CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No.2, R. K. Puram, New Delhi, Court No. 1

Date of hearing/decision: 10.04.2017

Customs Appeal Nos. 29 & 33 of 2012

(Arising out of order-in-appeal No. CC(A) CUS/ICD/430/2011 & CC(A) CUS/ICD/419/2011 dated 21.11.2011 & dated 03.11.2011 passed by the Commissioner of Customs (Appeals), New Delhi)

M/s Nippon Audiotronix Limited Appellant

Vs.

CC, New Delhi Respondent

Appearance:

Sh. S. D. Gaur, Advocate for the assessee

Sh. Yogesh Agarwal, AR for the Revenue

Coram:

Hon'ble Mr. Justice (Dr.) Satish Chandra, President
Hon'ble Mr. V. Padmanabhan, Member (Technical)

Final Order No. 52879 – 52880/ 2017

Per: **Justice (Dr.) Satish Chandra**:

The present appeals are filed against the order dated 21.11.2011 & 03.11.2011 passed by the Commissioner of Customs, New Delhi.

2. Brief facts of the case are that in March 2009, the appellant imported Car MP3 player under bill of entry dated 12.03.2009 and 05.03.2009 at the assessable value of Rs. 87,87,816/- and Rs. 1,66,56,955/-. The said goods were classified under 85198990 and duty was assessed @ 10% CVD alongwith cess etc. But the department opined that as per Notification No. 49/2008-CE (NT)

dated 24.12.2008 on MP3 player falling under Chapter 85 is leviable on retail sale price after allowing an abatement of 30%. Finally, the department demand duty of Rs.71,919/- after issue of show cause notice. Being aggrieved, the present appeals are filed by the appellant.

3. With this background, we heard Sh. S. D. Gaur, ld. Advocate for the assessee and Shri Yogesh Agarwal, ld. AR for the Revenue.

4. After hearing both sides and on perusal of record, it appears that the identical issue has come up before the Tribunal in the case of M/s Supreme Audiotronix Pvt. Ltd. vs. CC (ICD), New Delhi (C/A No. 623/2011-DB) vide Final Order No. 52100/2016 dated 08.06.2016 where it was observed that-

> "5. *It is clear that the appellant in the bill of entry classified the goods under 85198890 and paid BCD @ 10% while the BCD to MP3 Player is 5% as per Notification No. 21/2008-Customs. We also find that the classification for MP Player is 85198940. This shows that the appellant categorically classified the goods as other than MP3 Player. Serial No. 90 of the table appended to Notification No. 49/2008-CE(NT) dated 24.12.2008 allows 35% abatement from MRP for charging CVD on all goods other than MP3 player or MPEG 4 player. The goods were assessed according to the declaration of the appellant and cleared. Subsequently, the differential duty has been demanded on the ground that the goods were MP3 Players and therefore the abatement would be only 30%. We fail to understand as to on what ground/ basis it has been alleged/ asserted after the goods were cleared that those were MP3 players when the goods were not available for examination nor was there any evidence/ material on the basis of which it could be alleged/ asserted that the goods were MP3 players. It is also pertinent to keep in mind that it would have made no commercial sense for the appellant to pay higher BCD (@ 19%) if the goods were MP3 players on which BCD leviable*

was only 5% only for the sake of claiming abatement from MRP @ 35% instead of 30% for paying CVD.

6. In the foregoing circumstances, we do not find any sustainable ground to hold that the goods cleared were MP3 players. Consequently, the impugned order is set-aside and the appeal is allowed".

6. By following our earlier order (supra), we set-aside the impugned order and allow the appeals.

7. In the result, both the appeals are allowed.

(Dictated and pronounced in the open Court).

(V. Padmanabhan) Member (Technical)	(Justice (Dr.) Satish Chandra) President

Pant