

**IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
KOLKATA**

REGIONAL BENCH – COURT NO.1

Customs Appeal No.78394 of 2018

(Arising out of Order-in-Appeal No.Kol/Cus(Airport)/AA/1086-1087/2017 dated 14.06.2018 passed by Commissioner (Appeals) of Customs, Kolkata)

M/s Senheiser Electronics India Private Limited

(102A,1st Floor, Time Tower, M.G.Road,Sector-28,Gurgaon, Haryana-122002)

Appellant

VERSUS

Commissioner of Customs (Admn. & Airport), Kolkata

(15/1, Strand Road, Kolkata-700001)

Respondent

WITH

Customs Appeal No.78395 of 2018

(Arising out of Order-in-Appeal No.Kol/Cus(Airport)/AA/1086-1087/2017 dated 14.06.2018 passed by Commissioner (Appeals) of Customs, Kolkata)

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VERSUS

Commissioner of Customs (Admn. & Airport), Kolkata

(15/1, Strand Road, Kolkata-700001)

Respondent

APPEARANCE :

Shri N.K.Sharma, Advocate for the Appellant

Shri Faiz Ahmed, Authorized Representative for the Respondent

CORAM:

HON'BLE MR.ASHOK JINDAL, MEMBER (JUDICIAL)

HON'BLE MR.K.ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO.75191-75192/2025

DATE OF HEARING : 20 JANUARY 2025

DATE OF DECISION : 20 JANUARY 2025

Per Ashok Jindal :

Appellants are in appeals against the same impugned order wherein the requests of the appellants for re-assessment Bill of Entry No 4369526 Dt. 17.01.2014 and Bill of Entry No 4524038 Dt. 01.02.2014 involving refund of Rs.5,95,641/- and Rs.8,61,169/- respectively, were rejected by Commissioner Customs (appeal) Custom

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House, Okhla vide order-in-appeal no. KOL/CUS(Airport)/AA/1086-1087/2017 Dt. 14.06.2018. As both the appeals are arising out of the same impugned order, accordingly, the same are being disposed of by a common order.

2. Brief facts of the case are that the appellant had imported Wireless Microphone 100 sets under BE No 4369526 Dt. 17.01.2014 and 265 numbers of Wireless microphones sets and its parts under Bill of Entry Bio 4524038 Dt. 01.02.2014.

2.1 The appellant company had been importing, 'Wireless Microphone and Receiver Systems" and its parts under CTH 85255050 claiming the benefit of Nil rate of basic Customs Duty under Notification 25/2005-Cus Dt. 01.03.2005.

2.2 Directorate of Revenue Intelligence Officers investigated against the appellant and issued Show Cause Notice No 23/54/2013-DZU Dt. 24.12.2013 alleging misclassification of wireless microphone and receiver systems and proposing to classify the goods under CTH 85272900 and to deny the exemption under Notification no 25/2005-Cus Dt. 01.03.2005.

2.3 Under the circumstances, the appellant company declared the goods under CTH 85272900 in Bill of Entry No 4369526 Dt. 17.01.2014 and Bill of Entry No 4524038 Dt. 01.02.2014 and paid the Customs Duty amounting to Rs. 5,95,641/- and Rs. 8,61,169/- respectively under protest.

2.4 The Show Cause Notice issued by the DRI was adjudicated by Additional Director General DRI Adjudication Vide OIO No 07/NKU (10-12) ADG (Adj)/DRI/N. Delhi/2016-17 Dt. 30.03.2017 holding that

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wireless Microphone Systems/Sets are classifiable under CTH 85255050 and are entitled to benefit of Notification no 25/2005-Cus Dt. 01.03.2005 and dropped the show cause notice. Since the classification issue had been settled by the (ADG DRI) and the Dep't did not challenge the said order in Appeal, the same had attained finality.

2.5 The Appellant therefore filed two appeals against the above said two bills of entries through speed post Dt. 27.03.2014 along with application for condonation of Delay in the case of BE No. 4369526 Dt. 17.01.2014 before the Commissioner (Appeals).

2.6 The Commissioner (Appeals) vide his common order-in-appeal no. KOL/CUS(Airport)/AA/1086-1087/2017 Dt. 14.06.2018 passed in the matter of two appeals has condoned the delay but rejected the appeals on the ground that the bill of entries was self-assessed by the importer U/S 17(1) of Customs Act. 1962 as per the CTH prescribed by the DRI. Commissioner (A) has further observed that after self-assessment, the appellant paid the duty under protest contesting the classification of the said imported goods and claimed it should be 85255050 and also sought the benefit of Notification no 25/2005-Cus Dt. 01.03.2005 and or 10/2012-Cus 17.03.2012 after the bill of entries were finalized which is not permissible unless the importer requested for the amendment of documents U/S 149 of the Act.

2.7 Being aggrieved with the order of the Id.Commissioner (Appeals), the appellants are before us.

3. The Id.Counsel for the appellants submits that the Commissioner (Appeals) order is based mainly on the fact that duty had been paid under self-assessment and has not been passed on merits. He also

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submits that the appellants filed two appeals under reference. It is on record that the appellant had been clearing the goods under CTH 85255050. The Customs Deptt DRI Unit launched an investigation against the appellant and others and issued a show cause notice (Supra) proposing to classify the goods under CTH 85272900 and deny the benefit of notification no. 25/2005- Cus Dt. 01.03.2005.

3.1 He further submits that the show cause notice was the trigger to declare CTH 85272900 in Bill of Entry No 4369526 Dt. 17.01.2014 and 4524038 Dt. 01.02.2014 and pay duty under protest and observed by Commissioner (A). Hence so-called self-assessment was not a voluntary Act but an attempt to play safe in view of DRI show cause notice. So far as merits were concerned the issue of classification stands settled by ADG DRI (Adjudication) who withdraw the show cause notice. He, therefore, prays that the impugned order be set aside and allow the appeals with consequential relief.

4. The Id.A.R. for the Revenue reiterated the findings of the adjudicating authority.

5. Heard both the parties and considered the submissions.

6. We find that the short issue involved in this case is that whether the goods i.e. "Wireless Microphone System/Set" imported by the appellant, are classifiable under Tariff Item 85255050 or 85299000 and eligible for exemption from payment of BCD Vide Sl.No.16 of Notification No.25/2005-Cus dated 01.03.2005.

7. The said issue has been examined by the ADG (Adjudication), DRI vide Order-in-Original No.07/NKU(10-12)/ADG(Adj.)/DRI/N.Delhi/2016-17 dated 30.03.2017, wherein it has been observed that the impugned

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goods i.e. "Wireless Microphone System/Set" imported by the appellant, are classifiable under Tariff Item 85255050 and is entitled the benefit of Notification No.25/2005-Cus dated 01.03.2005 as amended. For better appreciation, the said observations are incorporated herein under :

"10.1 The impugned goods viz. "Wireless Microphone System/Set" are classifiable under Tariff Item 85255050 for the subject period and are entitled to the benefit of exemption of BCD under Notification No.21/2002-Cus dated 01.03.2002 ; Notification No.25/2005-Cus dated 01.03.2005 and Notification No.12/2012-Cus dated 17.03.2012."

and thereafter, the proceedings were dropped against the importer wherein the appellant is one of the importer and the said order has entertained finality.

8. In that circumstances, we hold that the impugned goods imported by the appellant falls under the CTH 85255050 and is entitled for exemption from payment of BCD in terms of Notification No.25/2005-Cus dated 01.03.2005.

9. Therefore, we do not find any merit in the impugned order and the same are set aside.

10. In the result, the appeal is allowed with consequential relief, if any.

(Operative part of the order was pronounced in the open court)

(Ashok Jindal)
Member (Judicial)

(K.Anpazhakan)
Member (Technical)