

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL  
NEW DELHI  
PRINCIPAL BENCH-COURT NO. 4**

**CUSTOMS APPEAL NO. 50292 OF 2022**

[Arising out of Order-in-Appeal No. CC(A)/ Cus./D-1/Import/NCH/3877-79/2021-22 dated 12.11.2021 passed by the Commissioner of Customs (Appeals), New Delhi]

**RF GENIE ENTERPRISES PRIVATE  
LIMITED**

**.....APPELLANT**

W-153, 2<sup>nd</sup> Floor, Greater Kailash Part-1, New  
Delhi-110 028

VERSUS

**COMMISSIONER OF  
CUSTOMS(APPEALS)- NEW DELHI**

**.....RESPONDENT**

New Customs House, New IGI Airport,  
New Delhi-110014

**Appearance:**

Shri B.L. Narasimhan, Ms. Kruti Prashar and Ms. Aditi Sharma,  
Advocates for the Appellant

Shri Rajesh Singh, Authorised Representative for the Respondent

**CORAM:**

**HON'BLE MR. S.S. GARG, MEMBER (JUDICIAL)**

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

**FINAL ORDER NO. 51838 /2025**

**DATE OF HEARING: 02/12/2025**

**DATE OF DECISION: 08/12/2025**

**P.V. SUBBA RAO**

1. M/s RF Genie Enterprises Pvt Ltd.<sup>1</sup> filed this appeal to assail the order dated 12.11.2021 passed by the Commissioner of Customs (Appeals) New Customs House, New Delhi wherein he upheld the order dated 03.09.2020 passed by the Additional Commissioner and dismissed the appellant's appeal except to the extent of setting aside the penalty under section 117 imposed on

---

1. **the appellant**

the appellant. He upheld the demand of duty under section 28 (1) of the Customs Act 1962<sup>2</sup> along with interest only.

2. We have heard learned counsel for the appellant and learned authorized representative appearing for the Revenue and perused the records.

3. The short question to be answered is whether the "One Time Seal with RFID" imported by the appellant is correctly classifiable under Customs Tariff Item<sup>3</sup> 8523 59 10 as classified by the appellant in the Bills of Entry or under CTI 8309 90 30 as held in the order-in-original of the Additional Commissioner and upheld by the impugned order.

4. When goods are imported and exported in containers they are sealed with one time seals which are also known as One Time Locks or Bottle Seals. These come in two parts. After shutting the doors of the container, one part of the seal is inserted from the top and the second part is inserted from the bottom and pressed together. Once pressed the two parts click and they cannot be separated; the only way to open the container is to break the seal. These seals have the details of the manufacturer and serial number on each seal. If a seal is broken and is replaced with another seal, it can easily be verified by checking the sr. no. of the seal. These bottle seals or one time locks have been used for a long time.

---

**2. The Act**  
**3. CTI**

5. There are another type of one time locks in which, there is a Radio Frequency Identification Tag which has an electronic chip PCB circuit and an RFID antenna build into it. If the container is sealed with OTL with RFID tag, the serial number of the tag need not be physically examined. As the container passes through scanners the information in the RFID tag is read by the scanners. If the seal is tampered with it, it is indicated by the scanner. In addition to the serial number, the RFID tags and also store shipment details, container information, tamper status and possibly real time tracking of the movement of the container. The appellant had imported one time seals with RFID tags. According to the Revenue these are essentially one time seals with additional functionality of having RFID tags and hence are classifiable as seals under CTI 8309 90 30. According to the appellant, these are classifiable as proximity tags, cards and tags under the CTI 8523 59 10.

6. The CBIC had issued a Instruction no. 16/2018 dated 08.10.2018 stating that they deserved to be classified as RFID tags under 8309 90 30. The consignments were imported by the appellant between December, 2017 and September, 2018 before the issue of this Instruction. Three show cause notices dated 26.12.2019, 26.12.2019 and 24.02.2020 were issued to the appellant after the CBEC issued Instruction no. 16/2018. However, the reasons for re-classification of the seals with RFID tags given in the SCNs included both the fact that the goods were

classifiable under 8309 90 30 as per the Customs Tariff and also the Instruction No. 16/2018.

7. The first submission of the learned counsel for the appellant is that the CBEC circular cannot be applied retrospectively because it is an oppressive circular. He submits that the settled legal position is that any Circular issued by the CBEC must be applied retrospectively if it is in favour of the assessee (facilitating circular) and must only be applied prospectively if it is against the assessee (oppressive circular). It is the submission of the learned counsel that since this CBEC Instruction increases the duty payable, it is oppressive and hence it should only be applied prospectively and it cannot be applied to the imports made by the appellant between the December, 2017 and September, 2018. He relied on the following judgments:

- (i) **Suchitra Components vs. Commissioner of Central Excise,**<sup>4</sup>
- (ii) **Commissioner of Central Excise vs. Mysore Electricals,**<sup>5</sup>
- (iii) **H.M. Bags Manufacturer vs. Collector of Central Excise,**<sup>6</sup>
- (iv) **Commissioner of Service Tax, Delhi II vs. Religare Securities Limited**<sup>7</sup>
- (v) **DTM Construction (India) Ltd. vs. Commissioner of Service Tax,**<sup>8</sup>

---

4 2007 (208) E.L.T. 321 (SC)

5 2006 (204) ELT 517 (SC)

6 1997 (94) E.L.T. 3(SC)

7 Final Order No. 51097/2023 dated 11.08.2023

8 (2024) 16 Centax 371 (Tri.-Del.)

8. The appellant had also taken this ground before the Commissioner (Appeals) and his findings on this issue are as follows:

"5.6. The next objection is about non applicability of Instruction No. 16/2018-Cus on past import. In this connection, I note that the Adjudicating Authority has decided the issue of classification on merits & not solely on the basis on Instruction No. 16/2018-Cus. Accordingly, the issue of retrospective or prospective application of Instruction No. 16/2018-Cus is inconsequential."

9. Learned authorized representative appearing for the department also vehemently argued that both the impugned order and the Order in Original were not merely based on the CBEC's Instruction but were also based on merits.

10. We have considered the submissions of both sides on this issue and we find that the CBEC's Instructions must be ignored while deciding this appeal because the imports were made before the Instructions. It only needs to be seen whether, on merits, the goods are classifiable under CTI 8523 59 10 or under CTI 8309 90 30.

### **Decision on Merits**

11. The relevant portion of the two Customs Tariff Items is as follows:

Tariff Item		Description of goods
8309		<b>STOPPERS, CAPS AND LIDS (INCLUDING CROWN CORKS SCREW CAPS AND POURING STOPPERS), CAPSULES FOR BOTTLES, THREADED BUNGS, BUNG COVERS, SEALS AND OTHER PACKING ACCESSOREIS, OF BASE METAL</b>
8309 10 00	-	Crown Corks
8309 90	-	<b>Other</b>

8309 90 10	---	Pilfer proof caps for packaging, all sorts, with or without washers or other fittings, of cork, rubber, polyethylene or any other material
8309 90 20	---	Aluminum caps, seals, capsules and closers
8309 90 30	---	<b>Other seals</b>

Tariff Item		Description of Goods
8523		<b>DISCS, TAPES, SOLID-STATE NON-VOLATILE STORAGE DEVICES, "SMART CARDS" AND OTHER MEDIA FOR THE RECORDING OF SOUND OR OF OTHER PHENOMENA, WHETHER OR NOT RECORDED, INCLUDING MATRICS AND MASTERS FOR THE PRODUCTION OR DISCS, BUT EXCLUDING PRODUCTS OF CHAPTER 37</b>
	-	Magnetic media
8523 29	--	Other
	-	Optical media
8523 49	--	Other
	-	<b>Semi-conductor media</b>
85 23 51 00	--	Solid-state non-volatile storage devices
8523 52	--	Smart Cards
<b>8523 59</b>	--	<b>Other</b>
<b>8523 50 10</b>	---	<b>Proximity cards and tags</b>

12. The submission of the learned counsel for the appellant is that the RFID tags cost a lot more (Rs. 60-90 per piece) than the traditional seals (Rs. 10-20 per piece) and they also provide the additional functionality of being able to check for identification of the container details shipping details and tamper status. According to him the RFID is the essential character of the good and, therefore, they should be classified under 8523 59 10 as RFID tags as per the General Rule of Interpretation Rule 3(b). It is his further submission that even if it can be argued that they can be classified under either of the CTIs, as per rule 3(c) of GIR, the latter entry must prevail over the earlier entry. The relevant portion of rule 3 of GIR is 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 (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 (a) or (b), they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration."

13. He, therefore, submits that CTI 8323 59 10 is the correct classification and, accordingly the demand of duty needs to be set aside. On the other hand, learned authorized representative for the Revenue submits that the invoice and bill of lading of the appellant describe the goods as "bolt seals" which is the essential character of the goods. For this reason, he submits that the goods are correctly classifiable under CTI 8309 90 30.

14. We have considered the submissions advanced by both sides on merits of classification. In order to determine the essential character of a good, it must be seen as to what it is intended to be and how it is sold and bought in the market.

15. A mobile phone, for instance, may have many excellent features such as that of calculator, diary for keeping notes, a minicomputer, a video player and camera, etc. Sometimes these other features may be overwhelmingly more than the primary

function of the mobile phone of receiving and making calls. However, when it comes to classification, what needs to be seen what is the essential character of the goods regardless of what other additional functions a good can perform. Therefore, they should be classified as mobile phones only.

16. On the other hand, a smart television has most functions of the computer and enables one to access the internet, hold video conferences, etc. However, it's essential character is that of television. The goods in question in this appeal are known as bolt seals or one time locks with RFID tags. The person who buys these goods uses them to seal the container. The additional functionality in the form of RFID chips which helps in keeping track of the container through sensors, etc., are additional functions. The value of these additional functions is a large proportion of the value of the goods as is evident from the comparable prices of the traditional seals and the RFID seals. However, this, by itself, does not change the essential character of the goods to RFID tags.

17. The submission of the learned authorized representative for the Revenue that these are the essentially seals must be accepted. In view of the above, we find that the goods are correctly classifiable under CTI 8309 90 30.

18. The show cause notices issued under Section 28(1) of the Act within the normal period of limitation can demand duty, inter alia, changing the classification of the goods as was done in this case. Both the order in original and the impugned order

determined the classification on merits and not merely applying the CBIC Instruction No. 16/2018.

19. The impugned order, therefore, needs to be upheld and is upheld. The appeal is, accordingly, dismissed.

[Order pronounced on **08/12/2025**]

**(S.S. GARG)**  
**MEMBER (JUDICIAL)**

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

Tejo