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

Custom Appeal No.C/171/2011-Cu[DB]
[Arising out of Order-In-Appeal No. CC(A)CUS/I&G/09/2011 dated 28.01.2011 passed by Commissioner of Customs (Appeals), New Delhi]

For approval and signature:
Hon'ble Mr. S.K. Mohanty, Member (Judicial)
Hon'ble Mr. Ashok K. Arya, Member (Technical)

M/s. Idapet Marketing ...Appellant

Vs.

C.C. New Delhi …Respondent

Appearance:
Mr.R.S. Sharma, Advocate for the Appellant
Mr. K. Poddar, AR for the Respondent

CORAM:
Hon'ble Mr. S.K. Mohanty, Member (Judicial)
Hon'ble Mr. Ashok. K. Arya, Member (Technical)

Date of Hearing.14.02.2017
Date of Decision 28.02.2017

Final Order No. 51994 /2017

Per Ashok K. Arya:

1. M/s. Iadept Marketing is in appeal against Order-In-Appeal No.09/2011 dated 28.01.2011 passed by Commissioner Customs (Appeals). The impugned order in appeal dated **28.01.2011** holds the classification of imported goods namely Eye Tracking System under Custom Tariff Heading CTH 90318000.

2. The appellant importer M/s. Iadept marketing has been represented by the Ld. Advocate, Shri R.S. Sharma and the revenue has been representated by ld AR, Shri K. Poddar.

3. The ld. Advocate for the appellant based on the appeal and the written submissions, mainly *inter-alia submits* as follows.

i) The subject import equipment was supplied to an Air Force Institute in India. The application was to record the reflexes reactions and actions of IAF pilots while in flight or in simulator. These recordings were to be studied and used as feedback data for improving their awareness about their deviations from SOP (Standard Operating Procedures) while they flew in aircraft or in simulator.

ii) The goods are appropriately classifiable under Heading 84715000 of the Schedule to Customs Tariff Act which cover the following

> "Processing units other than those of sub-headings 847141 or 847149, whether or not containing in ht same housing one or two of the following types of unit: storage units, input units, output units"

The imported goods are processing units containing of storage units, input units and output units per packing list enclosed and appropriated classification is under Heading 84715000 of the schedule to Customs Tariff Act.

iii) Imported goods are classifiable under 84715000 as per section note 4 of section XVI which provides as under"

> "Where a machine (including a combination of machines) consists of individual components (whether separate or interconnected by pipin, by transmission devices, by electric cables or by other devices) intended to contribute together to a clearly defined function covered by one of the headings in Chapter 84 or Chapter 85, then the whole falls to be classified in the heading appropriate to the function."

4 The ld. AR for the Revenue based on written submissions mainly submits as under:

a) The goods imported is "Eye Tracking System". It has got the specific function and it is based on the measurement principle and is used to measure consumer interaction with surroundings.

b) Chapter Note 5(E) says – "Machine incorporating or working in conjunction with an automatic data processing machine and performing specific function other than data processing are to be classified in the headings appropriate to their respective function or, failing that, in residual headings.

c) The Ld. AR refers to NIDB import data and states that Eye Tracking System was classified in case of imports made on 4.05.2016 at Delhi air Cargo under Chapter Heading 90318000 and again in case of imports at Bombay Air Cargo on August,4 2015 under the same heading that is 9031800.

5. We have carefully considered the facts on record and the submissions of both the sides. The rival classifications for the subject item are Customs Tariff Headings 84715000 and 9031800. The appellant wants to classify under Customs Tariff Heading 84715000, whereas Revenue wants classification of the subject item under Custom Tariff heading 90318000.

5.1 The description of the goods for chapter headings 8471 and 84715000 are given below:-

Tariff Item	**Description of goods**	**Unit**	**Rate of duty £#®**	
			Standard	**Preferential Areas**
8471	*Automatic data processing machines and units therof' magnetic or optical readers, machines for transcribing data on the data media in coded form and machines for processing such data, not elsewhere specified or included".*			
84715000	Processing units other than those of sub-headings 8471 41 or 8471 49, whether of not containing in the same housing one of two of the following types of unit: Storage units, input units, output units	u	Free	-

5.2 The description given for chapter heading for heading 9031 and sub heading 90318000 are given below:-

Tariff Item	**Description of goods**	**Unit**	**Rate of duty £#®**	
			Standard	**Preferential Areas**
9031	**-MEASURING or CHECKING INSTRUMENTS, APPLIANCES AND MACHINES, NOT SPECIFIED OR**			

	INCLUDED ELSEWHERE IN THIS CHAPTER; PROFILE PROJECTORS			
90311000	-Machines for balancing mechanical parts	[u]	7.5%	
90312000	-Test benches	[u]	7.5%	-
90314100	-Other optical instruments and appliances:--- For inspecting semiconductor wafers, or devices or for inspecting photo-masks on reticles used in manufacturing semiconductor devices	[u]	7.5%	
90314900	-Other optical instrument and appliances:--- Other	[u]	7.5%	
90318000	**--Other optical instruments, appliances and machines**	**[u]**	**7.5%**	

5.3 The literature 'given by the Revenue explains that in simple terms, 'Eye Tracking system' is for the measurement of Eye activity. 'Eye Tracking' is explained as follows:-

> *"In the simplest terms, eye tracking is the measurement of eye activity. Where do we look? What do we ignore? When do we blink? How does the pupil react to different stimuli? The concept is basic, but the process and interpretation can be quite complex."*

it has been mentioned by the appellant that this Eye Tracking Technology is used by the DRDO for checking physiological parameters and they supplied the same to Air Force Institute in India. The data supplied by the Revenue and the appellant indicated that the item is for cognitive, medical, marketing research studies. By reading description given for chapter 84.71, we find that it covers the items namely *automatic data machines* *and units thereof; magnetic and optical readers, machines for transcribing data on to data media in coded form and machines for processing such data, not else where specified or included.* Chapter sub heading 84715000 covers the goods which are *Processing units other than those of sub-headings 847141 and 847149, whether or not containing in the same housing one or two of the following types of units: storage units, input units, output units.*

5.3.1 Whereas chapter heading 9031 covers the items namely measuring or checking instruments, appliances and machines, which are not specified or included elsewhere in chapter 90. Further, chapter heading 90318000 covers the goods namely other instruments, appliances and machines.

5.4 The appellant says that the item imported is neither measuring or checking instrument nor these are optical instruments whereas Revenue says it has got specific function and is based on measuring principle and is used to measure consumer interaction with surroundings. There is no doubt that the item imported is eye tracking system having specific measurement function relating to eye activity. Thus undoubtly it measures activity of the eye and that is why it is called 'eye tracking system'. The Note 5 to chapter 90 reads :-

> "Measuring or checking optical instruments, appliances or machines which, but for this Note, could be classified both in heading 9013 and in heading 9031 are to be classified in heading 9031."

The appellant's argument that this has got input, output and processing unit cannot decide its classification under chapter heading 8471 or in chapter sub heading 84715000. Chapter 84 mainly covers machines and mechanical appliances and parts thereof. Further, chapter 8471 covers automatic data machines and so on. However from the literature given and the submissions made on behalf of both the sides, we find that the item has got specific measuring capability in case of activity of eyes and when Chapter 90 of Custom Tariff mainly covers the items namely, optical, photographic, cinematographic, measuring, checking, precision, medical or surgical instruments and parts and accessories thereof and when there is no exclusion for the subject item from chapter 90, considering note 5 to chapter 90, we are of the opinion that the item deserves classification under chapter 9031 and further under its sub heading 90318000.

6. In the light of the discussions made above and further for the reasons mentioned in the Orders of lower Revenue Authorities, the impugned order is sustained and the appeal dismissed.

(Pronounced in the open court on _28.02.2017_)

(Ashok K. Arya)
Member(Technical)

(S. K. Mohanty)
Member (Judicial)

Sakshi