, that all the goods falling under 8518 or 8519 or 8527 containing speaker to produce/reproduce sound could lead to a dispute, hence, the classification is made on the capability of a device and certainly not based on the function to produce/reproduce sound alone. Considering the importance of the multi-tasking/multi-functioning capabilities, different headings under 8518 or 8519 or 8527, etc. are characterized, otherwise the same would become redundant. Respective HSN notes also recognize this and hence do we find different explanatory notes. Different headings therefore appear to cover devices depending on their multi-functional

capability and sound producing / reproducing being just a common feature.

16. The question before us in this context is only whether the revenue is right in classifying the goods in question under the heading 8518. The heading 8518, which has been reproduced by us below para 7.3, indicates that the products/items in question are having a primary characteristic of an output device which only emits/throws out the sound.

17. The Ld. Authorised Representative Shri Anoop Singh has referred to the general rules of interpretation and also relied on Note 3 to section XVI. *Per contra*, Ld. Advocate Shri Jai Kumar have relied on the Board's Circular No. 27/2013 – Cus. dated 01.08.2013 wherein, identical goods have been dealt in detail and after considering the GRI as well as the section notes, it is clarified that the goods/speakers incorporating radio and USB playback would merit classification either under CTH 8519 or CTH 8527; which means that their classification under CTH 8518 is ruled out. There is no doubt that the said Board's circular is still in operation. That being the case, we see no reason for the revenue authorities to not to follow the said circular, since it is the settled position of law that the board's instruction via its circular is binding on the revenue authorities. The said view has been expressed by the Hon'ble Apex court in a number of decisions, including *Collector of Central Excise Vs. Dhiren chemical industries [2002 (139) ELT 3(SC)]*.

18. Further, the appellant relying on HSN Explanatory Notes Clause 5 to CTH 8527 has argued that the imported Multimedia Speaker Systems which are Stereo systems (hi-fi systems) containing a radio receiver with amplifier and equaliser and special sound speakers are rightly classifiable under CTH 8527. The relevant HSN Explanatory Notes reads as follows: -

*"Chapter Heading: 8527:
(5) Stereo systems (hi-fi systems) containing a radio receiver, put up in sets for retail sale, consisting of modular units in their own separate housing, e.g., in combination with a CD player, a cassette recorder, an amplifier with equaliser, loudspeakers, etc. the radio receiver gives the system its essential character"*

There is no doubt that imported Multimedia Speaker Systems are Hi-Fi Stereo Systems containing a radio receiver, an equaliser, amplifier, sub-woofer and tweeters and put up in sets for retail sale and can be used in combination with a DVD/CD player, Blu-ray players, a cassette recorder or T.V., etc.

19. However, on a careful reading of the Clause 5 to the CTH 8527 supra, it is evident that though the imported Multimedia Speaker Systems having all the above characteristics and features, it cannot be said that the radio receiver only gives the systems its essential character. The imported goods are sold in sets and can be connected to CD/DVD player and consists of amplifier, woofer, equaliser,

speakers, etc. As such, the classification as sought by the Appellant under CTH 8527 is not justified for this reason.

20. The Ld. Counsel also have referred to the Customs Declaration filed before the exporting country indicating classification of the imported goods under CTH 8527910000. Further, he has referred to US Customs Ruling for import of similar goods into USA where the classification adopted was under CTH 8527916040. It was observed in the above US Customs ruling that the audio system is not solely a speaker assembly and incorporates other audio components that allow for the production of sound i.e., DVD player / CD player, USB port, SD card reader, FM receiver, etc. The inclusion and additional functionality of various sound reproduction components would take this device beyond the intended scope of heading 8518. US Customs has consistently classified audio systems that incorporate sound reproducing and radio reception components outside of heading 8518. Another item of similar goods with radiobroadcast receiver with woofers, sub-woofer, two tweeters and a built-in DVD/CD player along with a radio which contains an FM tuner with auto scan, Bluetooth capability which can reproduce sound from SD card and the built-in DVD/CD player were found to be classifiable under Chapter 8527. The third item which is described as Home Theatre Sound System which consists of an AM/FM radio broadcast receiver / amplifier with a built-in DVD/CD player, a remote control and surround sound speakers was also determined to be classifiable under CTH 8527316040. The

item which imparts the essential character to these goods was that of AM/FM receiver / amplifier, these components provided the major value of the set and also provided the means to the audio / video entertainment for the user.

21. However, the appropriate classification of imported goods depends upon the Tariff entries in the Indian Customs Tariff Act, 1975 read with GRIs to the import tariff and Section and Chapter Notes thereto. Though these decisions referred to by the Ld. Counsel may be of persuasive value, but, could not determine the classification of the impugned goods. Though HSN Explanatory Notes provides uniform guidance to all the Customs Administrations all over the world in classification matters, the Tariff can vary from one country to another. Indian Customs Tariff has 8-digit classification whereas China and USA have adopted 10-digit classification.

22. The classification of goods is to be determined by application of General Rules for the Interpretation (GRI) of the First Schedule to the Customs Tariff Act, 1975. GRIs require that in classifying articles for legal purposes which shall be determined according to the terms of the heading and any relative Section or Chapter Notes. In terms of Note 3 to Section XVI which stipulates that, unless the context otherwise requires composite machines consisting of two or more machines fitted together to form a whole and other machines designed for the purpose of performing two or more complementary or alternative functions are to be

classified as if consisting only of that component or as being that machine which performs the principal function.

23. In the case of *M/s. Logic India Trading Co. Vs. CC, Cochin [2016 (337) ELT 65 (Tri-Bang)]*, the criteria for classifying the product is the principal and the main function it performs which was considered / dealt with for settling the issue of dispute in classification.

24. Even by applying Note 3 to Section XVI, we are of the view that the imported Multimedia Speaker Systems are more of a sound reproducing apparatus and so, it is appropriately classifiable under CTH 8519 of the Customs Tariff Act, 1975 which gives its essential character being not a 'Speaker Simplicitor'. "Sound producing apparatus" in MSS performs the main and principle function.

25. Even by applying Rule 3 of GRI, where the goods are *prima facie* classifiable under two or more headings, classification needs to be effected as follows: -

3. When by application of Rule 2 (b) or for any other reason, goods are, *prima facie*, classifiable under two or more headings, classification shall be effected as follows :
 - (a) The heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods.
 - (b) Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to 3 (a), shall be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable.
 - (c) When goods cannot be classified by reference to 3 (a) or 3 (b), they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration.

26. In this case, the imported Multimedia Speaker Systems are being not Speaker Simplicitor are more appropriately classifiable under CTH 8519 as a Sound Reproducing Apparatus. These cannot be equated with loudspeakers with additional features. These systems possess technology to retrieve, read and to produce audio files of MP3/WMA audio formats from USB devices, flash drives, flash player, SD cards and can play FM radio with digital display along with Bluetooth connectivity and an interactive remote control is part of the MSS. These are multifunctional devices for reproducing sound and provide wholesome entertainment. The main system i.e., the sound producing apparatus embodied with the above stated features can interact with the users of the audio / speaker system through the remote and also through Bluetooth which imparts the essential character to the entire system which is not the case in 'Logic Trading' where the products were mere Multiple Speakers / Multimedia Speakers. The products imported are new generation speaker systems are not just simple loudspeakers / audio speakers. They are

multi-functional devices which are meant essentially to reproducing sound for wholesome entertainment. So, we are of the view that the sound reproducing apparatus imparts the essential character to the entire Multimedia Speaker Systems. Further, our view is strengthened by the Sub-Heading Explanatory Note to Sub-Heading 8519 81: - This subheading covers apparatus using one or more of the following: -

- i. Magnetic,
- ii. Optical, or
- iii. Semiconductor media.

Even by applying GRI, Rule 3(a), Multimedia Speaker Systems is more specific description of sound recording apparatus rather than Loudspeakers. In terms of Rule 3(c) of GRIs, where any product is classifiable under more than one Customs Tariff Heading, the goods are required to be classified under the Heading which occurs last in the Numerical Order.

27. Thus, we are of the considered opinion that the products in hand, namely, 2.1/5.1 channel multimedia speaker system are totally different from the mere loudspeakers with added functions, which was dealt in the Logic Trading case. To also put it differently, we are in agreement with the decision that addition of FM radio or USB playback to the speakers would not take away the essential character of the product as a speaker but the paradigm differential is the imported goods on hand are hi-fi stereo

systems, which are connected to speakers and the speakers are nothing but an output device for the 2.1/5.1 stereo system.

28. To draw a parallel, a computer (Automatic Data Processing Machine), classifiable under CTH 8471 shall incorporate an input device (mouse / keyboard), a Central Processing Unit (CPU) and a Output device, (Monitor). Earlier they would be presented separately but in modern day evolution, we are getting hybrid Computers (mostly used in schools), where all the three (input/CPU as well as display) are all integrated in a single housing. In that case, to our mind, such an integrated hybrid system cannot be called or classified as Monitors or display but still as ADPM. In this context we also wish to rely on the decision of the Tribunal in the case of *M/S. Ingram Micro India Private Limited Versus Principal Commissioner of Customs (Import), New Delhi* [2022 (2) TMI 308 CESTAT NEW DELHI].

29. Towing the same reasoning, even in the case on hand, any attempt to call or classify the integrated 2.1/5.1 multimedia speaker system only as a speaker would be calling a hybrid computer as a monitor or display. The goods in hand are not mere speakers or speakers with add-on functions like FM radio or USB playback but are integrated 2.1/5.1 multimedia speaker systems, which are hi-fi stereo systems with a radio reception put up in sets for retail sale and consisting of modular units in their own separate housing, namely, loudspeakers.

30. Another important contention of the appellants is with reference to Board's Circular No 27/2013 Cus. dated 01.08.2013. In the said Circular, somewhat identical goods have been dealt with in detail and after considering the GRI as well as the Section Notes, it has been concluded that the speakers incorporating radio and USB playback would merit classification under either under CTH 8519 or under CTH 8527 and not under CTH 8518. On a question from the bench, both sides confirmed that the said Circular is still in vogue and has not been withdrawn. The learned AR made a feeble attempt to distinguish from the said Circular stating that same is not binding on Courts but he is unable to address the ratio of the Hon'ble Supreme Court in the case of *Collector of C.Ex vs Dhiren Chemical Industries [2002 (139) ELT 3 (SC)]*. For reference, the ratio of the said judgement is reproduced hereunder: -

"We need to made it clear that, regardless of the interpretation that we have placed on the said phrase, if there are circulars which have been issued by the Central Board of Excise and Customs which place a different interpretation upon the said phrase, that interpretation will be binding upon the Revenue"

31. Thus, even if the contents of a Board Circular is against the ratio of the decision of Supreme Court, the Revenue is bound by its Circular and we feel the right and righteous way for the Revenue should have been to withdraw the Circular before agitating the classification, which is against their own proposition.

32. Another important objection from the Revenue is the test of commercial parlance, which is another foundation of the Logic India case. In the Logic India case, the Bench came to a conclusion based on the following findings:

"We may also add that the invoices raised by the seller of the goods stand examined by it and description stand given as "Multimedia Speaker. This also reflects upon the fact that the goods in question, in common parlance are also traded as speakers. The appellants have also submitted an affidavit of the dealers, the invoices raised by them against the customers and the statement of Service Manager of the assessee. Examination of these documents shows that goods are primarily sold as speakers. Even the brochures placed on record indicate that the goods are being traded as speakers only and not as either FM radio or the sound reproduction system."

33. In the instant case, it has been argued that from the importation till the commercial sale in the domestic market, the products are imported, marketed, sold and purchased only as 2.1/5.1 channel Multimedia speaker systems and not as mere speakers, which is also evidenced from the Bills of Entry as well as their Commercial invoices, placed on record. During the course of the hearing, the learned counsel also unpacked a product and demonstrated that there is an indelible marking in the product as "2.1 Multimedia speaker system". On a specific query to the arguing Ld. Counsel and the Departmental Representative, it is ascertained that imported goods are not known as Multimedia Speakers but as MSS and more popularly as Home Theatre Systems.

34. Thus, even as per the prescription of "common parlance test", the facts of the Logic India case and the case

on hand are entirely different. In the *Logic India* case, the description was "multimedia speakers" supported by affidavits from the dealers as well as statements from the Service Engineers; in the instant case, there is nothing placed on record by the Revenue to counter the claim of the appellants that the impugned goods are imported and sold only as 2.1/5.1 channel multimedia speaker systems and not as mere multimedia speakers. It was also admitted no market survey was carried by the Revenue. In absence of any evidence to the contrary, we are unable to accept the argument of the Revenue on commercial parlance test. Further, common parlance test can be pressed into service when the law is ambiguous. For the above reasons, as we find there is no ambiguity, there is no requirement of summoning "common parlance" to the fore.

35. Before we conclude the issue of classification, we need to mention that, in the written submissions, the learned AR has relied in the decision of *Global Enterprises vs. Commissioner of Central Excise, Delhi II [2017 (354) ELT 548 (Tri- Del.)]*, wherein a similar product has been dealt with. For ready reference, the relevant parts of the said decision is reproduced: -

"4. We have heard both the sides extensively and perused the appeal record, written submission and sales brochure of the impugned products. We take up for consideration, first the classification of multi media speakers. There is no dispute about classification of such multi media speakers without FM radio under CETH 85184000. The dispute is only with reference to classification of multi media speakers with FM radio. The Revenue held a view that the same is classifiable under CETH 85279990, whereas GE contended that the same will be classifiable like any other multi media speakers under CETH 85184000.

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6. We note the product, as represented above basically contains two speakers and a woofer. FM radio is built in, in the woofer. The whole set is a multi media speaker system generally connected to other devices like computers or audio players for sound output. A comparison of the above goods with multi media speakers + sub-woofer, without FM radio, indicates that both the products are almost identical except for the fact that in one, there is a an additional built in FM radio, in the sub-woofer."

36. Interestingly, in the said case, the above said goods were held to be classifiable under CTH 85184000 and not under any of the headings proposed in these proceedings namely, 85182100/85182200/85182900. In the rejoinder, it was submitted by the Ld. counsel for the appellants that even if the impugned goods are classified under CTH 85184000 as per the above decision relied upon by the Revenue, then there would be no differential duty payable, as both CTH 85184000 as well as the one adopted by them under CTH 8527 attract the same rate of duty.

37. In view of the foregoing, we conclude that the imported goods, namely "Philips" brand 2.1/5.1 channel multimedia speaker systems, imported and sold by the appellants shall merit classification under CTH 8519 and not under CTH 8518 as contended by the Revenue.

38. Where the classification proposed by the Department cannot be sustained, then irrespective of the fact as to whether or not the classification of the Assessee is proper, the same would prevail as held by the Hon'ble Apex Court in *Warner Hindustan Ltd. Vs. CCE [1999 (113) ELT 24 (SC)]* which was followed by the Tribunal in *Pepsico Holdings Pvt. Ltd. Vs. CCE [2019 (25) GSTL 271 (Tri.Mum.)]* wherein

the Tribunal held that the classification proposed in the Bill of Entry will prevail when classification of the Revenue is found to be inappropriate. Further, the Hon'ble Supreme Court in *CC Vs. Sunrise Traders [2022 (382) ELT 23 (SC)]* affirmed the decision of the Tribunal in *M/s. Sunrise Traders & Ors. Vs. CC [2022 (381) ELT (Tri.Ahmd.)]* that when the classification proposed by the Department fails, the only course of action would be to sustain the classification adopted by the Assessee.

39. We find that the impugned Order-in-Original No. 02/2022 dated 29.07.2022 passed by the Commissioner of Customs (Preventive), Tiruchirapalli has imposed a penalty of Rs.150 crores on the Appellant under Section 114AA of the Customs Act, 1962 for mis-classifying the above imported goods. In this regard, provisions of Section 114AA of the Customs Act, 1962 are reproduced hereunder: -

"114AA. Penalty for use of false and incorrect material.

- If a person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular, in the transaction of any business for the purposes of this Act, shall be liable to a penalty not exceeding five times the value of goods."

40. The Ld. Counsel have argued that there was no mention at all as to what was the false or incorrect material that was made, signed, used or caused to be made, in connection with the classification of the imported goods but it was clearly mentioned that officers did not find any dispute in accepting the classification of the impugned goods. Wherever the Bills of Entry were marked for physical

examination, then also the officers did not find any disagreement on the classification. Even after the introduction of faceless assessment in Nov 2020, the declared classification was not disputed / disturbed by any officers and the goods were imported and cleared through Nhava Sheva, Noida, Chennai, Bangalore which have accepted the declared classification of the goods under CTH 85279900. In Paragraph 10 and 26 of the Show Cause Notice, it was mentioned that classification under CTH 85279900 was never under dispute and even demand of differential duty was raised as per Para 27 of the Show Cause Notice for a normal period of two years as there is no suppression of facts and only an interpretation is involved. The appellant has argued that no penalty can be imposed by relying on the Hon'ble High Court of Madras decision in the case of *M/s. Wipro Ltd. [2019 (368) ELT 901]* which while dealing with a similar issue of classification regarding penalty held as follows: -

"17. Thus, taking note of the peculiar facts and circumstances of the case and the dispute being one of a classification dispute, and it is the Department which took a U-turn in the matter after a very long period, when the Department was permitting the respondent/importer to clear the goods by classifying the same under chapter Heading 8542, it is not a case where penalty could have been imposed. Thus, for the above reasons, we confirm the order passed by the Tribunal in this regard also."

41. The Ld. Advocate has also referred to the Board's Circular No. 27/2013 dated 01.08.2013 which had clarified that Multimedia Speaker Systems with FM Radio and USB play back merits classification under subheading 852799 where the Department all along was arguing before

the Tribunal and Courts that the impugned goods to be classifiable under CTH 8527 and not under 8518 in terms of the above Circular which is in vogue and not withdrawn. The appellant has also submitted placing reliance on the decision of the Tribunal in the case of *Lewek Altair Shipping Pvt. Ltd. [2019 (366) ELT 318 (Tri.Hyd.)]* wherein an identical issue of misclassification and imposition of the penalty it was held as follows: -

"As far as the penalties under Section 114AA are concerned, these are imposable if a person knowingly or intentionally makes, signs or uses or causes to be made, signed or used, in a declaration, statement or document which is false or incorrect in any material particular, in the transaction of any business for the purpose of the Customs Act. Ld. Commissioner held "considering the facts of the case, it has to be held that on the ground of wilful misstatement regarding classification and availing of notification, I am constrained to hold that the importer is liable for penalty under Section 114AA of the Customs Act, 1962." Thus holding, he imposed a penalty of Rs. 1.00 crore on the appellant in each of the impugned orders. In our considered view, claiming an incorrect classification or the benefit of an ineligible exemption notification does not amount to making a false or incorrect statement because it is not an incorrect description of the goods or their value but only a claim made by the assessee. Thus, even if the appellant makes a wrong classification or claims ineligible exemption, he will not be liable to penalty under Section 114AA of the Customs Act, 1962."

When an appeal has been filed by the Department before the Hon'ble Supreme Court, the same was dismissed as reported in *[2019 (367) ELT A328 (SC)]*.

42. Further, a reference was also drawn to the decision of the Tribunal Mumbai in the case of *Suresh Kumar Aggarwal Vs. Commissioner of Customs III, Raigad [2024*

(6) *TMI 779 – CESTAT MUMBAI*] wherein it was held that the Section 114AA of Customs Act can be invoked only in the absence of physical export of goods. The penalty provided under Section 114AA is only in respect of transactions in business with Customs sans goods, i.e., fake paper transactions without involving export of goods.

43. As such, it was vehemently argued that imposition of huge penalty of Rs.150 crores under Section 114AA on a misclassification issue without any misdeclaration is not only illegal but also absolutely unjustified.

44. We find that the Show Cause Notice dated 05.08.2021 has observed in para 27 '*since there is no suppression of facts and only an interpretation of facts, it is submitted that we cannot go beyond the period of two years*'. We are at loss to comprehend how the appellant has contravened the provisions of 114AA of the Customs Act and why the exorbitant penalty of Rs.150 Crores has been imposed on the appellant when it is stated that there is no merit for issuing the Show Cause Notice beyond the normal period. There was no discussion as to justification of invoking the provisions of Section 114AA and there was no recording or any finding in the impugned order dated 29.07.2022. Hence, imposing a penalty to the extent of Rs.150 crores is clearly whimsical and arbitrary.

45. We find that in the Order-in-Original No. 103564/2023 dated 07.11.2023 apart from demanding differential duty, the impugned goods were confiscated and a redemption fine of Rs.3,50,00,000/- was imposed apart from penalty under Section 112(a) of the Customs Act, 1962.

46. As we have held the issue of classification against the Department, the question of confiscation and consequent redemption fine as well as penalties under Section 112A of Customs Act, 1962 as well as under Section 114AA of the Customs Act, 1962 shall not arise and the same are set aside.

47. In view of the foregoing discussions, the impugned Order-in-Original No. 02/2022 dated 29.07.2022 passed by the Commissioner of Customs (Preventive), Tiruchirapalli, Order-in-Original No. 103564/2023 dated 07.11.2023 passed by the Commissioner of Customs, Custom House, Chennai and Order-in-Appeal No. 08/2024-TRY(CUS) dated 07.03.2024 passed by the Commissioner of GST and Central Excise (Appeals), Trichy are not sustainable and so ordered to be set aside. Ordered accordingly.

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48. Thus, the impugned orders are set aside. The appeals are allowed with consequential relief, if any, as per the law.

(Order pronounced in the open court on 27.11.2024)

Sd/-

(VASA SESHAGIRI RAO)
Member (Technical)

Sd/-

(P. DINESHA)
Member (Judicial)

gs/mk