IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI
PRINCIPAL BENCH, COURT NO. IV

Appeal No. C/518071/16-CU[DB]

[Arising out of Order-in-Appeal No. CC(A)CUS/156/2016 dated21.03.2016, passed by the Commissioner of Customs, New Delhi]

M/s Hewlett Packard India **....Appellant**

Vs.

CC, New Delhi **....Respondent**

Appearance:

Ms. Disha Jain, Sh. S. Vasudevan, Advocate for the Appellant
Dr. S.K. Sheoran, DR for the Respondent

CORAM:

Hon'ble Shri Ashok Jindal, Member (Judicial)
Hon'ble Shri V. Padmanabhan, Member (Technical)

Date of Hearing: 16.12.2016

Date of Pronouncement:14.02.2017

FINAL ORDER NO. 50854 /2017-CU [DB]

Per V. Padmanabhan

The appeal challenges Order dated 21.03.2016 passed by the Commissioner Appeals (Customs) IGI Airport, New Delhi. The appellant imported 'HP Slate 6" Voice Tab' and filed Bill of Entry No. 4871337 dated 11.03.2014. At the time of importation, the goods were classified under CTH8517. However, Department took the view that the goods are classifiable as Customs Tariff Item (CTI) 8471 30 10 as a personal computer. Though the appellant did not agree to the classification adopted by the Department, they paid the applicable Customs duties at the higher rate under protest. In the speaking Order passed by the Original Authority dated 25.03.2014, the classification of the impugned goods was confirmed under CTI 8471 30 10. When this order was challenged before Commissioner (Appeals), he vide the Impugned order dated 21.3.2016 upheld the decision and confirmed the higher rate of duty paid on the same. Aggreived by the Impugned order the present appeal has been filed.

2. With the above background, we heard Ms. Disha Jain and Sh. S. Vasudevan, Ld. Advocates appearing for the appellant as well as Dr. S.K. Sheoran, Ld. DR for the respondent.

3. The main grounds on which the present appeal has been filed are summarized below:

a) The impugned goods are multi-function devices with the principal function of telephony.

b) The CBEC Circular No. 17/2007 dated 19.04.2007 (hereinafter referred to as "Circular No. 17/2007") has clarified that a hybrid product containing a cellular phone with camera and GPS is classifiable under customs tariff sub-heading 8517 12 as the principal function of these devices remain as telephony.

c) The CBEC Circular No. 20/2013 dated 14.05.2013 (hereinafter referred to as "Circular No. 20/2013") has clarified that devices with size specifications of or more than 170mm x 100mm x 45mm are too big to be used principally for making voice calls. The impugned goods, however, are well within this size limit and are smaller in comparison with the WCO HSC decision to classify machines commercially referred to as 'tablet computers'.

d) The impugned goods are hybrid between a phone and a tablet and are referred to as phones in the commercial and trade parlance.

e) The impugned goods were reviewed as a phablet under the Technology section in the various newspapers.

f) Even if the common parlance test is applied, the impugned goods are to be classified under CTH 8517.

g) The impugned goods cannot be classified under CTH 8471 in light of Chapter Note 5E.

4. During the course of hearing, the Ld. Counsel for the appellant submitted copies of the relevant export invoices issued by the exporter. They have pointed out that the country of export is Singapore and the goods have been classified under 8517 12 90, telephones as not computers under 8471.

5. The submissions of the Revenue in support of the Impugned order are as follows:

a) The Appellant has referred its product as a full featured tablet that offers voice calling facility; and advertised the same as more than a tablet, smarter than a phone.

b) From a reading of CBEC Circular No. 20/2013 it is clear that tablet computers are to be classified under CTH 8471 by application of Rule 1 of GRI (Note 3 to Section XVI and Note 5A to Chapter 84) and Rule 6.

(c) The appellant is not known for manufacturing of any smart phone and neither have they advertised for any such item. Thus, the functions mentioned and relatable to calling functions, etc. are merely incidental and the same do not alter the basic feature of the impugned goods which is a tablet.

(d) The technical specifications of the impugned good are as follows:

- 6 inch display with a dimension of 165mmx83.2mmx8.98mm
- Captive Touch Screen
- Quad Core processor
- Memory-16GB e MMC
- Dual cameras-front and rear
- Dual sim cards with dual SIM standby-voice calling
- 3G connectivity
- Front firing speakers-stereo sound, FM radio
- SO slot-Micro SO slot expandable upto 64GB
- Wireless-BT 3.0 EDR, Wifi 802, WAPI, GPS and AGPS Connectivity SIM-GSM

The ld. DR accordingly submitted that the import goods would be rightly classifiable under 8471 in view of the above.

6. For ready reference, two CTHs have been reproduced below:

8471		***Automatic data processing machines and units thereof; magnetic or optical readers, machines for transcribing data on to data media in coded form and machines for processing such data, not elsewhere specified or included***
8471 30	*-*	*Portable automatic data processing machines,* *Weighing not more than 10 Kg, consisting of at least a* *Central processing unit, a keyboard and a display:*
8471 30 10	*---*	*Personal computer*
8471 30 90	*---*	*Other*

8517		***Telephone sets, including telephones for cellular networks or for other wireless networks: other apparatus for the transmission or reception of voice, images or other data, including apparatus for communication in a wired or wireless network (such as a local or wide area network), other than transmission or reception apparatus of heading 8443, 8525, 8527 or 8528***
	-	*Telephone sets, including telephones for cellular networks or for other wireless networks:*
8517 12	*--*	*Telephones for cellular networks or for other wireless networks:*
8517 12 10	*---*	*Push button type*
8517 12 90	*---*	*Other*

7. The appellant has describe its product in the literature as a full feature tablet that offers voice calling facility. It is advertised as "more than a tablet, smarter than a Phone". From the technical specifications, it is seen that the device has a 6" display. We have

also perused as sample of the product. It is to be noted that the device has provision for inserting dual sim cards and has micro-phone and ear speaker fitted in such a way that device can be used for making phone calls by conveniently holding in hand. It is also seen that the technical features of the product is very high and is capable of use as a tablet for performing various computing functions.

8. The issue for consideration is whether the Impugned goods are classifiable under 8471 as an automatic data processing machine or under 8517 as telephone for cellular network. It is evident that the goods are capable of use both asset as cellular telephone as an automatic data processing machine (Tablet). With the advances and technology, there is a thin line between a tablet capable of being used as a telephone as well as a telephone capable of being used as a tablet.

9. Before we finalize the classification of the impugned goods, it is useful to refer to the relevant Section/Chapter notes which governed the classification of Automatic Data Processing Machine under 84 71. Note 3 to section 16(XVI) rights as follows:-

> *"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."*

Here, we have a machine which performs the alternative functions of Automatic Data Processing Machine as well as cellular telephone which function is considered as a principal function will be depending upon the user.

10. The classification under 8479 is only if the machines are capable of the following "Chapter note 5(A) to Chapter 84

(A) For the purposes of heading 8471, the expression "automatic data processing machine" means machine capable of:

(i) Storing the processing programme or programmes and at least the data immediately necessary for the execution of the programme;

(ii) Being freely programmed in accordance with the requirements of the user;

(iii) Performing arithmetical computations specified by the user; and

(iv) Executing without human intervention, a processing programme which requires them to modify their execution, by logical decision during the processing run.

Chapter note 5(D) specified as follows:

(D) Heading 8471 does not cover the following when presented separately, even if they meet all of the conditions set forth in paragraph (C):

(i) printers, copying machines, facsimile machines, whether or not combined;

(ii) apparatus for the transmission or reception of voice, images or other data, including apparatus for communication in a wired or wireless network (such as a local or wide area network);

(iii) loudspeakers and microphones;

(iv) television cameras, digital cameras and video camera recorders;

(v) monitors and projectors, not incorporating television reception apparatus.

11. From the above Chapter note 5(D); we find a clue to decide the correct classification of the Impugned goods. Having perused sample of the item, it is not in dispute that it has facility for transmission and reception of voice, that is in other words, it is capable of use as a cellular Telephone. The Chapter note 5(D) excludes apparatus which is capable of use as a telephone from classification under 8471.

11.From among the documents submitted by the appellant, we find that a copy of the World Customs Organization guidelines, which deal with tablet computers and its classification, has been attached. These are guidelines issued by the World Customs Organizations on the recommendation the harmonized nomenclature has been adopted all over the world for classification of goods by customs. These guidelines are reproduced below.

The above WCO guidelines suggest classification of tablet as an Automatic Data Processing Machine under 8471 in cases where the machine as dimensions mentioned as above. But, we find that the dimensions of the Impugned goods are smaller in comparison with the WCO guidelines for tablet, computers. Accordingly, in line with the WCO guidelines, the impugned goods may not be classifiable under 8471.

12. Once the classification under 8471 is ruled out, the alternate classification suggested is under 8517. When we peruse the export invoice of the goods from the hands of supplier, we noted that the goods have been classified under 85171290. Since the Custom Tariff is align with the harmonize Custom Nomenclature. We have no hesitation in concluding that the goods merit classification under 8517 and not under 8471.

13. In view of the above, the Impugned order is set aside and the appeal allowed.

[Pronounced in the Open Court on _14.02.2017]

Ashok Jindal
(Member Judicial)

V. Padmanabhan
(Member Technical)

RS