IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT MUMBAI
COURT NO. I

Appeal No. C/688/08 & C/126/10

(Arising out of Order-in-Appeal No. 165/2008/MCH/ACA/VB/ 07-08 dated 25.03.2008 passed by the Commissioner of Customs (Appeals), Mumbai-I and Order-in-Original No. 08/2009-10 CC(I)/JNCH dated 20.01.2010 passed by the Commissioner of Customs (Import), Nhava Sheva).

Commissioner of Customs (Import). Nhava Sheva	Appellant

Vs.

M/s Vodafone Essar Gujarat Ltd. M/s Vodafone Essar Cellular Ltd.	Respondents

Appearance:

Mrs. P. Vinitha Sekhar, Jt. Commr. (AR)	for Appellant

Shri T. Viswanathan, Advocate	for Respondent

And

Appeal No. C/48 to 55/10, C/291 to 295/11, C/372 to 378/12 & C/1093 to 1103/12

(Arising out of Order-in-Original No. 154/2009 CC(I)/JNCH dated 21.10.2009 and Order-in-Original No. 64 to 70 (Gr.VB)/2012 (JNCH) MP 54 to 65 dated 08.02.2012 passed by the Commissioner of Customs (Import), Nhava Sheva).

M/s Vodafone Essar Gujarat Ltd. M/s Vodafone Spacetel Ltd. M/s Vodafone Essar Cellular Ltd. M/s Vodafone Essar South Ltd. M/s Vodafone Essar Digilink Ltd. M/s Vodafone Essar Ltd. M/s Vodafone Essar Digilink Ltd. M/s Vodafone Essar Cellular Ltd.	Appellants

Vs.

Commissioner of Customs (Import). Nhava Sheva	Respondent

Appearance:

Shri T. Viswanathan, Advocate	for Appellant

Mrs. P. Vinitha Sekhar, Jt. Commr. (AR)	for Respondent

CORAM:

HON'BLE DR. D.M. MISRA, MEMBER (JUDICIAL)
HON'BLE MR. S. SRIVASTAVA, MEMBER (TECHNICAL)

Date of Hearing: 09.10.2018

Date of Decision: 09.10.2018

ORDER NO. **A/88216-88248 / 2018**

Per: Dr. D.M. Misra

All these appeals listed are filed by the assessee as well as Revenue. Since involved common issue, they are heard together and being disposed.

2. The short issue involved in these appeals relate to whether the Optical Fiber Cable imported by the appellants and used in telecommunication merit classification under Customs Tariff Heading 8549 and eligible to benefit of exemption under Notification No. 20/2005-Cus dated 1.3.2005 or the classification of the said cable is under Tariff Heading 9001 of Customs Tariff Act, 1975 attracting customs duty @ 10% under Notification No. 21/2002-Cus dated 1.3.2002. Recording conflict views on the subject, the matter was referred to Larger Bench of this Tribunal vide Order No. M/5336/15/CB dated 02.12.2015. After analyzing the issue in detail, the larger Bench of this Tribunal vide Order No. dated 22.11.2017 answering the reference observed as follows: -

> "6. In these circumstances, the reference is answered as follows: -
>
> *'Optical Fibre Cables (OFC) imported by Vodafone Group of Companies and used in Telecommunication are not classifiable under Customs Tariff Heading 8544 and they would fall under Customs Tariff Heading 9001'."*

3. Learned Advocate Shri T. Viswanathan for the assessee appellants submits that the issue has been decided against the assessee. However, he vehemently argued that since the issue relates to interpretation of the relevant entries under the Customs Tariff Act, no *mala fide* intention could be attributed in declaring the classification under Heading 8544 of the Customs Tariff Act, 1975. Consequently, the imposition of penalty and confiscation of the goods as directed in Appeal No. C/54 & 55/2010 is unwarranted and hence liable to be set aside.

4. Per contra, the learned AR for the Revenue fairly submits that since the issue has been referred to Larger Bench for resolution of conflicting views, therefore, the issue is one of interpretation of law.

5. Heard both sides and perused the records.

6. As far as classification of the Optical Fibre Cables imported by the appellants, the larger Bench of this Tribunal has decided the issue on merit against the assessee observing that the same is classifiable under Customs Tariff Heading 9001 of the Customs Tariff Act, 1975. Therefore, the appeals filed by the assessees are accordingly dismissed.

7. As far as Appeal No. C/54 & 55/2010 are concerned, in addition to confirmation of the demand, the authorities below have imposed fine and penalty, which in our opinion cannot be sustained as the issue involved relates to classification of the imported Optical Fibre Cables and no facts have been suppressed nor mis-declared while claiming classification under Heading No. 8544 of Customs Tariff Act, 1975. Consequently, the fine and penalties imposed are set aside and orders are modified to this extent and appeals are partly allowed.

8. With regard to Appeal No. C/126/10 filed by the Revenue, which relates to enhancement of penalty, the same is dismissed and the Appeal No. C/688/2008, also of the Revenue, which relates to classification of the Optical Fibre Cables under Tariff Heading 9001, is hereby allowed.

9. The appeals are disposed of as above.

(Operative portion of the order pronounced in Court)

(S. Srivastava)
Member (Technical)

(Dr. D.M. Misra)
Member (Judicial)

Sinha