

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

REGIONAL BENCH - COURT No. III

(1) Customs Appeal No.40065 of 2020

(Arising out of Order-in-Original No.600/2019-AIR dated 22.10.2019 passed by Commissioner of Customs (Chennai-VII), New Custom House, Meenambakkam, Chennai 600 027)

M/s. Bharath FIH Ltd.

.... Appellant

M/2,A-1, SIPCOT Industrial Park,
Phase-II, Hitech SEZ, DTA Area,
Sriperumbudur Taluk,
Tamilnadu 602 106.

VERSUS

The Commissioner of Customs

... Respondent

Chennai-VII, New Custom House,
Air Cargo Complex,
Meenambakkam,
Chennai 600 027.

(2) Customs Appeal No.40096 of 2020

(Arising out of Order-in-Original No.600/2019-AIR dated 22.10.2019 passed by Commissioner of Customs (Chennai-VII), New Custom House, Meenambakkam, Chennai 600 027)

The Commissioner of Customs

... Appellant

Chennai-VII, New Custom House,
Air Cargo Complex,
Meenambakkam,
Chennai 600 027.

VERSUS

M/s.Bharath FIH Ltd.

.... Respondent

M/2,A-1, SIPCOT Industrial Park,
Phase-II, Hitech SEZ, DTA Area,
Sriperumbudur Taluk,
Tamilnadu 602 106.

(3) Customs Appeal No.40281 of 2020

(Arising out of Order-in-Original No.76/2020-AIR dated 25.01.2020 passed by Commissioner of Customs (Chennai-VII), New Custom House, Meenambakkam, Chennai 600 027)

M/s. Bharath FIH Ltd.

M/2,A-1, SIPCOT Industrial Park,
Phase-II, Hitech SEZ, DTA Area,
Sriperumbudur Taluk,
Tamilnadu 602 106.

.... Appellant*VERSUS***The Commissioner of Customs**

Chennai-VII, New Custom House,
Air Cargo Complex,
Meenambakkam,
Chennai 600 027.

... Respondent**(4) Customs Appeal No.40291 of 2020**

(with C/CROSS/40132/2020-by assessee)

(Arising out of Order-in-Original No.76/2020-AIR dated 25.01.2020
passed by Commissioner of Customs (Chennai-VII), New Custom House,
Meenambakkam, Chennai 600 027)

The Commissioner of Customs

Chennai-VII, New Custom House,
Air Cargo Complex,
Meenambakkam,
Chennai 600 027.

... Appellant*VERSUS***M/s.Bharath FIH Ltd.**

M/2,A-1, SIPCOT Industrial Park,
Phase-II, Hitech SEZ, DTA Area,
Sriperumbudur Taluk,
Tamilnadu 602 106.

.... Respondent**(5) Customs Appeal No.40252 of 2020**

(Arising out of Order-in-Original No.803/2019-AIR-CH-VII dated
31.12.2019 passed by Commissioner of Customs (Chennai-VII), New
Custom House, Meenambakkam, Chennai 600 027)

M/s. Bharath FIH Ltd.

M/2,A-1, SIPCOT Industrial Park,
Phase-II, Hitech SEZ, DTA Area,
Sriperumbudur Taluk,
Tamilnadu 602 106.

.... Appellant*VERSUS*

The Commissioner of Customs

Chennai-VII, New Custom House,
Air Cargo Complex,
Meenambakkam,
Chennai 600 027.

... Respondent**(6) Customs Appeal No.40294 of 2020**

(with C/Cross/40134/2020-by assessee)

((Arising out of Order-in-Original No.803/2019-AIR-CH-VII dated 31.12.2019 passed by Commissioner of Customs (Chennai-VII), New Custom House, Meenambakkam, Chennai 600 027)

The Commissioner of Customs

Chennai-VII, New Custom House,
Air Cargo Complex,
Meenambakkam,
Chennai 600 027.

... Appellant*VERSUS***M/s.Bharath FIH Ltd.**

M/2,A-1, SIPCOT Industrial Park,
Phase-II, Hitech SEZ, DTA Area,
Sriperumbudur Taluk,
Tamilnadu 602 106.

.... Respondent**(7) Customs Appeal No.40279 of 2020**

(Arising out of Order-in-Original No.130/2020-AIR dated 26.02.2020 passed by Commissioner of Customs (Chennai-VII), New Custom House, Meenambakkam, Chennai 600 027)

M/s. Bharath FIH Ltd.

M/2,A-1, SIPCOT Industrial Park,
Phase-II, Hitech SEZ, DTA Area,
Sriperumbudur Taluk,
Tamilnadu 602 106.

.... Appellant*VERSUS***The Commissioner of Customs**

Chennai-VII, New Custom House,
Air Cargo Complex,
Meenambakkam,
Chennai 600 027.

... Respondent

AND

(8) Customs Appeal No.40293 of 2020

(with C/CROSS/40133/2020-by assessee)

(Arising out of Order-in-Original No.130/2020-AIR dated 26.02.2020 passed by Commissioner of Customs (Chennai-VII), New Custom House, Meenambakkam, Chennai 600 027)

The Commissioner of Customs

... Appellant

Chennai-VII, New Custom House,
Air Cargo Complex,
Meenambakkam,
Chennai 600 027.

VERSUS

M/s.Bharath FIH Ltd.

.... Respondent

3, M/2,A-1, SIPCOT Industrial Park,
Phase-II, Hitech SEZ, DTA Area,
Sriperumbudur Taluk,
Tamilnadu 602 106.

Smt. A. Aruna, Advocate for the Assessee-Importer
Shri S. Subramanian, Special Counsel for the Revenue

CORAM :

HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)
HON'BLE MR. M. AJIT KUMAR, MEMBER (TECHNICAL)

FINAL ORDER Nos. 40100-40107/2025

DATE OF HEARING : 21.08.2024

DATE OF DECISION :17.01.2025

Per: Shri P. Dinesha

I) Appeals C/40065/2020 & C/40096/2020

The assessee-importer imported certain items vide various Bills of Entry declared as "**Receiver**" by classifying them under CTH 85177090, paid the Basic Customs Duty

(BCD) at 5% thereby claiming the benefit under Notification No.50/2017-Cus. dt. 30.06.2017 (Sl.No.499), for the period 04.07.2017 to 30.01.2018.

2. Entertaining a doubt that the "Receiver" imported by the assessee was classifiable under tariff item 85181000 which attracted BCD at 10% which was further increased to 15% w.e.f. 02.02.2018 vide the Notification No.57/2017 dt. 30.06.2017, the Revenue through the Commissioner issued Show Cause Notice dt. 04.05.2019 *inter alia* proposing to reclassify "Receiver" under CTH 8518, to demand differential duty under Section 28 (1) of the Customs Act, 1962 along with applicable interest under Section 28AA *ibid* and penalty under Section 112 (a) *ibid*. It also proposed to confiscate the goods in respect of some of the Bills of Entry under Section 111 (m) and 111 (o) of the Act *ibid*.

2.1 The assessee appears to have filed a detailed reply justifying its classification and thereby requesting for the dropping of the further proceedings, but however not accepting the reply, the Commissioner of Customs, Chennai VII vide Order-in-Original No.600/2019-AIR dt. 09.10.2019 confirmed the proposals made in the SCN. The consequent demand, interest and penalty have also been confirmed in the said order. It is against this order that **Appeal C/40065/2020** has been filed by Assessee-Importer before this forum.

3. When the matter was taken up for hearing Smt. N. Aruna, Ld. Advocate appeared for the Assessee-Importer and Shri S.Subramanian, Special Counsel appeared for the Revenue.

4. It is the case of the assessee that the "Receiver" is a part of cellular mobile phone which can be used only with mobile phone and hence the classification adopted by them under CTH 85177090 was very much in order. The Revenue is trying to classify the same under CTH 8518 but as per Explanatory Notes to CTH 8518 "Receivers" are not covered under that heading. Moreover, the Revenue's classification is not based on General Interpretative Rules.

5. *Per contra*, the Ld. Special Counsel defending the order of the Commissioner, contended that Customs Notification No.57/2017 specifically classified the "Receiver" under CTH 8518, Board's Circular No.09/2016-Customs dt. 11.03.2016 also clarified that "*all kinds of Receivers are classifiable under tariff item 85181000*". This makes it clear that "Receiver" has a specific classification which is under 8518. This apart, he would also contend that Phased Manufacturing Programme (PMP) Schedule also mentions that 'Receiver' would be chargeable to duty from 2017-18. He would also take us through HSN System apart from various notifications and TRU letters to justify the stand of the Revenue.

6. We have heard the rival contentions and perused the documents placed on record. We have also carefully considered various judicial pronouncements relied upon by the contesting parties. We find that this very Bench in the case of **Flextronics Technologies Pvt. Ltd. Vs CC Chennai** has considered the classification of 'Receiver' vide **Final Order Nos.40203-40208/2024 dt. 28.02.2024**. In the said order, however, the bench felt it proper to remand this issue for the detailed reasons given therein.

We have also considered the interpretations given by various judicial fora. Section Note 2 to Section XVI of Customs Tariff Act, 1975 lays down the rules to be followed while classifying parts of machines falling under 84 & 85 which prescribes the guidelines as under :

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

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

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

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

7. Taking cognizance of Note 2 to Section XVI as above, we find that ‘parts’ which are goods included in any of the headings of Chapter 84 or 85 are required to be classified in their respective headings; parts which are suitable for use principally with goods of heading 8517 and 8525 to 8528 are to be classified in Heading 8517. “Receiver” claimed to be specifically coming under CTH 8518 is required to be considered in *ejusdem generis*, i.e in the context of the words accompanying with the heading. The tariff heading 8518 refers to “*micro phones and stands therefor; loud*

speakers, whether or not mounted in their enclosures; head phones and ear phones, whether or not combined with a micro phone etc." which are perhaps separate parts *per se* whereas the "Receiver" under dispute in this appeal is a 'part' of the phone. CTH 8517 in fact covers "*Telephone sets including Telephones for Cellular Networks or for other Wireless Networks; Other Apparatus for Transmission or Reception of voice etc."* and since cellular mobile is also of similar kind, we may have to agree with the classification adopted by the importer-assessee. We find support in this regard when we specifically consider the Explanatory Notes to HSN. The classification sought to be made by the Revenue under CTH 8518 lacks any merit and hence, we set aside the impugned order. Resultantly, the **Appeal C/40065/2020** filed by assessee-importer stands allowed with consequential benefits, if any, as per law.

8. The Department has filed Appeal **C/40096/2020** being aggrieved by the non-imposition of redemption fine under Section 125 *ibid* since the goods were not physically available, by way of its grounds of appeal but, however, since we have held that the classification declared by the assessee was in order, there was no scope for levying or demanding duty and the consequential interest and penalty and hence, the goods are not liable for confiscation. We therefore do not find any infirmity in the non-levy of redemption fine for above reasons. In the result, Department Appeal **C/40096/2020** is dismissed.

II) Appeals C/40281/2020 & C/40291/2020

9. Appeal **C/40281/2020** is filed by Assessee-Importer against Order-in-Original No. 76/2020-AIR dated 25.01.2020. Brief facts are that assessee had imported “**Microphone**” which is a specialized item exclusively used in the PCBA of mobile phone by classifying them under 85183000, by availing ‘Nil’ BCD under Notification No.57/2017 [Sl.No.6(b)] upto 01.04.2018 and from 02.04.2018, under Sl.No.6(a). Entertaining a doubt that ‘Microphone’ is not eligible for ‘Nil’ BCD benefit under the above notification, Show Cause Notice dated 31.07.2019 was issued *inter alia* proposing to classify the same under 8518 which attracted BCD at 15%, apart from proposing to demand consequential interest and penalty. Assessee appears to have filed a detailed reply justifying its classification but, however, not satisfied with the reply, the original authority confirmed the proposals made in the SCN and it is against this Order-in-Original No.76/2020 dt. 25.01.2020, the appeal **C/40281/2020** has been filed by Assessee-Importer.

10. After having heard both sides, we find that this very Bench in the case of **Flextronics Technologies Pvt. Ltd.** (supra) has dealt with the classification of “Microphones” very exhaustively and further held that “Microphones” were not eligible for exemption as claimed by the assessee under Sl.No.6(a) of Notification No.57 (supra) as under :

MICROPHONES

Department’s View:

9.0 The following points have been made by Revenue:

- a) The microphones are complete and distinctly identifiable commodities imported as such. As per Boards Circular 09/2016-Customs dated 11/03/2016 all microphones are classifiable under tariff item 85181000.
- b) Microphone, receiver etc. are known in trade parlance as distinct commodities and not as parts of PCBAs.
- c) 'Microphones' are not eligible for concessional rate of duty under S. No. 6A of Notification No. 57/2017-Cus. dated 30.06.2017 as they are not a part of PCBA. Further S. No. 18 of the same Notification, specifically denied exemption from the tariff rate to microphones of cellular mobile phones. They do not form the basic construction component of a PCBA and are not inputs or parts for use in manufacture of PCBA's. The claim to exemption must be viewed in light of the whole Notification applying the principle of harmonious construction.
- d) The specific exclusion of microphones from S. No. 6A brought in by Notification No. 24/2019-Cus. dated 06.07.2019 is to make the exclusion clear.
- e) PMP Notification issued from File No.4(8)/2016-IPHW dated 28/04/2017 and D.O letter of TRU No 334/4/2018-TRU dated 01/02/2018 (??) [Circular DOF No. 334/3/2019-TRU dated 05/07/2019] issued at the time of introduction of the Finance Bill, 2009 and subsequent tariff changes bring out the intention and object of the legislative change.
- f) The benefit under S. No. 427 of Notification No. 50/2017-Cus. dated 30.06.2017 is not applicable to microphones as it is a general provision which is applicable to all goods as opposed to Notification No. 57/2017-Cus. which applies to electronic items with specific entries pertaining to mobile phone parts like microphones, receivers, etc. The entry at Sl. No. 4 in List No. 20 "Microphones, Microphone cartridges" deals with microphones per se (standalone and not mobile parts).

Appellant's Averments

9.1 The following pleadings have been made by the Appellant:

- (i) All microphones, irrespective of whether they are used in cellular mobile phones or otherwise are covered in List 20 (S. No. 427) of Notification No. 50/2017-Cus. dated 30.06.2017.
- (ii) The 'microphones' imported by Flextronics are transducers/variable capacitors that convert acoustic pressure waves to electric signals. They are parts mounted on Printed Circuit Board Assembly (PCBA) of cellular mobile phones using Surface Mounting Technology (SMT) and are therefore eligible for exemption under S. No.

6A of Notification No. 57/2017-Cus. dated 30.06.2017.

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

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

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

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

9.3 The first dispute relates to whether 'microphones' are eligible for concessional rate of duty under S. No. 6A of Notification No. 57/2017-Cus. dated 30.06.2017 as part of PCBA or should be denied exemption as they are not parts of PCBA's and are also specifically covered under S.No. 18 of the same Notification, which specifically denied exemption to microphones of cellular mobile phones. S. No. 6A and 18 of the said Notification are extracted below:

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

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

S. No.	Chapter or Heading or Sub-heading or tariff item	Description of goods	Standard rate	Condition No.

(1)	(2)	(3)	(4)	
18	8518	All goods other than the following parts of cellular mobile phones, namely:- (i) Microphone (ii) Wired Headset (iii) Receiver	10 %	-

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

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

(b) "Printed Circuit Board Assembly (PCBA)" means printed circuit board assembled with electronic components such as resistors, capacitors, diodes, inductors, ICs and vmechanical components such as contact springs or connectors of charger or adapter of cellular mobile phones.

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

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

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

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

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

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

para 8, it was said:

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

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

“Now the statute affects nearly everyone, the producer or manufacturer, the importer, wholesaler and retailer, and finally the consumer who, in the last analysis, pays the tax. Parliament would not suppose in an Act of this character that manufacturers, producers, importers, consumers, and others who would be effected by the Act, would be botanists. The object of Excise Tax Act is to raise revenue, and for this purpose to class substances according to the general usage and known denominations of trade. In my view, therefore, it is not the botanist's conception as to what constitutes a 'fruit' or 'vegetable' which must govern the interpretation to be placed on the words, but, rather what would ordinarily in matters of commerce in Canada be included therein. Botanically, oranges, and lemons are berries, but otherwise no one would consider them as such.” (emphasis added)

The Apex court stated:

“But this word must be construed not in any technical sense nor from the botanical point of view but as understood in common parlance. It has not been

defined in the Act and being a word of everyday use it must be construed in its popular sense meaning 'that sense which people conversant with the subject-matter with which the statute is dealing would attribute to it'. It is to be construed as understood in common language."

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

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

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

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

(emphasis added)

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

interpretation to be eligible for exemption under another SI no of the same notification by elaborate discussions on what constitutes inputs or parts of a PCBA.

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

We find that Notification No. 24/2019 Cus dated 06.07.2019 amending SI. No 6A of Notification No. 57/2017-Cus. inserted a 'proviso' to negativate the inclusion of specific goods under SI. No. 6A. An insertion clarifying the legal position with respect to goods which was earlier not correctly understood, puts it beyond any possibility of controversy. By describing the given goods with a hard and fast exclusion, whereby no other meaning can be assigned to the goods in dispute, is clarificatory in nature and will be effective from the inception of the notification. In **Commissioner of Income Tax, Bombay & Ors. v. Podar Cement Pvt. Ltd. & Ors.** [AIR 1997 SUPREME COURT 2523 / (1997) 5 SCC 482] it was held that a clarificatory statute would be retrospective in nature. If two views on an existing provision were not prevailing or possible, in such a situation the amendment would not be held to be clarificatory. In **Commissioner of Income Tax-I, Ahmedabad v. Gold Coin Health Foods Pvt. Ltd.** [(2008) 11 SCALE 497], a three Judge Bench of the Apex Court held :

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

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

circumstances under which the amendment was brought in existence and the consequences of the amendment would have to be understood in terms of government policy on cellular phones which is discussed below.

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

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

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

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

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

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

9.11 Exemption notification should be interpreted strictly.

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

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

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

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

It is the contention of Revenue that Notification No. 50/2017-Cus. is a

general exemption notification covering standalone microphones, whereas Notification 57/2017 dated 30/06/2017, applies to electronic items with specific entries for mobile phone parts. The learned AR has taken us to the HSN notes for Chapter 85.18 wherein it has been stated that there are many varied applications of microphones (e.g., in public address equipment, telephony; sound recording; aircraft or submarine detectors; trench listening devices; study of heart beats). Microphone does not refer to a single application product hence when a specific reference is made to a particular microphone in the notification it would have to prevail over a notification giving a general description of microphones. Exemption notification should be interpreted strictly. It is noted that both notifications i.e. 50/2017-Cus. and 57/2017-Cus. were issued on the same date. Hence there is some degree of ambiguity in the language used as there could not be an intention to tax the same goods differently on the same day and the notifications should be interpreted in favour of Revenue. Further in this situation as discussed above, general description in notification 50/2017-Cus. must yield to those of a specific description in 57/2017-Cus.

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

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

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

9.14 It is seen that PMP was notified with the objective of

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

9.15 Further as stated at the beginning of the discussion on 'microphones', the classification of the product was not in dispute. The is centered around the correct exemption notification for microphones. We have found that microphones were not eligible for exemption under S. No. 6A of Notification No. 57/2017-Cus. dated 30.06.2017 nor under S. No. 427 of Notification No. 50/2017-Cus. dated 30.06.2017. However, it is settled law that the extended period cannot be invoked when the case involves a genuine interpretative issue, which is not merely an excuse given by an Appellant when confronted for non-payment of duty. In such a situation the Appellant is not involved in a blame worthy act and no fine can be levied and penalty imposed. No mis-declaration or suppression of facts can be alleged in such a situation. The demand will have to be confined to the normal period with applicable interest. This view has also been held by the Apex Court in **Northern Plastic Ltd. v. Collector of Customs & Central Excise [1998 (101) E.L.T. 549 (S.C.)]**. We hold accordingly in this case too.

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

As regards the Department's appeal against the impugned order for non-imposition of redemption fine, the Hon'ble Supreme Court in **Asstt. Collector v. Bussa Overseas and Properties Pvt. Ltd.** [2004 (163) E.L.T. A160 (S.C.)], dismissed the SLP against the judgment and order dated 04/08/1992 of the Bombay High Court in **Bussa Overseas and Properties Pvt. Ltd. v. C.L. Mahar, Asstt. Collector** [2004 (163) E.L.T. 304 (Bom.)] The High Court had held that once the imported goods are

cleared for home consumption they cease to be 'imported goods' as defined in Section 2 of the Customs Act, 1962 and are consequently not liable to confiscation. This needs to be differentiated from the Supreme Court judgement in the case of **Weston Components Ltd. Vs Commissioner of Customs, New Delhi** [2000 (115) ELT 278 (SC)], wherein the Hon'ble Supreme Court, had earlier upheld confiscation of goods and consequently imposition of redemption fine on the goods not physically available but the same (goods) were allowed provisional release under Bond. In the present case no bond has been executed by the Appellant for the clearance of goods. The Hon'ble Supreme Court again in **Commissioner Vs Finesse Creation Inc.** [2010 (255) E.L.T. A120 (S.C.)], dismissed the SLP filed by Commissioner of Customs (Import) against the Judgment of the High Court of Bombay in **Commissioner Vs Finesse Creation Inc** [2009 (248) E.L.T. 122 (Bom.)]. The High Court had distinguished the Apex Court decision in case of Weston Components Ltd. (supra), while holding that concept of redemption fine arises in the event the goods are available and are to be redeemed, and if goods are not available, there is no question of redemption of goods. In any case the Appellant has not been found committing a blame worthy act and the demand has been restricted to the normal period. Hence the appeal filed by Revenue is rejected.

9.17 Judgments on exemption to cellular microphones

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

9.18 In **Vivo Mobile India - I** (supra) a Coordinate Bench of this Tribunal examined a similar matter pertaining to exemption for microphones used in cellular phones. The matter in the judgment on merits was confined to exemption for cellular microphones under Notification No. 57/2017-Cus. dated 30.06.2017. The discussions were limited to microphones being part of a PCBA and hence being eligible for exemption as per sl no 6A of the said notification. In the case of Notification No. 50/2017-Cus. dated 30.06.2017, the matter was discussed in the context of the eligibility of the appellant claiming the exemption at the Appellate stage. The **Sennheiser Electronics India** (supra) the judgment of a Coordinate Bench lacks a detailed discussion on the issue which deprives it of precedential value. The onus of proof, for being eligible for the exemption, being on the appellant, they should have led the discussion on the accepted principles of law in this regard and shown that they satisfied the same. We find that when faced with ambiguity, the judgments have not examined the conflict in two sl nos of the same notification or between two notifications issued on the same date with regard to the impugned goods that are a subject matter of a specific policy formulation of the government and try to resolve it

by considering the law as per the statute and also as declared by the Apex Court in a number of cases, in as much as;

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

(ii) Notification No. 24/2019 Cus dated 06.07.2019 amending Sl. No 6A of Notification No. 57/2017-Cus. by introducing a 'proviso' only seeks to remove the confusion which pertains to two Sl. Nos. of the same notification and is only clarificatory in nature and will hence have retrospective effect. The Appellant in this case agrees that the amendment removes the exemption benefit for the impugned goods, but only prospectively. [**Commissioner of Income Tax, Bombay & Ors. v. Podar Cement Pvt. Ltd. & Ors.** [AIR 1997 SUPREME COURT 2523 / (1997) 5 SCC 482]]

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

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

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

(vi) that a Constitutional Bench of the Apex Court held that the burden of proof would be on the assessee to show that his case comes within the parameters of the exemption clause or exemption notification. [**Commissioner of Customs (Import) Vs M/s Dilip Kumar and Company & Ors.** [AIR 2018 SUPREME COURT 3606 / AIR ONLINE 2018 SC

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

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

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

11. However, this Bench in the aforecited case supra has held that there was no suppression involved since the case involves a genuine interpretative issue for which, extended period could not be invoked. Hence, the demand, if any, is to be confined to the normal period with applicable interest, if any. Following the same, we hold that “Microphone” is not eligible for exemption and the demand is restricted to normal period with applicable interest. The impugned order stands modified to this extent. Appeal **C/40281/2020** is partly allowed with consequential benefits, if any, as per law.

12. The Department has filed Appeal **C/40291/2020** being aggrieved by the non-imposition of redemption fine under Section 125 ibid since the goods were not physically available by way of its grounds of appeal but, however, since we have held that the classification declared by the assessee was in order, there was no scope for levying or demanding duty and the consequential interest and penalty and hence, the goods are not liable for confiscation. We therefore do not find any infirmity in the non-levy of redemption fine for above reasons. In the result, Department Appeal **C/40291/2020** is dismissed. The cross objection filed by Assessee in this appeal stands disposed of.

III) Appeal C/40279/2020 & C/40293/2020

13. Appeal **C/40279/2020** is filed against Order-in-Original No.130/2020-AIR dt. 13.02.2020 whereby the Commissioner has rejected the classification of impugned goods viz. "**Connectors**" as adopted by Appellant and ordered re-classification of subject goods under CTI 85177090. Brief facts are that during Post-Clearance of Audit of various Bills of Entry filed by Importer-Appellant, it was observed by Audit that the imported items declared as "Connectors", were classified by appellant under CTH 85369090 and claimed benefits under Notification No.50/2017 Sl.No.427 (List 20). It was viewed that the imported items are rightly classifiable under CTH 85177090 and BCD @ 10% is applicable on Connectors used in Cellular Mobile Phone, as per Customs Notification No.37/2018 dated

02.04.2018 Sl.No.5B (amending Notification No.57/2017 dt. 30.06.2017) and 40/2018 dated 02/04/2018 (amending Notification No.50/2017 dated 30.06.2017. Assessee appears to have filed a detailed reply justifying its classification but, however, not satisfied with the reply, the original authority confirmed the proposals made in the SCN and it is against this order, the present appeal **C/40279/2020** has been filed before this forum.

13.1 In so far as connectors are concerned, they were claimed to be essential parts for the manufacture of mobile phones and therefore covered *vide* Sl. No. 6A of Notification No.57/2017 dated 30.06.2017; they were also exempted from BCD vide Notification No.50/2017 dated 30.06.2017 -Sl. No. 427 list 20 and that parts of mobile phone, in any case, were exempted from BCD till 01.04.2018.

13.2 Notification No.57/2017 *supra* has provided the definition of PCBA as printed circuit board assembled with electronic components, such as resistance, capacitors, diodes, inductors, IC, and mechanical components such as contact springs, or connectors of charger or adapter of cellular mobile phones. Connectors are distinctly identifiable commodity/parts of mobile phone and were imported as such. The said Notification has specific entries pertaining to mobile parts like connectors, microphone, receiver, etc. and in respect of connectors, the definition explicitly states that only those connectors which will be used to connect power adapter for charging mobile will be considered as part of PCBA.

13.3 Amending Notifications to the original Notification No. 57 *Supra* dated 30.06.2017 by which Sl. No. 6A was inserted, subsequently came to be modified with another Notification No.37/2018 dated 02.04.2018. In the said Notification, the description of goods is inputs or parts for use in manufacture of PCBA of cellular mobile phones; inputs or sub – parts for use in manufacturer of parts mentioned in the above.

13.4 The same was further modified *vide* Notification No. 24/2019 dated 06.07.2019 wherein, exception class was added to the effect that 'nothing contained in the entries mentioned at items A and B shall apply to *inter alia*, connectors, microphones and receivers'. The said restriction/exception was continued even vide Notification No.03/2021 – Customs dated 01.02.2021.

13.5 From the above, it boils down to the fact that inputs or parts for use in manufacture of PCBA of cellular phones are eligible for exemption under Serial No. 6A, irrespective of their classification under any chapter. That is to say, the only requirement to avail the above benefit is that the product in question must be an input or a part of PCBA. Connectors are mounted on the PCB, which is used to transfer the signal or power from one PCB to another or transfer to PCB from another source within the unit. Connectors provide an easy method of design for manufacture as the PCB are not hard wired and could be assembled later in the production process. There are, in fact, different types of connectors that are used in cellular

phones, some of which require placement in PCBA and some of the other form part of back-end assembly of the mobile phone and these connectors are claimed to be an integral/essential part of a mobile phone.

13.6 The PCBA though a separate part of a mobile phone forms the backbone of the said phone and all inputs or parts of the phone are connected to PCBA either directly or indirectly. Connectors play an important role in completing the PCBA circuiting and would form a part of the PCBA and are thus covered by Sl. No. 6A of Notification 57/2017-Cus dated 30.06.2017. Therefore, it is only in the subsequent Notifications viz. No.37/2018, No.24/2019 and No.03/2021, the scope of PCBA came to be restricted by incorporating exclusions. Therefore, when through the subsequent Notifications, items like connectors, microphones, receivers, etc. are excluded, all the inputs and parts that are specifically excluded will not get the benefit of exemption. In the light of the above subsequent amending Notifications, the connectors would also not be eligible for any benefit. However, the fact remains that the exemption to BCD was very much available in terms of Notification No. 24/2019 *Supra*.

14. In view of our above discussions above, we hold that the Assessee is eligible for benefit for exemption for the subject goods viz. "Connectors". Appeal No.**C/40279/2020** is allowed with consequential benefits, if any, as per law.

15. The Department has filed Appeal **C/40293/2020** against the very same Order-in-Original No.130/2020 dated 26.02.2020 being aggrieved by the non-imposition of redemption fine under Section 125 ibid since the goods were not physically available by way of its grounds of appeal but, however, since we have held that the classification declared by the assessee was in order, there was no scope for levying or demanding duty and the consequential interest and penalty and hence, the goods are not liable for confiscation. We therefore do not find any infirmity in the non-levy of redemption fine for above reasons. In the result, Department Appeal **C/40293/2020** is dismissed. The cross objection filed by Assessee in this appeal stands disposed of.

IV) Appeal Nos.C/40252/2020 & C/40294/2020

16. Appeal No.**C/40252/2020** is filed by Appellant-importer against Order-in-Original No.803/2019-AIR dated 09.12.2019 whereby the Commissioner of Customs, Chennai-VII has rejected the classification adopted for the impugned goods by appellant in the subject Bills of Entry as listed in Annexures A to Z of SCN and ordered reclassification of subject goods under Customs Tariff Item 39209999. Brief facts are that during Post Clearance Audit of various Bills of Entry as annexed to SCN dt. 16.07.2019, it was observed by Audit that the importer had declared the imported goods as "**Rear Cover, A Cover, D Cover Assy. B Cover, Front Housing, Rear Housing, Camera Lens, Front Cover ASM and Battery Cover ASM**" and classified these items under 85177090 and paid BCD @ 5% by claiming the benefit under Customs Notification No.50/2017-

Sl.No.499 and in pursuance to IGST Notification No.01/2017 dated 28.06.2017, effective from 1st July 2017, the IGST was paid @ 12% under Schedule II, Sl.No.202 of CTH 8517. However, Audit was of the opinion that the imported goods are made of plastics and appropriately classifiable under CTH 39209999, hence attract BCD @10% which has been increased to 15% w.e.f. 02.02.2018 vide Customs Notification No.57/2017 as amended. After due process of law, the adjudicating authority (i) rejected the classification adopted by Appellant and reclassified under 39209999, (ii) confirmed the differential duty demand as proposed in the SCNs (iii) ordered for confiscation of subject goods and (iv) imposed penalty under Sec. 112 (a) *ibid*. It is against this order that the Appeal No.C/40252/2020 has been filed by Appellant-Importer before this forum.

17. After having heard both sides, we find that this Bench in the case of **Flextronics Technologies Pvt. Ltd.** (*supra*) has dealt with the classification of "Battery Cover, Back Cover, Camera Lens and Front cover" and held in para 11 as under :

"(III) Battery Cover, Back Cover, Camera Lens and Front Cover -

The Department has not been able to prove its charge of classifying the impugned good under CTH 3920 9999 as done by the appellant holds good. Since Notification No.50/2017 (Sl.No.99) as amended is applicable to parts of cellular phones falling under CTH 851770, the impugned goods are eligible for the same. The impugned order hence merits to be set aside.

18. Following the ratio in the *aforecited* decision *supra*, we hold that the impugned goods, as listed above being parts of cellular phones falling under CTH 85177090, are eligible for

the benefit of exemption under Notification No.50/2017 (Sl.No.499) as amended. The impugned order is set aside and Assessee's Appeal **C/40252/2020** is allowed. As a consequence, for the reasonings recorded in the preceding paras of this order, the Department appeal No. **C/40294/2020** is dismissed. The cross objections filed by assessee in this Department appeal stands disposed of.

20. In the result,

(i) the Assessee's Appeals No.**40065/2020, 40252/2020, 40279/2020** are allowed with consequential benefits, if any, as per law.

(ii) Assessee Appeal No.**C/40281/2020** is partly allowed, with consequential benefits, if any, as per law.

(ii) Department Appeals No.**40096/2020, 40291/2020, 40294/2020, 40293/2020** are dismissed. Cross objections filed by Assessee stand disposed of.

(Order pronounced in the open court on 17.01.2025)

sd/-

(M. AJIT KUMAR)
Member (Technical)

sd/-

(P. DINESHA)
Member (Judicial)