

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH AT HYDERABAD**

Division Bench – Court No. – I

Customs Appeal No. 30566 of 2024

(Arising out of Order-in-Original No. HYD-CUS-004-COM-24-25 dt.07.06.2024 passed by
Principal Commissioner of Customs, Hyderabad)

M/s Medha Servo Drives Pvt Ltd

P-4/5B, Industrial Park, Nacharam,
Hyderabad, Telangana – 500 076

.....Appellant

VERSUS

**Commissioner of Customs
Hyderabad - Customs**

GST Bhavan, LB Stadium Road,
Basheerbagh, Hyderabad – 500 004

.....Respondent

with

Customs Appeal No. 30567 of 2024

(Arising out of Order-in-Original No. HYD-CUS-004-COM-24-25 dt.07.06.2024 passed by
Principal Commissioner of Customs, Hyderabad)

Y. Kasyap Reddy

Managing Director, M/s Medha Servo Drives Pvt Ltd,
P-4/5B, Industrial Park, Nacharam,
Hyderabad, Telangana – 500 076

.....Appellant

VERSUS

**Commissioner of Customs
Hyderabad - Customs**

GST Bhavan, LB Stadium Road,
Basheerbagh, Hyderabad – 500 004

.....Respondent

and

Customs Appeal No. 30568 of 2024

(Arising out of Order-in-Original No. HYD-CUS-004-COM-24-25 dt.07.06.2024 passed by
Principal Commissioner of Customs, Hyderabad)

B. Sanjay Reddy

General Manager, M/s Medha Servo Drives Pvt Ltd,
P-4/5B, Industrial Park, Nacharam,
Hyderabad, Telangana – 500 076

.....Appellant

VERSUS

**Commissioner of Customs
Hyderabad - Customs**

GST Bhavan, LB Stadium Road,
Basheerbagh, Hyderabad – 500 004

.....Respondent

Appearance

Shri Dr. L. Venkateswara Rao, Advocate for the Appellant.
Shri K. Sreenivasa Reddy, AR for the Respondent.

**Coram: HON'BLE MR. A.K. JYOTISHI, MEMBER (TECHNICAL)
HON'BLE MR. ANGAD PRASAD, MEMBER (JUDICIAL)**

FINAL ORDER No. A/30093-30095/2025

Date of Hearing: 09.01.2025

Date of Decision: 20.03.2025

[Order per: A.K. JYOTISHI]

M/s Medha Servo Drives Pvt Ltd (hereinafter referred to as the appellant) has come in appeal against the Order-in-Original dated 07.06.2024 (Impugned Order), passed by the Principal Commissioner of Customs, Hyderabad (Adjudicating Authority) vide Appeal No. C/30566/2024. Similarly, vide Appeal No. C/30567/2024, Mr. Y. Kasyap Reddy, Managing Director of the appellant company, has come in appeal against imposition of penalty under section 112(a) and section 114AA of the Customs Act, 1962; and vide Appeal No. C/30568/2024, Mr. B. Sanjay Reddy, General Manager of the appellant company, has come in appeal against imposition of penalty under section 112(a) and section 114AA of the Customs Act, 1962.

2. The adjudicating authority, vide the impugned order, examined the grounds leveled against the appellant for misclassification of certain imported goods and wrong availment of benefit under Notification No.57/2017 dt.30.06.2017. He has also examined the role played by other appellants viz., Mr. Y. Kasyap Reddy & Mr. B. Sanjay Reddy for imposition of penalty etc. After going through their submissions and evidence on record, he has, inter alia, rejected the classification of goods viz., Fiber Optic Transmitters/ Receivers/ Transceivers (impugned goods) of several models/make imported under various headings of Chapter 85 (other than CTH 85176290) and reclassified the impugned goods under heading CTH 85176290 in respect of bills of entry listed in Annexure-A to the SCN. He has also denied the benefit of exemption under S.No.20 of Notification No.57/2017 dt.30.06.2017. Thereafter, he has confirmed the demand of Customs Duty of Rs.2,84,67,205/-, confiscated the offending goods amounting to Rs.18,98,04,619/- under section 111(m) and 111(o) of the Customs Act and further, imposed fine of Rs.1,00,00,000/- in view of confiscation. In addition, he has imposed penalty of Rs.2,84,67,205/- on the appellant under section 114A and Rs.25,00,000/- under section 114AA of the Customs Act. He has also imposed penalty on other two appellants covered in Appeal Nos. C/30567 & 30568/2024.

3. The brief facts of the case are that the appellants are engaged in importing impugned goods through various ports and have been claiming benefit under S.No.20 of notification 57/2017 by paying Basic Customs Duty (BCD) @ 10%. On investigation by DRI, it was noticed by the department that the said availment of notification is wrong as the notification clearly excludes 'Optical Transport Equipment' (OTE) from the purview of S.No.20 of the said notification 57/2017, as amended, vide Notification No.75/2018-Cus dt.11.10.2018 and further amended vide Notification No.02/2019-Cus dt.29.01.2019.

4. Based on searches conducted at the premises of appellant as well as statements recorded of Mr. Y. Kasyap Reddy, Managing Director & Mr. B. Sanjay Reddy, General Manager, it was found that appellant had imported the impugned goods for Signaling System, Auxiliary Convertor, Traction Convertor, Solar Invertors, etc., which are used in Control Electronics, Power Electronics and Signaling Components and that the said goods were being used in the manufacture of traction convertor, signaling system. It was noted that optical transceivers are used to convert electrical signal into optical signal and vice versa, whereas, optical transmitters are used to convert electrical signal into optical signal and optical receivers are used to convert optical signal into electrical signal. It was further observed that based on the statements given by the Technical Director, these impugned goods can be considered as optical transport devices, which can be used for various applications like data transfer, voltage isolation application and Optical Transport Network (OTN), etc., even though they are using them for voltage isolation application in traction convertors and auxiliary convertors as end use. Certain devices like AXFE 1314, which can be considered as OTE, are used by the appellant as communication device, in their railway signaling equipment for sending and receiving optical data between their centralized control unit to distributed units in optical form. This has also been confirmed by the Mr. Y. Kasyap Reddy, MD, in his statement, wherein he has completely agreed with contents of the statement of Mr. Vinod Kumar Agarwal dt.30.08.2022. It was also noticed by the department that subsequent to initiation of investigation, the MD informed that they are importing goods under investigation under the HSN 85176290 based on the supplier's invoice and that only after the investigation was initiated, they have reassessed their import goods datasheets and found that Fiber Optic

Transmitters and Receivers are classifiable under the HSN 85423100 as Integrated Circuits under the category of Multi Component Integrated Circuits (MCOs), whereas, the Optical Transceivers, which are small modules and cannot function by themselves cannot be classified as OTE/OTN products. The department went through the technical literature, datasheets, end use, expert opinion, tariff entry and HSN explanatory notes for the contrasting tariff headings to come to the conclusion that the impugned goods are OTE, classifiable under CTH 85176290 and therefore, the appellants are ineligible for benefit under S.No.20 of the notification 57/2017. The department also invoked extended period under section 28(4) of the Customs Act, based on the fact that they have not complied with various provisions of Customs Act and in fact, they were completely aware that imported goods were not eligible for benefit under notification and therefore, misdeclared the goods under different CTH even though the goods were not classifiable under the said CTH. The evidence relied upon by the department was from the responses submitted by the appellant and communications made over email with their overseas supplier on the clarification of the CTH and the fact that CTH 8517 and the description mentioned in the invoices were ignored while filing corresponding bills of entry. It was alleged that based on the statements recorded under section 108 of the Customs Act that there is gross misdeclaration and in fact, the appellants have indulged in fraud when they deliberately misdeclared the details resulting in deceiving and leading the department into believing in falsehood.

5. On adjudication, the adjudicating authority has gone through the written submissions and other evidence on record. The adjudicating authority also allowed cross-examination in respect of the concerned expert who has provided technical advice, Mr. L. Umanand, HoD, Dept. of Electronic Systems Engineering of IISc, Bengaluru, who attended the personal hearing in virtual mode.

6. Based on the evidence, including written submissions, the adjudicating authority examined the classification in respect the impugned goods. He has also given due weight to the functionality of the articles imported, the details of which are at Para 16.5.2 of the impugned order. According to the same, the item FR50MHNR imported as fiber optic receiver is used to receive

optical signals through optical fiber cable and convert the optical signals into electrical signals. Similar, item AXFE 1311 imported as fiber optic transceiver has functions of both devices i.e., fiber optic transmitter and fiber optic receiver built into it. It is used for conversion of electrical signals into optical signals and vice versa and transmission/reception of optical signals through connected optical fiber cable. Insofar as item HFBR series of fiber optic transmitter and fiber optic receiver are concerned, it is used for conversion of electrical signals into optical signals and vice versa. The item AXFE 1314 imported as fiber optic transceiver has again both functions of fiber optic transmitter and fiber optic receiver. Therefore, essentially, it was held that optical transceivers are used to convert electrical signal into optical signal and vice versa, optical transmitters are used to convert electrical signal into optical signal and optical receivers are used to convert optical signal into electrical signal.

7. The adjudicating authority has also taken into account expert opinion given by Department of Electronics, IISc, Bengaluru, based on the datasheets of the supplier that the impugned goods would fall under the category of OTE. The adjudicating authority has also relied on the statement recorded under section 108 of Customs Act in respect of Mr. Vinod Kumar Agarwal, Technical Director of the appellant company, in which he has, inter alia, stated that the impugned devices can be considered as optical transport devices and can be used for various applications like data transfer, voltage isolation application and optical transport network, etc., as detailed in datasheet and all these devices are used for optical signal transportation and they are using them for voltage isolation application in traction convertors and auxiliary convertors. This fact was also confirmed by the MD of the appellant company in his statement dt.17.11.2022. The adjudicating authority has also gone through the tariff entries and the related HSN explanatory notes, especially explanatory notes to tariff heading 8517, which, inter alia, explains the coverage of items. As per the said explanatory notes, the category of other communication apparatus would, inter alia, also cover multiplexers and related line equipment (e.g., transmitters, receivers or electro-optical convertors).

8. The appellant submitted that transmitters and receivers were being used by them in the manufacture of electrical equipment i.e., traction

converter, which contains a component called IGBT (Insulated Gate Bipolar Transistor), and that IGBT is used for converting the Alternating Current of the range 2.5 KV to 2.8 KV to Director Current and then convert the same into three-phase Alternating Current ranging up to 2100 Volts maximum and since the final product Traction Converter falls under CTH 8504, hence, it cannot be classified under 85176290 and it would more appropriately be classified as parts of Traction Converter falling under CTH 8504. The adjudicating authority, however, felt that those parts, which in themselves, would constitute an article falling under a particular heading and the fact that optical fiber communication is used between traction computers and gate drive cards as well as technical literature would support the fact that fiber optic transmitter and receiver have many applications viz., industrial control data links, factory automation data links, information network, voltage isolation, PLCs, motor drives, sensor, meter and actuator interfaces, and voltage isolation is one of the applications and therefore, same would not be classifiable as part of item falling under CTH 8504.

9. As regards the appellant's contention that the goods imported by them would fall under CTH 8542 and not under CTH 8517, he has gone by the Note 12(b) to Chapter 85 in the HSN, whereby, Multi Component Integrated Circuit has been explained. Therefore, in terms of para 12(b)(iv), he has observed that MCOs are a combination of one or more monolithic, hybrid or multi-chip integrated circuits with at least one of the following components viz., silicon based sensors, actuators, oscillators, resonators, whereas, from the appellant's letter dt.03.10.2023 as well as datasheets of the transmitter and receiver, it is clear that they do not contain any of the parts like silicon based sensors, actuators, oscillators, resonators, etc. Therefore, on this ground itself, the impugned goods cannot be considered as MCOs falling under CTH 8542.

10. The objection taken by the appellant in respect of outcome of the cross-examination has also been dealt with at para 16.5.8.10.1 of the impugned order, where the appellants have, inter alia, themselves categorically stated that the said equipment is used in voltage isolation in Vande Bharat Express trains, though they are falling under the category of OTE.

11. Since this is an issue of interpretation of notification, inasmuch as the notification only extends the benefit to certain items and excludes certain items categorically, the notification needs to be interpreted and construed strictly. The adjudicating authority has relied on various judgments cited at para 17.5.1 of the impugned order including CC (Import), Mumbai Vs Dilip Kumar & Co. [2018 (361) ELT 577 (SC)], wherein, it was, inter alia, held that exemption notification should be interpreted strictly and the burden of proving the applicability will be on the assessee. Further, the Hon'ble Supreme Court has also held that when there is ambiguity in the exemption notification which is subject to strict interpretation, the benefit of such ambiguity cannot be claimed by the subject/assessee and it must be interpreted in favour of the revenue.

12. As regards invocation of extended period, the adjudicating authority has gone by the scheme of self-assessment introduced for import of consignments as well as various statutory provisions regulating import of consignment. Relying on various provisions, he observed that the appellants had initially classified the impugned goods under CTH 85176290 but wrongly claimed the benefit under S.No.20 of notification 57/2017. He also noted that whenever customs verified a bill of entry and reassessed the goods denying the benefit under the said notification, they have accepted the same and did not challenge such reassessment. It was also noted that even after reassessment by customs, they were still filing bills of entry claiming the benefit of said notification wrongly. He has also noted that appellant changed the description of fiber optic transmitter and receivers in bills of entry to 'integrated circuits', after initiation of investigation by the DRI, to suppress the true nature of goods imported and to misclassify the said goods with an intention to evade payment of BCD. It was also noted that though the supplier's invoice contained correct classification of the impugned goods under CTH 85176290, the appellants deliberately misdeclared and misclassified the goods under CTH 8542. It was also observed that they have also been importing various goods under the category of integrated circuits under CTH 8542 and therefore, they were fully aware of the differences between CTH 8542 and CTH 8517 and despite their seeking clarification from the supplier, wherein the supplier clarified that it would fall under CTH 85176290, the appellant continued to willfully misdeclare and misclassify the goods to avail exemption. Further, Technical Director and

Managing Director of the appellant company have already admitted in their statements that impugned goods are OTE, and despite that they continued to misdeclare.

13. Insofar as the confiscation of goods is concerned, the same was held to be liable for confiscation under section 111(m) & 111(o) of the Customs Act. Since in terms of section 111(m), when the goods do not correspond in respect of value or any other particular with entry made under the Act, the same shall be liable for confiscation. As far as the penalty is concerned, in the facts of the case, it was found that appellants have intentionally misdeclared and misclassified the goods and therefore, liable to penalty under section 114AA of the Customs Act.

14. Learned Advocate for the appellant has contested the impugned order primarily on the ground of classification and exclusion of impugned items. He submits that the proposed classification under CTH 85176290 is not correct as these impugned items are not complete apparatus and machine having independent function and they are basically components and further, that they are not capable of functioning independently. He also submitted that classification is contrary to the provisions in the relevant HSN entry for CTH 85176290. He has further explained the scheme of things in the HSN explanatory notes to support his contention that the entry covers two categories of goods; first one is telephone sets and the second one is other apparatus, whereas in their case, it is neither telephone set nor apparatus. He has not disputed that impugned goods are used as parts of static convertor/ auxiliary convertor for voltage isolation in Vande Bharat and other electrical trains being operated by Indian Railways. He is also relying on section note (1) to section XVI which includes certain category of items not covered within the said chapter. Learned Advocate has also, by relying on these general rules for classification, submitted that classification of goods shall be decided in terms of heading and further in any situation where the goods are primarily classifiable under two or more headings, classification shall be preferred under heading which provides most specific description over one providing general description. They have relied on the judgment in the case of CC (Import) Vs Reliance Jio Infocom Ltd [2023 (3) CENTAX 96 (Tri-Bom)], wherein, it was, inter alia, held that in the absence of evidence produced by the department that the goods in question are

designed to function independently as machine, the same cannot on standalone basis be considered as machine and have to be regarded as part only. In the case of CC, New Delhi Vs C-Net Communications (India) Pvt Ltd [2007 (9) TMI 15 –SC], the Hon'ble Supreme Court has applied the common parlance test, in the classification of the product 'decoder' and the Hon'ble Supreme Court interpreted the terms 'apparatus' as compound instrument or chain of series of instruments designed to carry out specific function or for a particular use. In the case of CC, Bangalore Vs Modicom Network Pvt Ltd [2005 (2) TMI 608 – CESTAT Bangalore], the Tribunal classified the modules (Main Switching Centre Hardware Upgrades) imported by the respondents under CTH 851790 as 'parts' and not as 'apparatus'.

15. Learned Advocate also relies on Circular No.08/2023 dt.13.03.2023, whereby, the CBIC has, in consultation with the Department of Telecommunications, made identification of products/equipment covered thereunder at (b) to (h) in Annexure-I of the circular. It is apparent that Fiber Optic Transmitters/ Fiber Optic Receivers do not figure under OTE & OTN products in items (b) and (c) under notifications. Insofar as denial of classification under CTH 8542, he submits that the impugned goods comply with the conditions inasmuch as both transmitter/receiver consists of (i) one or more monolithic integrated circuits, (ii) LED/Photodiode, (iii) LED/Photodiode formed on a single substrate as a single, integrated circuit as an indivisible part designed for assembly onto a printed circuit board and (iv) with two connection pins for the anode and cathode terminals. They have also relied on certain case laws as under in support that the items were electronic integrated circuits and therefore, rightly classifiable under CTH 8542 as items covered under CTH 8517 constitute a complete machinery or apparatus in itself:-

- a) Bradma of India Ltd Vs CC, Mumbai [2006 (204) ELT 82–(Tri-Mum)]
- b) CCE, Bangalore Vs Priya Raja Enterprises [1997 (94) ELT 421 (Tri)]
- c) Samsung India Electronics Pvt Ltd Vs CC, New Delhi [2024 (7) TMI 1409 (Tri-Mumbai)]

16. He has also relied on the decision of Hon'ble Supreme Court in the case of Anjaleem Enterprises Pvt Ltd Vs CCE, Ahmedabad [2006 (194) ELT 129 (SC)], wherein, the Apex Court held that even a programmed

integrated circuit is classifiable under Heading 8542 and that essential character of integrated circuit does not change with the programming being embedded therein. Insofar as reliance of the department on expert opinion given by Mr. L. Umanand, HoD, IISc Bengaluru is concerned, his main contention is that department failed to follow the procedure prescribed for drawing samples for testing as per section 114 and section 18 of the Customs Act. They have relied on the judgment of Tribunal in the case of Ciena Communications India Pvt Ltd Vs Prl CC (Import) [2024 (1) TMI 683 (CESTAT-Mumbai)], wherein the relevancy of expert opinion was considered and held that if the samples have not been drawn in terms of legal provisions and procedure prescribed under section 114 and section 18, expert opinion cannot be relied upon. They are also relying on expert opinion given by Dr. B. Prabhakar, Professor of Electronics & Communication Engineering, JNTU, Hyderabad, who, after physically inspecting the 13 models gave the opinion that they are Multi Component Integrated Circuits. He is also contesting that classification by their overseas supplier is not binding on them relying on the judgment of this Bench's decision in the case of CCE & C, Visakhapatnam Vs Reliance Infrastructure Ltd [Final Order No. A/30026/2022 dt.31.01.2022 (Tri-Hyd)]. Learned Advocate has also contested the invocation of extended period on the grounds that no such ingredients, as are required in terms of section 28(4) are there. He has further reiterated that the department was well aware about the change of classification of the impugned goods by the appellant and, in fact, the appellant vide letter dt.03.10.2022 and subsequent information given to the department in November, 2022 informed the change of assessment practice in respect of impugned goods to department. Therefore, extended period is not invokable. Further, even the department issued letter dt.24.10.2022 to the appellant demanding duties on goods cleared in 135 bills of entry and therefore, the allegation of suppression of facts is not sustainable and the issue is entirely relating to short payment of duty on the grounds that goods were considered as OTE and were cleared under ineligible exemption under S.No.20 of the notification 57/2017. He has relied on certain case laws, as under, in support of the contention that extended period of limitation cannot be invoked in case of misclassification of goods in the bill of entry.

- a) Daxen Agritech India Pvt Ltd Vs Prl CC (Import), New Delhi [2024 (2) CENTAX 467 (Tri-Del)]

- b) Ajinomoto India Pvt Ltd Vs CC, Chennai [2024 (21) CENTAX 465 (Tri-Mad)]
- c) Sirthai Superware India Ltd Vs CC, Nhava Sheva-III [2020 (371) ELT 324]
- d) CCE Vs Chemphar Drugs & Liniments [1989 (40) ELT 276 (SC)]
- e) Nizam Sugar Factory Vs CCE, AP [2006 (197) ELT 465 (SC)]
- f) CC Vs Magus Metals Pvt Ltd [2017 (355) ELT 323 (SC)]

17. He has also submitted that the adjudicating authority has confirmed the excess duty of Rs.1,08,76,790/- by not considering certain duty debited in respect of goods imported by the appellant against MEIS license as well as differential duty paid in December, 2022. He is also contesting the confiscation under section 111(m) on the ground that same can be invoked only in the case involving undervaluation, whereas, there is no undervaluation in this case. Further, full description of the imported goods has been made and the exemption was availed under bonafide belief that it was available to them. They have relied on the following case laws:-

- a) Northern Plastic Ltd Vs CC & CE [1998 (101) ELT 549 (SC)]
- b) M/s Bhagwati Products Ltd Vs Prl CC, New Delhi [Final Order No. 50226-50232/2024 dt.09.02.2024 (Tri-New Delhi)]
- c) Lewek Altair Shipping Pvt Ltd Vs CC, Vijayawada [2019 (366) ELT 318 (Tri-Hyd)]
- d) Daxen Agritech India Pvt Ltd Vs Prl CC (Import), New Delhi (supra)
- e) Sandan Vikas (India) Ltd Vs CC (ICD, TKD), New Delhi [2017 (357) ELT 893 (Tri-Del)]
- f) Prl CC, New Delhi Vs Om Sai Trading [2024 (22) CENTAX 395 (Tri-Del)]

18. Similarly, he has also relied on certain case laws as under in support that section 111(o) is not applicable in the facts of the case as the goods are neither prohibited nor were exempt from duty subject to observance of any condition.

- a) Daxen Agritech India Pvt Ltd Vs Prl CC (Import), New Delhi (supra)
- b) Maruthi Udyog Ltd Vs CC, Kandla [2001 (132) ELT 340 (Tri-Mumbai)]
- c) CC, Amritsar Vs Raja Impex (P) Ltd [2008 (229) ELT 185]
- d) Bhagyanagar Metals Ltd Vs CCE-II [2016 (333) ELT 395 (Tri-LB)]

- e) Ajinomoto India Pvt Ltd Vs CC, Chennai (supra)
- f) PB Enterprises Vs CC, New Delhi [2017 (355) ELT 430 (Tri-Del)]
- g) CC (Import), Mumbai Vs Finesse Creation Inc [2009 (248) ELT 122 (HC-Bom)]

19. Insofar as the penalty under section 114AA of the Customs Act is concerned, it can be invoked only when any person knowingly or intentionally makes, signs or causes any declaration or statement which is incorrect or false in any business transaction under the Customs Act, 1962. He has relied on certain case laws as under:-

- a) Lewek Altair Shipping Pvt Ltd Vs CC, Vijayawada (supra)
- b) Daxen Agritech India Pvt Ltd Vs Prl CC (Import), New Delhi (supra)

20. Similarly, in respect of imposition of penalty under section 114A, it can be invoked only when the case is involving short payment of duty or interest by way of collusion or willful misstatement or suppression of facts, whereas, in the present case, the allegation is misclassification of the imported goods and incorrect avilment of duty exemption only. He submitted that there is no evidence adduced to show that either the appellant or its employee has committed the act of collusion or willful misstatement or suppression of facts with an intention to evade duty. Therefore, penalty under section 114A is not attracted.

21. On the other hand, learned AR has reiterated the findings of the adjudicating authority in the impugned order and has, inter alia, submitted that the optical transceivers are used to convert electrical signal into optical signal and vice versa, optical transmitters are used to convert electrical signal into optical signal and optical receivers are used to convert optical signal into electrical signal. Therefore, these goods are involved in transmission of optical signals over fiber optic network and therefore, it can be categorized as OTE. This view is also supported by the expert opinion of professor at IISc, Bengaluru. They have also highlighted the fact that MCOs are combination of one or more monolithic hybrid or multichip integrated circuits with at least one of the following components i.e., silicon based sensors, actuators, oscillators, resonators. However, the datasheets of the transmitter and receiver clearly show that they do not contain any of the parts which are mandatorily required to be part of MCOs. Therefore, by

virtue of the same, the goods cannot be classified as MCOs. They have also highlighted the fact that appellant has not produced any test report to support that these are MCOs and in fact, on the other hand, even the technical datasheets of impugned goods do not mention them as integrated circuits. The reliance has been placed in the case of *Dunlop India Ltd & Madras Rubber Factory Ltd Vs UOI & Others* [1983 (13) ELT 1566 (SC)], wherein, inter alia, it was held that classification of goods on the basis of end use is irrelevant and the classification of the goods should be on the basis of popular sense and not in scientific and technical sense.

22. Heard both sides and perused the records.

23. The core issue that has to be decided in the present appeal is whether the impugned goods imported by the appellant are classifiable under CTH 85176290 or under CTH 854230 as contended by the appellants. We find that the entire case is based on various technical materials, datasheets, expert opinion and the statements recorded of the relevant persons of the appellant. Moreover, while the appellants are trying to make it as a case of classification, we find that, essentially, it is a case of misuse of notification, inasmuch as the goods imported were clearly falling within the excluded category of goods under S.No.20 of the notification 57/2017. Before we proceed further, the relevant notification is reproduced below:-

S.No.	Chapter or Heading or Sub-Heading or tariff item	Description of goods	Standard rate	Condition No.
(1)	(2)	(3)	(4)	(5)
20	85176290	All goods other than wrist wearable devices (commonly known as smart watches)	10%	-

S.No.20 was further amended vide Notification No. 75/2018-Cus dt.11.10.2018 effective from 12.10.2018 and the same is tabulated below:-

S.No.	Chapter or Heading or Sub-Heading or tariff item	Description of goods	Standard rate	Condition No.
(1)	(2)	(3)	(4)	(5)
20	85176290	All goods other than following goods, namely: a) wrist wearable devices (commonly known as smart watches)	10%	-

		b) Optical Transport Equipment c) Combination of one or more of packet Optical Transport Product or Switch (POTP or POTS) d) Optical Transport Network (OTN) products e) IP Radios		
21	85176990	All goods other than following goods, namely: a) Soft switches and Voice over Internet Protocol (VoIP) equipment, namely, VoIP phones, media gateways, gateway controllers and session border controllers b) Carrier Ethernet Switch, Packet Transport Node (PTN) products, Multiprotocol Label Switching-Transport Profile (MPLS-TP) products c) Multiple Input/Multiple Output (MIMO) and Long-Term Evolution (LTE) products	10%	-

The said S.No.20 was further amended vide Notification No. 02/2019-Cus dt.29.01.2019 effective from 30.01.2019, as tabulated below:-

S.No.	Chapter or Heading or Sub-Heading or tariff item	Description of goods	Standard rate	Condition No.
(1)	(2)	(3)	(4)	(5)
20	85176290 or 85176990	All goods other than following goods, namely: a) wrist wearable devices (commonly known as smart watches) b) Optical Transport Equipment c) Combination of one or more of packet Optical Transport Product or Switch (POTP or POTS) d) Optical Transport Network (OTN) products e) IP Radios f) Soft switches and Voice over Internet Protocol (VoIP) equipment, namely, VoIP phones, media gateways, gateway controllers and session border controllers g) Carrier Ethernet Switch, Packet Transport Node (PTN)	10%	-

		products, Multiprotocol Label Switching-Transport Profile (MPLS-TP) products h) Multiple Input/Multiple Output (MIMO) and Long-Term Evolution (LTE) products		
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24. Further, some of the admitted facts are that they have been importing goods under CTH 85176290 and only when they were put under investigation by DRI, they changed the heading to another classification i.e., CTH 8542. It is also on record that the supplier had, based on their enquiry, clearly held that the goods supplied to the appellant were falling under CTH 8517. It is also on record that they have been paying duty on certain imports without availing exemption @ 10%. It is the department's contention that the rate of duty is not 10% in respect of impugned goods as the goods are essentially covered within the exclusion category for the items at S.No.20 of the said notification.

25. The adjudicating authority has gone through all technical literature, expert opinion, scheme of classification, contrasting tariff entries, HSN explanatory notes relevant to the tariff headings, chapter notes, section notes, etc., to come to the conclusion that in the facts of the case, the goods are more appropriately classifiable under CTH 8517. On going through the notification 57/2017 and especially S.No.20, we find that it, inter alia, prescribes for concessional rate at 10% in respect of all the goods falling under heading 85176290 except for certain categories of goods including OTE. The department has mainly contested that the goods are essentially OTE and are also classifiable under heading 85176290. The notification covers goods under various tariff headings including 85176990 & 85176290 but has made a specific exclusion of certain items falling under the headings. Therefore, the first issue to be decided is whether the impugned goods are falling under CTH 85176290 or otherwise and if it is falling under CTH 85176290, then whether they get excluded by virtue of their being OTE or otherwise.

26. The adjudicating authority has gone through the details furnished by the appellant as well as various other documents referred to supra to come to the conclusion that goods are clearly classifiable under CTH 85176290 and the goods are also in the nature of OTE, in view of their actual function. He has also categorically ruled out the possibility of its classification as

simple electrical integrated circuit, keeping in view the HSN explanatory note, according to which, essentially, at least one of the components are required to be present, which incidentally was not found to have been used in the said impugned goods. Therefore, after ruling out CTH 8542, as contested by the appellant, he has found that the goods in question are rightly classifiable under CTH 85176290. Secondly, having decided the classification, he has also discussed the nature of the impugned goods and their functionality and the manner in which they are used in the light of technical literature as well as statements given by various people to come to the conclusion that these impugned goods are in the nature of OTE. He has also given due weightage to the expert opinion of premiere institute like IISc, Bengaluru.

27. We find that the appellants have tried to take various submissions including the fact that these are not machines or apparatus, relying on various judgments and descriptions. The adjudicating authority has taken into account the statements recorded from technical expert of the appellant as well as expert opinion and felt that these are in the nature of apparatus or devices meant for certain specific functions like conversion of, inter alia, electrical signal into optical signal and vice versa, using optical fiber cable and therefore, they are more in the nature of OTE. The fact that OTE has been categorically classified under CTH 85176290 in the notification itself also supports that if the impugned goods are in the nature of OTE then it would obviously fall under CTH 85176290. The adjudicating authority has also relied on various case laws including judgment of Supreme Court in the case of CC (Import), Mumbai Vs Dilip Kumar & Co (supra) to support that the claim for benefit under notification has to be construed strictly and it is for the appellant to establish that they are eligible for the notification and not the other way around. Even if there is grey area, the benefit will go to the revenue and not to the appellant.

28. Therefore, we find that impugned order is a well reasoned order, where after going through the detailed submissions and other evidence on record, the adjudicating authority has rightly held the impugned goods to be classifiable under CTH 85176290 and has also rightly held that these are in the nature of OTE and therefore, they shall not be entitled for the benefit

under notification 57/2017. In view of the same, we uphold the classification as well as denial of benefit under S.No.20 of the notification 57/2017.

29. Insofar as the invocation of extended period is concerned, we find that there has been great deal of debate in terms of coverage under notification 57/2017, which covered multiple items falling under Chapter 85 in so much so that the CBIC has to come out with certain clarification in terms of Circular No.08/2023 dt.13.03.2023. We also find that the grounds taken in the SCN for invoking extended period is also not substantive apart from alleging that they have knowingly and intentionally misclassified their product despite knowing correct classification or as intimated by importer. We find that this could not be a ground for invoking extended period as no element as indicated under section 28(4) is forthcoming. It is a fact that they were classifying under certain heading which later on they switched to another heading. It is also a fact that the foreign supplier has indicated the heading 8517, whereas, they were adopting CTH 8542. It is also an admitted position that sometimes they have paid duty at 20% and sometimes at 10%. However, all these change of stands, etc., were in view of complex nature of classification involved as well as possibility of its being getting classified under two different or multiple headings. Therefore, obviously there is nothing wrong for the appellant to have a bonafide belief to choose a heading which may be more beneficial to them even though, ultimately, it may not be found to be correct classification. However, this, per se, cannot become ground for invoking extended period of limitation. There has to be much more evidence on record to prove their deliberate plan or deliberate suppression in order to hoodwink the department into believing something else. Merely because they chose to claim classification under a heading, which they thought was more appropriate, it cannot be a ground for invoking extended period. Further, though the adjudicating authority has tried to bring in the concept of fraud for invoking extended period in the sense that they were deliberately misleading the department, it has neither been alleged in the SCN nor has been explained in what way the appellants were indulging in fraud. Therefore, in view of the facts of the case, as also cited case laws, we find that invocation of extended period is not tenable and therefore, to that extent the impugned order is liable to be set aside.

30. As regards, wrong calculation of duty demanded, we do not find any discussion on this issue and therefore, the matter needs to be remanded back to the adjudicating authority to examine this aspect and allow the benefit of this amount if it has already been paid, as submitted by the appellant.

31. Insofar as the confiscation of impugned goods is concerned, we find that in view of the various cited case laws, when the issue is primarily that of classification, the confiscation cannot sustain and therefore, on that count itself, the impugned order to the extent of confiscation of impugned goods and imposition of fine is also not tenable.

32. As far as penalty under section 114A is concerned, in view of the fact that the extended period cannot be invoked in the present case, as also there is no element of fraud, suppression or misstatement, etc., therefore, the penalty under this section is not sustainable.

33. Insofar as the penalty under section 114AA is concerned, it is invocable only when a person knowingly or intentionally make, sign or use, or cause to be made, signed or used any declaration, statement or document which is false or incorrect in any business transaction for the purpose of this Act. We find that in this case, whenever they have used a different classification than the classification which was indicated in the invoice, they knew that they are entering wrong classification in the bills of entry and therefore to that extent, the appellants knowingly and intentionally made the said entries. Their bonafide belief will not be of much help as here, it is an established fact that the classification mentioned in the bills of entry was different than the classification indicated by the supplier of the said goods. Therefore, we do not find any infirmity in the imposition of penalty under section 114AA.

34. Therefore, in view of the same, impugned order is set aside to the extent of confiscation of goods and payment of fine as well as for imposition of penalty under section 114A. However, the impugned order is upheld insofar as it relates to classification of goods under CTH 85176290, denial of benefit under S.No.20 of notification 57/2017 and penalty under section 114AA. The demand of confirmed amount to the extent falling within normal period is upheld, whereas, beyond normal period, it is set aside as extended

period cannot be invoked. Insofar as the recalculation of demand within normal period is concerned, the matter is required to be remanded and is accordingly, remanded to that extent only. The amount already paid, if any, to be adjusted against final redetermined amount of demand.

35. Therefore, Appeal No. C/30566/2024 is partly allowed by way of remand for redetermination of quantum of demand in the light of observations, supra.

36. Insofar as the Appeal Nos. C/30567 & 30568/2024 are concerned, we do not find that penalty under section 112(a) is sustainable in view of the fact that impugned goods were not found to be liable for confiscation as held in Appeal No. C/30566/2024. Therefore, penalty under section 112(a) of the Customs Act is set aside. However, in terms of penalty imposed under section 114AA, we find that Mr. Y. Kasyap Reddy, Managing Director and Mr. B. Sanjay Reddy, General Manager of the appellant company have knowingly made declaration, which they had reasons to believe was not in accordance with the facts as appearing from the invoice of the foreign supplier. Their bonafide belief, per se, will not exclude them from applicability of penalty under section 114AA, therefore, penalty to this extent is sustained and we do not find any infirmity in the impugned order.

37. Appeal Nos. C/30567 & 30568/2024 are partly allowed.

(Pronounced in the Open Court on 20.03.2025)

(A.K. JYOTISHI)
MEMBER (TECHNICAL)

(ANGAD PRASAD)
MEMBER (JUDICIAL)