

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH- COURT NO. I

Customs Appeal No. 51777 of 2021

(Arising out of Order-in-Appeal No. 11/2021/MKS/Pr.Commr./ICD-Import/TKD dated 26.07.2021 passed by the Principal Commissioner of Customs (Import), New Delhi)

M/s. Elentec India Pvt. Ltd.

B- 8/14, First Floor, Vasant Vihar,
New Delhi- 110057

...Appellant

Versus

**Principal Commissioner, Customs
(Import) – New Delhi (ICD TKD)**

Inland Container Depot, Tughlakabad,
New Delhi- 110020

...Respondent

APPEARANCE:

Shri Jayant Kumar, Advocate for the Appellant

Shri Nagendra Yadav, Authorized Representative for the Department

CORAM:

HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT

HON'BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)

DATE OF HEARING/ DECISION: November 27, 2024

FINAL ORDER NO. 59738/2024

JUSTICE DILIP GUPTA:

This appeal relates to classification of the front cover; middle cover and back cover and few other parts of the mobile phones imported by the appellant.

2. This issue has been decided in favor of the appellant by this Division Bench of the Tribunal in **Vivo Mobile India Pvt. Ltd. and others Vs Principal Commissioner of Customs, New Delhi¹** and it has been held that:

1. 2024-TIOL-149-CESTAT-DEL

"76. To sum up:

- a. Classification of the goods is a part of assessment and the importer, the proper officer and appellate authorities alone are competent to decide it.
- b. The policy of the MeITY, which is in the nature of an executive policy decision of that Ministry cannot determine the classification of goods under the Customs Act firstly, because the authority making the policy is not empowered under Section 17 and secondly because the policy is not a quasi-judicial, appealable decision but is a policy decision while classification of goods is a part of assessment and is a quasi-judicial and appealable function.
- c. The exemption notification issued by the Government under Section 25 exempts goods and does not determine the classification. If the description of the goods and also the CTH match with the notification, its benefit is available and not otherwise. Therefore, an exemption notification cannot determine the classification but it must be applied after classifying the goods.
- d. Based on the Customs tariff and the nature of the goods, we determine the classification of the goods in favour of the appellants and against the Revenue.
- e. The importer assessee has no obligation under the law to anticipate under which heading the proper officer may classify the goods and match their self-assessment with it.
- f. Classification of the goods in the Bill of Entry by the importer is essentially a part of the self-assessment under Section 17 which,

even if found incorrect, does not attract confiscation of the goods under Section 111 (m) or the consequential penalty under Section 112.

g. The classification of none of the goods in any of the appeals under CTH 39209999 as held by the Commissioner in the impugned orders can be sustained.”

3. The Civil Appeal filed by the department against the aforesaid order of the Tribunal in **Vivo Mobile India Pvt. Ltd. and others** was dismissed by the Supreme Court on 10.07.2024 and the order is reproduced below:

“Delay is condoned in filing the Civil Appeal. After having heard the learned counsel appearing for the appellant, we find no error in the view taken by the Customs, Excise and Service Tax Appellate Tribunal.

Hence, the Civil Appeal is dismissed.”

4. The impugned order dated 27.07.2021 passed by the Principal Commissioner of Customs rejecting the classification of the goods self-assessed by the appellant under CTH 8517 70 90 and ordering re-assessment under CTH 3920 99 99 is set aside and the appeal is allowed.

(Order dictated in the Open Court)

(JUSTICE DILIP GUPTA)
PRESIDENT

(P.V.SUBBA RAO)
MEMBER (TECHNICAL)