CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
HYDERABAD

REGIONAL BENCH - COURT NO. – I

Customs Appeal No. 30735 of 2016
(Arising out of **Order-in-Appeal** No.HYD-CUS-000-APP-011 to 013-16-17 dated 06.05.2016 passed by Commissioner of Customs & Central Excise (Appeals), Hyderabad)

Mr. D Sridhar .. **APPELLANT**
Managing Director,
Devi Communication Systems Pvt Ltd.,
Flat No. 416, Ameer Estates,
Ameerpet, Hyderabad,
Telangana – 500 038.

VERSUS

Commissioner of Customs .. **RESPONDENT**
Hyderabad - Customs
Kendriya Shulk Bhavan,
L.B Stadium Road,
Basheerbagh,
Hyderabad,
Telangana – 500 004.

AND

Customs Appeal No. 30737 of 2016
(Arising out of **Order-in-Appeal** No.HYD-CUS-000-APP-011 to 013-16-17 dated 06.05.2016 passed by Commissioner of Customs & Central Excise (Appeals), Hyderabad)

M/s Devi Communication Systems Pvt Ltd., .. **APPELLANT**
Flat No. 416, Ameer Estates,
Ameerpet, Hyderabad,
Telangana – 500 038.

VERSUS

Commissioner of Customs .. **RESPONDENT**
Hyderabad - Customs
Kendriya Shulk Bhavan,
L.B Stadium Road,
Basheerbagh,
Hyderabad,
Telangana – 500 004.

APPEARANCE:
Shri P. Rosi Reddy, Advocate for the Appellant.
Shri A. Rangadham, Authorized Representative for the Respondent.

CORAM: HON'BLE Mr. A.K. JYOTISHI, MEMBER (TECHNICAL)
HON'BLE Mr. ANGAD PRASAD, MEMBER (JUDICIAL)

FINAL ORDER No. A/30388-30389/2026

Date of Hearing: 09.06.2026
Date of Decision: 22.07.2026

[ORDER PER: ANGAD PRASAD]

These appeals are directed against the Order-in-Appeal No. HYD-CUS-000-APP-011 to 013-16-17 dated 06.05.2016 (impugned order), whereby, the Commissioner (Appeals), upheld the Order-in-Original No. 148/2014-ADJN.(Cus) dated 12.11.2014, confirming differential Customs Duty amounting to Rs. 5,33,139/- together with applicable interest and penalties were imposed upon M/s Devi Communication Systems Pvt Ltd., as well as Managing Director Mr. D. Sridhar by reclassifying the imported "Facsimile Machines" and there parts under Customs Tariff Heading 8443 3970 and 8443 9960 respectively, thereby, denying the benefit of Notification No. 24/2005-Cus.

2. The fact in brief is that the appellant imported various models of Panasonic Facsimile Machines and parts from M/s Panasonic Asia Pacific Singapore during the years 2009-10 and 2010-11. At the time importation, Bills of Entry were filed declaring the goods under CTH 8443 3260 as "Facsimile machine" capable of connecting to automatic data processing machine or to a network and exemption under Notification No. 24/2005 – Cus. was claimed. The Bills of Entry were assessed by the proper officers of Customs after examination of imported goods and the consignment were allowed clearance.

3. Subsequently, the Director of Revenue intelligence initiated investigation and entertained the view that the imported Facsimile Machines were not capable of connecting to an automatic data processing machine or to a network within the meaning of Heading 8443 3060. According to the Department, the goods merited classification under Heading 8443 3970 and the parts under Heading 8443 9960, thereby rendering the exemption inadmissible.

4. A Show Cause Notice was therefore issued proposing recovery of differential Customs Duty under Section 28 of the Customs Act, confiscation of the goods and imposition of penalties

5. The Adjudicating Authority confirms the proposal. The Commissioner (Appeals), by impugned order, confirmed, the findings, giving rise to the present appeal.

6. Learned Counsel submits that the entire dispute revolves around the interpretation of the expression "capable of connection to an automatic data processing machine or to a network". According to him, the Department has preceded on an erroneous assumption that only those, Facsimile Machines which can directly connect through a cable qualify under Heading 8443 3260. It is submitted that the tariff nowhere employ the expression "direct cable connectivity". The statute merely requires capability of network connectivity. Learned Counsel Points out that even the Department's investigation records establish that the imported machines can be connected to a network through an ATA (Analogue Telephone Adaptor). Thus, the Department itself has admitted the existence of network capability. It is argued that if a machine is technically capable of connecting to a network through an interface device, it satisfies the tariff description.

7. Learned Counsel further submits that technological advancement cannot be ignored while interpreting tariff entries. Network capability today is often achieved, through routers, gateways, wireless interfaces, adapters and similar devices. Therefore, restricting the tariff only to machines capable of direct cable connection would amount to reading words into the statute which the legislature never employed. Reliance is placed upon the following decisions:

i) Hindustan Ferodo Ltd., Vs Collector of Central Excise, Bombay [1997 (89) E.L.T. 16 (S.C.)]

ii) Union of India Vs Sahney Steel and Press Works Ltd., [1992 958) E.L.T. 38 (Bom.)]

iii) Commissioner of Customs Vs Jyoti Industries Ltd., Indian Institute of Chemical Technology, [2012 (26) S.T.R. 97 (A.P.)]

iv) Commissioner of Customs, Amritsar Vs Jyothi Industries [2005 (188) ELT 88 (Tri-Del)]

to contend that the burden of proving a different classification always rests upon the Department.

8. Learned Counsel submits that Mr. D. Sridhar was Managing Director of the appellant no.2 at that time. The issue involved is highly technical in nature and there are no clear final decision on the issue and his assertions in the statement that the Facsimile machines can be connected to a network if an ATA is attached to the Facsimile machines and then this ATA is attached to the network is to be treated as no admission of charge of mis-declaration. Even, otherwise when penalty is imposed on the appellant firm, no further penalty is imposable on the Managing Director. Learned Counsel relied on Commissioner of Central Excise, Vapi Vs, Bhavani Smelters Pvt Ltd., [2009 (236) E.L.T. 176 (Tri.-Ahmd.)].

9. The Learned Authorized Representative supports the impugned order, inter alia, that HSN Explanatory notes clearly envisage machines processing all necessary components for direct connectivity. According to the Revenue, the imported Facsimile Machines requires an additional external ATA device before network connectivity becomes possible. Consequently, they cannot be regarded as machines “capable of connecting” to a network within the meaning of Heading 8443 3260.

10. Learned Authorized Representative has placed reliance upon the recent judgment of Hon'ble Supreme Court in Commissioner of Customs Vs Ms. Welkin Foods [2026 (1) TMI 348 (SC)] and submit that tariff entries and exemption notifications require strict interpretation and classification must be determined strictly according to statutory language.

11. Heard both the parties and perused the records.

12. The following questions arise for determination:

i) Whether the imported Facsimile Machines are correctly classifiable under CTH 8443 3260 or under CTH 8443 3970?

ii) Whether the Department has discharged the burden of proving mis-classification?

iii) Whether Notification No. 24/2005-Cus has been rightly denied?

iv) Whether the extended period under Section 28(4) of the Customs Act has been validly invoked?

v) Whether penalties are sustainable?

13. The controversy essentially revolves around the true scope of the expression **"capable of connecting to an automatic data processing machine or to a network"** occurring under Heading 8443 of the Customs Tariff.

14. The competing tariff entries read as follows:

i) **CTH 8443 3260** – Facsimile Machines capable of connecting to an automatic data processing machine or to a network.

ii) **CTH 8443 3970** – Facsimile Machines not capable of connecting to an automatic data processing machine or to a network.

15. The classification therefore depends entirely to the factual determination of the technological capability of the imported machines.

16. It is a settled proposition that classification under the Customs Tariff must be determined primarily on the basis of language employed in the tariff itself. Resort to HSN Explanatory notes is permissible only as an aid to interpretation where the statutory language is ambiguous. However, such Explanatory notes cannot override or curtail the plain words by the tariff enacted by Parliament. Equally well settled in the principle that where the Department seeks to alter the classification declared by the importer and accepted at the time of assessment, the burden squarely lies upon the Revenue to establish, by cogent technical evidence, that the good answer the description of the alternative tariff entry. Suspicion or a different interpretative approach cannot substitute proof.

17. In the present case, the Bills of Entry were filed declaring the imported goods as Facsimile Machines under CTH 8443 3260. The goods were examined by the proper officers of Customs and thereafter assessed and cleared. Thus, the classification was not a mere self-assessment accepted mechanically; it was an assessment undertaken after physical verification by the Department itself.

18. The Show Cause Notice subsequently seeks to reclassify the same goods on the premise that they are incapable of connecting to a network. Such a finding, in the opinion of this Tribunal, required the Department to produce convincing technical evidence demonstrating that the imported models lacked the capability contemplated under the tariff. On careful

examination of the records, we find that no such conclusive evidence has been produced. On the contrary the investigation itself records that the machines can be networked through an Analogue Telephone Adopter (ATA) or similar interface devices. The appellant has consistently relied upon this very evidence to contend that the machines are network-connectable. Thus, the Department's, own investigation acknowledges that the imported machines are capable of functioning in a network environment, albeit through an interface device. Once this factual position emerges from the record itself, the burden resting upon the Revenue to prove that the machines fall under Heading 8443 3970 remains un discharged.

19. The principal reasoning adopted by the Commissioner (Appeals), proceeds on the footing that the Facsimile machines cannot be connected to an automatic data processing machine merely by attaching a cable and therefore, they are not "capable of connecting" within the meaning of Heading 8443 3260. In our considered view such an interpretation reads into the tariff words which are conspicuously absent. The tariff employs the expression "capable of connecting" and not "capable of direct cable connection without use of any external interface."

20. Fiscal statutes undoubtedly require strict interpretation. However, strict interpretation does not permit addition of words which the legislature has conscious omitted. Courts are required to interpret the language actually used and not rewrite the statute on perceived technical assumptions. In modern information technology architecture, network connectivity is frequently achieved through routers, gateways, adaptors, converters, wireless interfaces or other intermediary devices. A device does not cease to be network-capable merely because such connectivity is achieved through an

external interface. The Revenue has not demonstrated that the tariff intended to restrict the benefit only to machines processing built-in direct cable connectivity. No such restrictive language is discernible either in the tariff or in the relevant notification.

21. The Commissioner (Appeals), has placed considerable reliance upon the HSN Explanatory Notes. There is no dispute that HSN notes constitute an important aid to interpretation. Nevertheless, they cannot override the language enacted in the Customs Tariff. Even, assuming that the HSN notes contemplate machines equipped with the necessary components for immediate connection, they cannot be interpreted in a manner that narrows the statutory expression "capable of connecting" when the tariff itself does not prescribe such limitation. More importantly, the HSN notes cannot prevail that undisputed technical evidence showing that the imported machines can in fact operate on a network through an accepted interface device. Classification must ultimately be based upon the actual characteristics of the imported goods and not upon an unduly restrictive reading of Explanatory material. The Learned AR has strongly relied upon the judgment of the Hon'ble Supreme Court in M/s Welkin Foods, supra, to contend that tariff entries and exemption notifications require strict construction and that HSN-based interpretation should prevail. There can be disagreement with the principles enunciated by the Hon'ble Supreme Court. The decision reiterates that classification has to be determined in accordance with the statutory tariff and that exemption notifications cannot be expanded beyond their language. Those propositions are well settled. However, the said judgment does not dispense with the foundational requirement that the Department must first establish, on facts, that the imported goods satisfy every ingredient of the tariff entry sought to be applied. A precedent laying down

principles of interpretation cannot receive the Revenue of its burden to prove the factual applicability of the competing Heading. In the present case, the dispute is not about enlarging the scope of exemption notification. The threshold issue is whether the imported Facsimile Machines are, as a matter of fact, capable of connecting to an automatic data processing machine or to a network. Since, the Department's own material acknowledges network connectivity through an ATA device, the factual premise necessary to sustain classification under CTH 8443 3970 itself becomes doubtful. Consequently, the ratio of M/s Welkin Foods, supra, does not advance the Revenue's case. Rather applying the very principle of strict interpretation, the statutory words "capable of connecting" must be given their ordinary meaning without importing the additional requirement of direct cable connectivity. The Revenue's reliance on M/s Welkin Foods, supra, is therefore, distinguishable on facts and does not warrant interference with the appellant's classification.

22. Hon'ble Supreme Court in Hindustan Ferodo Machines Ltd., supra, categorically held that the burden of establishing that goods fall within a particular tariff entry lies upon the Revenue. The Supreme Court observed that unless the Department discharges such burden by adducing satisfactory evidence, the classification proposed by the Department cannot be sustained. Hon'ble Bombay High Court in Sahney Steel and Press Works Ltd., supra, reiterated that the burden of proving the applicability of a particular tariff entry lies upon the Department. The High Court emphasised that classification cannot rest upon presumption or conjecture. The above principle equally governs the present dispute. The Revenue has merely proceeded on the basis on an interpretation of the HSN Explanatory notes without demonstrating, by independent technical evidence, that the imported

Facsimile machines lack network capability. Such an approach falls short of the standard of proof required in classification disputes.

23. Tribunal Delhi in Jyothi Industries, supra, which was affirmed by Hon'ble Punjab and Haryana High Court. The Tribunal held that where imported goods had been examined and assessed by Customs officers after verification, and there was no suppression or misdeclaration on the part of the importer, the extended period under Section 28 could not be invoked merely because the Department subsequently entertained different opinion regarding classification. The factual matrix of the present case bears striking similarity. The Bills of Entry disclosed the complete description of the imported Facsimile machines; the goods were physically examined by the assessing officers and clearance was granted after due assessment. There is no allegation that the appellant withheld any catalogue, technical specification or other material relevant for assessment. Consequently, the subsequent change of opinion on classification cannot, by itself, constitute suppression of facts or wilful misstatement. Tribunal Kolkata in Pearl Enterprises Vs Commissioner of Customs (Port), Kolkata, [2006 (203) ELT 71], wherein, held that a bonafide claim of classification cannot be equated with misdeclaration so as to attract denial consequences. The Tribunal observed that merely because the importer claimed classification under a tariff heading belief to be applicable, it does not follow that there was deliberate misdeclaration attracting confiscation or penalty. We respectfully agree with the above proposition. In the present case, the appellant disclosed the goods as Facsimile machines, produced the relevant invoices, catalogues and technical literature and claimed classification under the tariff heading which, according to it, correctly described the goods. Such conduct is wholly inconsistent with any allegation of fraud or deliberate suppression.

24. The Show Cause Notice seeks to invoke the extended period under Section 28(4) of the Customs Act alleging suppression of facts. It is therefore, necessary to examine whether the statutory ingredients required for invocation of extended period stand satisfied. Section 28(4) permits invocation of extended period only where duty has not been levied or has been short levied by reason of collusion, wilful misstatement, suppression of facts or fraud on the part of the importer. These expressions have consistently been interpreted by the Hon'ble Supreme Court to require deliberate intent to evade payment of duty. In the present case, the appellant filed Bills of Entry describing the goods as "Facsimile machines" under CTH 8443 3260. The goods were subjected to physical examination by Customs officers. Assessment was completed by the proper officer after considering the documents produced, by the importer. Thus, every material fact necessary for assessment was available before the Department at the time of import itself. The Revenue has not pointed out any document that was concealed, any technical specification that was withheld, or any false declaration made by the appellant. The entire case of the Department upon a subsequent reinterpretation of the tariff entry and HSN Explanatory notes. Such reinterpretation, however, cannot retrospectively convert a bonafide claim into suppression or wilful misstatement. Therefore, we hold that the conditions precedent for invoking the extended period under Section 28 (4) of the Customs Act is absent. Consequently, the demand raised beyond the period is barred by limitation.

25. Upon an overall appreciation of the evidence, the statutory provisions and the judicial precedents cited by both sides, we arrived at the following conclusion:

a) The Revenue has failed to discharge the burden of proving that the imported Facsimile Machines merit classification under CTH 8443 3970.

b) The evidence on record indicates that the imported machines are capable of connecting to a network through an ATA or similar interface and, therefore, satisfy the essential requirement of CTH 8443 3260.

c) The extended period of limitation has been wrongly invoked, since there is neither suppression of facts nor wilful misstatement attributable to the appellant.

26. Consequently, the confirmation of differential duty, interest and penalties cannot be sustained, when demand is not sustainable, penalty against managing director also not survive.

27. Therefore, the impugned order is hereby set aside and appeals filed by the appellants are allowed with consequential relief, if any, in accordance with law.

(Pronounced in the open court on 22.07.2026)

(A.K. JYOTISHI)
MEMBER (TECHNICAL)

(ANGAD PRASAD)
MEMBER (JUDICIAL)

Shirisha