

**IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
KOLKATA
REGIONAL BENCH – COURT NO.2**

Customs Appeal No. 75397-75398 of 2021

(Arising out of Order-in-Appeal No. KOL/CUS(PORT)/AKR/114-115/2021 dated 29.01.2021 passed by Commissioner of Customs (Appeals), Kolkata.)

1. Shri Suvro Tanoy Sarkar,
(4, Biplabi Anukul Chandra Street, Kolkata-700072.)
2. M/s Vibration,

...Appellant

VERSUS

Commissioner of Customs (Port), Kolkata,
(Customs House, 15/1, Strand Road, Kolkata-700001.)

...Respondent

APPEARANCE :

Mr. S. C.Ratto, Consultant for the Appellant
Shri S. Debnaty, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. R. MURALIDHAR MEMBER (JUDICIAL)
HON'BLE MR. K. ANPAZHAKAN MEMBER (TECHNICAL)

FINAL ORDER No.77634-77635/2024

DATE OF HEARING : 22.11.2024
DATE OF DECISION : 21.11.2024

Per K. Anpazhakan :

M/s Vibrations (herein after referred as the appellant) has imported and cleared certain electronic goods under the description 'multi-media speakers' having Model Nos. JYU 2460, JYU 9309, 1.0 JADOO, BLASTER, JYU 3200, JY 110C, WINNER, JY 500U, JY118C, JYu 926, JYU 928 etc, with/without USB/SD Card reader and FM under the brand name JIEJIA, under 37 Bills of Entry, through Kolkata Sea port, during the period 20.08.2009 to 28.02.2014. They have classified the impugned goods under the CTH 85182200, 85182900 and 85181000 till May 2013 and thereafter they changed the classification to

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85198990/85279990/85279100. The department was of the view that the impugned goods are rightly classifiable under the CTH 85279100.

2. A Show Cause Notice was issued to the appellant and after due process, the Notice was adjudicated vide Order-in-Original dated 08.01.2018, wherein the Ld. Adjudicating authority ordered re-assessment /re-determination of CVD and classification of Certain Models as per Annexure-C to the Notice under the CTH 85278100 and certain Models as per Annexure-D to the Notice, under the CTH 85279100. The goods were ordered for confiscation and no redemption fine imposed, as the goods were physically not available. Various penalties were imposed, including a penalty of Rs.50,000/- on Shri Suvro Tanoy Sarkar Partner of the Appellant importer, under Section 112(a) of the Customs Act, 1962.

2.1. On appeal, the Ld. Commissioner (Appeals) passed the impugned order, rejecting the appeals filed by the appellants and upheld the classification of the imported items, under the CTH 85279100 and upheld the penalties imposed. Aggrieved by the rejection of the appeals, the appellant importer and the Partner Shri Suvro Tanoy Sarkar have filed these appeals.

3. The appellant submitted that the issue is no more res integra, as this Tribunal has already decided the issue in the case of Proline Inc Vs Commissioner of Customs (Port), Kolkata vide Final Order No. 76049-76052 dated 10.07.2023, wherein the multi-media speaker in question has been classified under the CTH 85182200 and the appeals were allowed in favour of the appellant. Accordingly, he prayed for allowing

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their appeals. As there is no mis-declaration established, no penalty imposable on the Partner. Accordingly, he prayed for setting aside the penalty imposed on the partner Shri Suvro Tanoy Sarkar.

4. The Ld. A.R. fairly conceded that the issue has already been decided in favour of the appellant.

5. Heard both sides and perused the appeal documents.

6. We observe that the issue is no more *res integra*, as this Tribunal has already decided the issues in the case of Proline Inc Vs Commissioner of Customs (Port), Kolkata vide Final Order No. 76049-76052 dated 10.07.2023, wherein the multi-media speaker in question has been classified under the CTH 85182200 and the appeals were allowed. The relevant portion of the said decision is reproduced below:

"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 multimedia 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

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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."

6.1. Following the ratio of the decision cited above, we hold that the classification of the goods adopted by the appellant is correct and it doesn't require any modification. Accordingly, we hold that the demands confirmed against the appellant importer are not sustainable. As there is no mis-declaration established, the penalty imposed on the partner Shri Suvro Tanoy Sarkar is also set aside.

7. In view of the above discussions, we set aside the impugned order and allow the appeals filed by the appellants, with consequential relief, if any, as per law.

(Dictated and pronounced in the open court)

Sd/-
(R. Muralidhar)
Member (Judicial)

Sd/-
(K. Anpazhakan)
Member (Technical)

Tushar. Kr.