IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, KOLKATA
EASTERN ZONAL BENCH : KOLKATA

REGIONAL BENCH

Customs Appeal No. 76860 of 2017

[Arising out of Order-in-Original No. KOL/CUS/COMMISSIONER/PORT/31/2017(Adjn) (Port) dated 05.09.2017 passed by the Commissioner of Customs(Port) Kolkata]

M/s. Omsai Shipping and Clearing Agency **...Appellant**
7 C, Kiran Shankar Roy Road
Kolkata

VERSUS

The Commissioner of Customs (Port), Kolkata **..Respondent**
Customs House, 15/1 Strand Road, Kolkata

With

Customs Appeal No. 77050 of 2017

[Arising out of Order-in-Original No. KOL/CUS/COMMISSIONER/PORT/31/2017 (Adjn) (Port) dated 05.09.2017 passed by the Commissioner of Customs (port) Kolkata]

Rohit Kumar Uppal **...Appellant**
Proprietor of M/s Clarion Computers
4, Madan Street, Kolkata

VERSUS

The Commissioner of Customs (Port), Kolkata **..Respondent**
Customs House, 15/1 Strand Road, Kolkata

<u>APPEARANCE</u>
Mr. S Banerjee and Mr. Mishra, Advocates for the Appellant (s)

Shri S Guha, Authorized Representative for the Respondent (s)

CORAM: HON'BLE SHRI P.K.CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE SHRI BIJAY KUMAR, MEMBER (TECHNICAL)

DATE OF HEARING: 25.10.2019
DATE OF DECISION: 03 January 2020

FINAL ORDER NOS: 75047-75048/2020

BIJAY KUMAR :

1. All these appeals emanate out of Order dated 5-7.09.2017 passed by the Commissioner of Customs (port) Kolkata. By this impugned order the learned Commissioner has confirmed the demand of customs duty M/s Clarion Computers (Appellant No. 1 or Appellant importer), 4, Madan Street, Kolkata, along with interest and penalties on Shri Rohit Kumar, Director (Appellant No. 2) of Appellant importer and of M/s Om Sai Agency of Clearing Pvt Ltd. Kolkata, who happened to be Customs House Broker, who effected the clearance on behalf of the Appellant importer. The demands were confirmed after the re-determination of assessable value in respect of 203 numbers of Bills of Entry, which were finalised at the time of import and the imported consignment was cleared on payment of duty. In respect of three live consignments which were detained by the Department the assessment were also finalised after ignoring the claim of classification declared by the by the Appellant No. 1. Being aggrieved the Appellants preferred these appeals.
2. The fact of the case are that the Appellant No. 1 has imported the consignment of 'clarion brand' speakers from Chinese manufacturer and claimed classification thereof under Customs Tariff Heading No. 851822/851829 of First Schedule to Customs Tariff Act, 1975. Acting on the intelligence that the Appellant has mis-classified the speaker as 'Multi Media Speaker' which were correctly classifiable under Chapter Heading 8519/8527, that attracted the levy of additional duty of customs (CVD) on the basis of Retail Sale Price (RSP) as per proviso to

Section 3 (3) of Customs Tariff Act, 1975 read with Notification No. 49/2008-CX(NT) Dated 24.12.2008 at Sl. No. 90, 94 and 96, that covers the goods falling under chapter heading nos. 8519 and 8527 against which the proviso to Sub-Section (2) of Section 4A of Central Excise Act, 1944 was applicable and the CVD were liable to be levied and collected after allowing 35 % abatement of such declared retail sale price (RSP). The DRI, which undertook the investigation also proposed to re-open the classification of the product in respect of past consignments which were cleared during period from 05.08.2013 to 28.02.2014 along with three live Bill of Entry being No. 2088133 dated 06.05.2013, 2047656 dated 06.05.2013 and 2047676 dated 06.05.2013, which were differently assessed and thereafter released under provisional duty bond. After detailed investigation the show cause notice dated 04.08.2014 was issued to these Appellants and that culminated into the impugned order, which in challenge before us.

3. The issue in brief regarding the classification of audio/music system with inbuilt USB/SD/FM/MP3 features. It is the contention of the Department that these speakers are stand alone speaker system rightly classifiable under Chapter Heading 8519/8527, instead of 851822/851929. The adjudicating authority confirmed the demand in terms of the impugned order in spite of various submissions made by the Appellant and also various order of this Tribunal which were upheld by the Hon'ble Supreme Court on the issue of classification of multimedia speakers.

4. The Appellant No. 2 is the Proprietor of the Appellant No. 1 and Appellant No. 3 is a CHA of the Appellant importer who have been visited with penalties for their alleged omissions and commissions.
5. Ld. Advocate on behalf of the Appellant submits that the issue regarding classification of products which were imported by the Appellant, is no longer *re integra* in view of decision of this Tribunal in case of **Commissioner of Customs (Port), Kolkata vs. Santosh Radio Product being Final Order No. FO/76070/2018 dated 04.05.2018.** In view of above the penalty imposed on the other Appellant are also not sustainable and liable to be set aside.
6. Ld. AR on behalf of the Department further supports the impugned order on the basis of finding contained therein.
7. We have considered the rival submissions and also perused the appeal records.
8. The issue in dispute is in these appeals are regarding classification of the goods imported by the Appellant No. 1 which has been described has Multi Media Speaker classifiable under Customs Tariff Heading No. 8518200 dated 16.04.2013 and thereafter under Heading 85198990, 8527990 and 85272900. The DRI has, however, not accepted the classification declared by the Appellant and came to the conclusion that the imported goods are rightly classified under Chapter Heading 85198100 leviable to CVD in terms of Section 4A of Central Excise Act, 1944 of MRP/RSP basis that attracted the provisions of legal methodology Act, 2009. We find the issue regarding classification of Multi Medial Speaker stands decided in case of **Santosh Radio Product (supra)** wherein Hon'ble Tribunal has held is under;

"5. After considering the arguments from both sides and on perusal of the records, we note that the goods imported have been described as "multi-media speaker system". It is stated to contain features of playing USB/FB/FM either by connecting the same or through blue tooth. The Department has argued that in view of the additional features in the imported goods, the same are more properly classified as music system under 8527 but we note that essential function of the imported goods is nothing but multi media speakers. We also find that similar goods have been classified as sought by the respondent under 8518 in the case of Logic India Trading Co. Vs. Commr. of Customs, Cochin [2016 (3370 ELT 65 (Tri.-Bangalore). Tribunal observed as follows:

> 4.7 ..."As we have already observed that even the lower authorities are not disputing the fact that the goods in question are speakers with added function, as such the main role of the item in question remains amplifying the sound received by it either from outside source or from inbuilt feature. As such, going by the Interpretative Rules and Section Note 3 to Section XVI, the criteria for classifying the product is the principal and the main function it performs, which in the present case remains to be that of a speaker. We accordingly hold that the goods in question are properly classifiable under Chapter Heading 8518 22 00. We may also add that the invoices raised by the seller of the goods stand examined by it and the description stand given as "Multimedia Speaker". This also reflects upon the fact that the goods in question, in common parlance are also traded as speakers. The appellants have also submitted an affidavit of the dealers, the invoices raised by them against the customers and the statement of Service Manager of the assessee. Examination of these documents shows that goods are primarily sold as speakers. Even the brochures placed on record indicate that the goods are being traded as speakers only and not as either FM radio or the sound reproduction system."

6. In view of the above discussions, we find no reason to interfere with the impugned order and the same is sustained.

7. Department's appeal is dismissed."

9. We find that the Final Order in case of **Santosh Radio (supra)** is passed on placing reliance on **Logic India Trading Co. vs. Commissioner of Customs [2016 (337) ELT 65 (Tri.-Bang.)].** The Department preferred appeal against this order before Hon'ble Supreme Court and the Supreme Court upheld the order passed by the Hon'ble Tribunal in Appeal No. D/25388/2016, [2016 (342) ELT A34

(SC)]. In such circumstances, we do not find any merit in the impugned order and the classification has been correctly made by the Appellant under Heading 851822 and 851829. We sustain the same as the products are being classified under these heading. There is no question of invocation of provisions of Section 4A of the Central Excise Act for levy of CVD on the basis of MRP/RSP, accordingly, we, therefore, set aside the impugned order filed by the Appellant importer.

10. As the issue does not survive on merits there is no question of levy of any penalty on the other Appellants. Accordingly, the Appeals are allowed with consequential benefit, if any, as per law.

(Order pronounced on 03 January 2020)

Sd/

(P K Choudhary)
Member (Judicial)

Sd/
(Bijay Kumar)
Member (Technical)

Tejo