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

APPLICATION No. C/Misc/85202/2018
APPEAL No. C/85097/2018

(Arising out of Order-in-Appeal No. MUM-CUSTM-AMP-APP-897/17-18 dated 26.12.2017 passed by Commissioner of Customs (Appeals), Mumbai)

Ingram Micro India Pvt. Ltd. **Appellant**

Vs.

Commissioner of Customs, ACC, Mumbai **Respondent**

Appearance:

Shri Anil Balani, Advocate, for appellant
Shri R. Kumar, Assistant Commissioner (AR), for respondent

CORAM:

Hon'ble Mr. Ajay Sharma, Member (Judicial)
Hon'ble Mr. Sanjiv Srivastava, Member (Technical)

Date of Hearing: 30.10.2018
Date of Decision: 22.01.2019

ORDER No. **A/85145/2019**

Per: Sanjiv Srivastava

The appeal is directed against the Order in Appeal No MUM-CUSTM-AMP-APP-896/17-18 dated 26.12.2017 of Commissioner of Customs (Appeals) Mumbai III. By the said order Commissioner (Appeal) has upheld the order in original No CAO No DC/SG/871/2016-17 Adjn (I) ACC dated 28.02.2017 of Deputy Commissioner of Customs, Group VA, ACC Mumbai holding as follows:

"I order that the goods under import viz "SX20 QUICK SET WITH 12 XPHDCAM, IMIC, REMOTE AND TC& SW, CTS-SX20-PHD12X-K9 (Video Conferencing System)" be classified under CTH 85176290.

I deny the benefit for the said goods under Notification No 024/2005 dated 01.03.2005 Sl No 13 and the same be assessed on merit rate of duty.

The order is issued without prejudice to any other action that may be taken against the importer or any other person under Customs Act, 9162 or any other Act for time being in force in India."

2.1 Appellants had filed Bill of Entry No 7260501 dated 27.10.2016 for clearance of the goods declared as *SX20 QUICK SET WITH 12 XPHDCAM, IMIC, REMOTE AND TC& SW, CTS-SX20-PHD12X-K9 (Video Conferencing System)"*claiming their classification under CTH 85176990 and benefit of exemption under Notification No 24/2005-Cus (S No 13).

2.2 Revenue didn't agree with the classification as claimed by the appellant and proposed to classify them under CTH 85176290. It was also proposed to deny the benefit of exemption under Notification No 24/2005 (Sl No 13).

2.3 After taking into account the explanation offered by the appellant vide their letter dated 21.12.2016, Deputy Commissioner of Customs Group VA Air Cargo Complex Mumbai, adjudicated the matter classifying the goods imported under CTH 85176290 and denied the benefit of exemption under Notification No 24/2005-Cus (Sl No 13) by his order referred in para 1, supra.

2.4 Aggrieved by the order of Deputy Commissioner appellants filed the appeal before Commissioner (Appeal). The appeal filed by the Appellants was dismissed by the Commissioner (Appeal) hence they are in appeal before us.

3.1 In their appeal appellants have assailed the order of Commissioner (Appeal) stating that-

i. Commissioner (Appeal) has in his order admitted that VOIP phone is different from Video Conferencing System (Para 5) but ahs still rejected their appeal.

ii. The Notification 24/2005-Cus (Sl No 13) excludes specific VOIP equipment namely VOIP phones, media gateways, gateway controller and session border controller. Entire VOIP Technology and hence Video Conferencing System are not excluded from the said Notification.

iii. Commissioner (Appeal) failed to appreciate the opinion given by Professor Kannan Krishnamurthy of IIT Madras stating that no soft switch is used in the video Conferencing System and that the video Conferencing System is different from VOIP Phone although both use identical protocols. He had further clarified that Video Conferencing System is video and audio streaming system and certainly not an audio system like VOIP phone.

iv. Even M/s Cisco Systems International BV Netherlands who are the manufacturers clarified that imported system is Video Conferencing System and not a VOIP phone/ equipment.

v. Commissioner 9Appeal) has wrongly concluded that there is no difference between COIP Phone and Video Conferencing System.

vi. Commissioner (Appeal) has failed to appreciate that simply because certain audio standards and protocols in the goods imported by the Appellant were common with Video Conferencing System and VOIP Phones, it did not mean that imported goods were VOIP phones. VOIP Technology is vast and as per the plain reading of notification, only VOIP Phones are excluded from the said notification and not the VOIP Technology as such.

vii. Video conferencing System does not use a soft switc, instead it uses and integrated solution combining a codec, a camera, with microphone and speaker which can be connected to adisplay unit to see and share a video. Audio is just one part.

viii. In the notification for excluding certain goods the word "namely' has been used. The word "namely" has been interpreted by the Hon'ble Apex Court in case of Sree Durga Distributors [2007 (212) ELT 12 (SC)] to mean specific.

ix. Commissioner (Appeal) order is also contrary to the trade parlance and trade understanding of the goods. Hon'ble Supreme Court has in following case emphasized the importance of trade/ common understanding of the phrases used in the notification-

   a. Marico Industries Ltd [2016 (338) ELT 335 (SC)]
   b. Wockhardt Life Science Ltd [2012 (277) ELT 299 9SC)]
   c. Mukesh Kumar Aggarwal & Co [2004 (178) ELT 3 (SC)]
   d. Alpine Industries [2003 (152) ELT 16 (SC)]
   e. A Nagaraju Bros [1994 (72) ELT 801 (SC)]

x. This tribunal has in case of Heavy Engg Corpn Ltd [1990 (49) ELT 531 (T)] & Tata Engg & Locomotive Co Ltd [1998 (98 ELT 623 (T)} held that exclusion clause has to be construed strictly. If only VOIP Phone is excluded, then other products like Video Conferencing System not specifically enumerated in the exclusion clause cannot be excluded.

xi. Commissioner has failed to appreciate that under Notification No 24/2005-Cus (Sl No 40) while components of VOIP phones are exempted components of Video Conferencing System are not exempted.

4.1 We have heard Shri Anil L Balani Learned Advocate for the Appellant and Shri R Kumar Assistant Commissioner (Authorized Representative) for the revenue

4.2 Arguing for the appellant learned advocate submitted-

i. Benefit of the exemption under Notification is available to all goods of heading 8517 except certain specified goods. The specified goods excluded are VOIP Phones. The goods imported are not VOIP Phone but is comprised of Codec device, Microphone, Remote Camera and Cables.

ii. Exclusion clause in notification using the word “namely” should be strictly interpreted and only those which are specifically covered by the exclusion clause should only be excluded, as has been held by the Hon’ble Apex Court in case of Sree Durga Distributors.

iii. Tribunal has in case of Heavy Engg Corpn Ltd [1990 (49) ELT 531 (T)] & Tata Engg & Locomotive Co Ltd [1998 (98 ELT 623 (T)] held that *“what are excluded from the scope of an expression in a legal provision are only those items mentioned specifically in the exclusion clause”.*

iv. Expert Opinion of Shri Kannan Krishnamurthy IIT and the certificate issued by the manufacturer clearly states that the goods imported are not VOIP

Phones. Thus they are not excluded from the said notification.

v. Also by applying the trade parlance test, distinction between VOIP Phone and Video Conferencing System is evident. Thus in view of decions in case of Plasmac Machine Mfg Co Pvt Ltd [1991 (51) ELT 161 (SC)], Novopan India Ltd [1994 (733) ELT 769 (SC)], Mukesh Kumar Aggarwal & Co [2004 (178) ELT 3 (SC)] and Indian Aluminum Cables Ltd [1985 (21) ELT 3 (SC)] the benefit of exemption should not be denied to them

vi. Hon'ble Supreme Court has in case of Favourite Industries [2012 (278) ELT 145 (SC)], Uttam Industries [2011 (265) ELT 14 (SC)] held that notifications need to be construed strictly. In case M Ambalal & Co [2010 (260) ELT 487 (SC)] it has been held that *"interpretation should be beneficial so as to suppress mischief and advance remedy."* In view of these decisions the interpretation that excludes Video conferencing System from the exemption notification is not tenable.

vii. Reference to Wikipedia article *"Voice over IP"* and eztalks.com explaining main difference between Video Conferencing be taken into account for determining the eligibility to exemption notification.

viii. For subsequent periods the benefit of exemption has been extended by Delhi Customs, Mumbai Customs and Madras Customs/ In view of decisions in case of RK Chemicals [2007 (220) ELT 160 (T) and Damodar J Malpani [2002 (146) ELT 483 (SC)] when benefit of exemption is given to others the same should not be denied to appellants.

ix. From the structure of CTH 8517, it is evident that phones fall under heading 851711 to 851718, and apparatus other than phones are covered under headings 85176100 onwards. The goods in present case are held classifiable under heading no 85176290 i.e. other than phones and hence benefit of exemption should be available to these goods.

x. He prayed that appeal should be allowed

4.3 Arguing for the revenue learned Authorized Representative submitted:

i. Both VOIP Phone and Video Conferencing Systems are one and the same with respect to their functioning as both transmit data from one end to another over IP using the same protocols i.e. G711, G722 & G729. The similarities between the two can be enumerated as follows-

   a. Most of Audio standards, protocols and network requirements for the product in question are common to that of VOIP Phone for the delivery of voice communication and multimedia session over IP network.

b. Network technology is common –H323 & SIP (Session Initiation Protocol). VOIP technology has not merely a voice over internet technology, but a technology which allows voice, video and other multimedia application on real time over the internet.

c. VOIP is not a single technology, but it is group of technologies used for real time transmission and reception of voice, video & other multimedia data packets over internet in secured manner.

ii. Video Conferencing system is designed to transmit and receive audio & video. This provides both audio and video connectivity to its users utilizing the standards and protocols of VOIP technology/ phone.

iii. In terms of Note 3 to Section XVI, since the goods are designed to transmit audio and video, the same merit classification under heading 85176290.

iv. The codec unit works to code/decode audio and video signals for communication from transmitting end to receiving end. The microphones within the camera is used to transmit the voices of the conference participants to a remote location, thus Video Conferencing System is nothing but a VOIP phone which are excluded from the scope of the said exemption of Sr No 13 of Notification No 24/2005 dated 01.03.2005.

v. The contention of the appellant that VOIP phone is a single unit, but the Video Conferencing System consists of different devices like a monitor, camera, microphone and input device like key board does not mean much because all the devices that exist are part of every such system, in some case they are connected externally through system of wire and cables and in more miniaturized version housed in single body through circuits. The manner of connection or presentation cannot be determinative of the fact that whether imported goods are excluded from the exemption notification or not.

vi. With the advancement of technology, there are smart Televisions in the market, which can be used as a monitor of computer and it has an inbuilt Camera to capture picture/ video to see on other end. It also has inbuilt memory and microphone and speaker. With all inbuilt devices, these 'smart television' cannot be termed as video conferencing system or smart phone or a data processing machine, the same continue to be a television and to be classified accordingly.

vii. In view of above the Video Conferencing System is nothing but VOIP Phone and benefit of exemption is not available to it.

5.1 We have considered the submissions made in appeal and during the course of argument. The issue for decision before us is whether the benefit of exemption under Notification No 24/2005-Cus (Sl No 13) admissible in respect of the goods imported by the appellant describing them as “Video Conferencing system”. For ease of reference we reproduce the text of the said entry below:

S N	Heading or Subheading or tariff item	Description
13	8517	All goods, except the following: (i) Soft switches and voice over internet protocol, equipment, namely VOIP Phones, media gateways, gateway controllers and session border controllers; (ii) Optical transport equipments, combination of one or more of packet optical transport products or switch (POTP or POTS), Optical Transport Network (OTN) products and IP Radios; (iii) Carrier Ethernet Switch, Packet Transport Node (PTN) products, Multiprotocol Label Switching Transport Profile (MPLS-TP) products; (iv) Multiple Input/ Multiple Output (MIMO) and Long Term Evolution (LTE (Products).

5.2 Looking into highly technical nature of dispute, the bench hearing the matter 02/04/2018 vide Order No I/14/18 dated 02/04/2018 ordered as follows:

“3. We are of the view that being highly technical and specialized product, an expert opinion is required to arrive at a conclusion of the nature of the product. We, therefore, direct Revenue to obtain report from the technical experts of department of electronics and/ or the department of telecommunication of Government of India. The appellant is also directed to obtain such report/ certificate from a recognized Independent authority.”

By post

INWARD NO. 4928

24 SEP 2018

INWARD CLERK
CESTAT, MUMBAI

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349146/2018/IP CELL File No.16-07/2018-IP-Part(1)

Government of India
Ministry of Communications
Department of Telecommunications
(Investment Promotion Cell)
20-Ashok Road, Sanchar Bhavan,
New Delhi -110 001.

Dated: 18/09/2018

OFFICE MEMORANDUM

Sub: Technical Opinion in video conferencing equipment/ TelePresence Model No. CTS-SX20-PHD 12-X-K9, Brand/ Manufacturer - M/s CISCO.

The undersigned is directed to refer to your letter dated 27.04.2018 wherein the technical opinion/comments was sought from this Department on the issue whether video conferencing equipment (TelePresence) is a Voice Over Internet Protocol (VoIP) or not.

2. In this regard, the comments have been obtained from Telecom Engineering Centre (TEC), DoT and to state that this Department is of the opinion that **Video Conferencing Equipment/Telepresence (model number CTS-SX20-PHD12-X-K9, brand manufacturer M/s Cisco) is a "VoIP Equipment"** used for Point to point and/or Point to Multipoint video conferencing using H.323/SIP/VOIP in the same conference.

3. A copy of the TEC opinion is also enclosed.

Encl: as above

(Manish Shukla)
ADG (IP)
Tel: 2303 6401

Ms. Blasé D'Souza
Director-Materials
INGRAM Micro India Private Limited
5th floor, Block-B, Godrej IT Park, Pirojshanagar
LBS Marg, Vikhroli West, Mumbai-400 079
(Email: IN-ImpexInfo@ingrammicro.com)

Copy to:

- **Deputy Registrar, CESTAT 34, P D'Mello Raod, Poona Srteet, Masjid Bunder(E), Mumbai-400009**

Government of India
Department of Telecommunication
Telecommunication Engineering Centre
Gate No. 5, Khurshid Lal Bhawan, Janpath,
New Delhi-110001

File no: TEC/IT/Tec Disc/2015 Date:10-08-2018

To

Sh. Manish Shukla
ADG(IP)
Sanchar Bhawan, 20 Ashoka Road
New Delhi-110001

Subject: Technical Opinion on video conferencing/Telepresence Model No. CTS-SX20-PHD 12-X-K9 brand Manufacturer-M/s CISCO-Regarding.
Reference: Dot letter O. M No. 16-08/2008-IP dated 15.06.2018

1. Kindly refer to DoT letter under reference seeking technical comments on video conferencing/Telepresence Model No. CTS-SX20-PHD 12-X-K9 brand Manufacturer-M\s CISCO. DoT requested TEC to examine the letter from M/s Ingram Micro India Private Limited and sought for comments as to "whether the said video conferencing equipment is a VOIP phone or not."

2. The undersigned is directed to convey the views/comments of TEC as follows:

   a) SIP Terminal/IP Phone/ VOIP Phone is a customer premises equipment & connected to Telecom Service provider's infrastructure to process and carry voice signal and multimedia services. It shall be connected in access layer of IP network (e.g. PABX, LMG, IAD or may be directly connected to router/soft switch).

   b) Based on the CISCO product's working demonstration in TEC, New Delhi and specification data sheet, it is observed that Cisco SX20 is a Video Conferencing Endpoint which includes a Codec, Camera, Microphone and Remote Control. It is used to send and receive Video and Audio streaming over IP network.

   c) Cisco SX20 uses ITU based H.323 protocol and also supports SIP Protocols for communication with other devices on IP network. SX20 is designed as a standalone device which does not require call control server or gateway for operation when H.323 protocol is used but the device has a capability of connecting with SIP supported devices.

   d) As per the GR on VoIP Traffic Generator and Protocol/Performance Analyser, the VOIP network could be based on any of the VoIP signalling specification like H.323, H.245, H.248, SIP, SIP-I, SIP-T, BICC-CS2 (Optional) or MGCP and VoLTE

interfaces/protocols including S1, S3, S6a, S10, S11, SGs, Gx, Gy, lu-CS and lu-PS. Hence, any equipment utilising any of the above protocol shall be treated as VOIP equipment. Accordingly, the said CISCO equipment using SIP/H.323 protocol may be considered as VOIP equipment.

   e) In view of the above, TEC is of the opinion that Video Conferencing Equipment/ Telepresence (model number CTS-SX20-PHD12-X-K9, brand manufacturer M/s Cisco) is a "VoIP Equipment" used for Point to point and/ or Point to Multipoint video conferencing using H.323/SIP/VOIP in the same conference.

This issues with the approval of competent authority.

(U.C. Meena)
ADG(IT-4)
TEC, New Delhi

5.3 Department of Telecommunication, Ministry of Telecommunications, has opined in respect of the imported goods namely Video Conferencing Equipment/ Telepresence (Model Number *CTS-SX20-PHD12X-K9, brand manufacturer M/s Cisco)* is a “VOIP Equipment” used for point to point and/ or Point to Multipoint Video Conferencing using H.323/SIP/VOIP in the same conference.

5.4 Appellants have also relied upon the opinion given by manufacturer and one Shri Kannan Krishnamurty, Executive Producer, Virtual Classrooms & Video Productions, National Program on Technology Enhanced Learning, IC & SR Building, third Floor, Data Centre, Indian Institute of Technology Madras, Chennai -600036. The said two opinions are reproduced below:

Cisco Systems International B.V.
Haarlerbergpark
Haarlerbergweg 13-19
1101 CH Amsterdam
The Netherlands

November 29, 2016

To Whom It May Concern

Sub: Video Conferencing Unit

Cisco Systems International B.V. ("Cisco") is a reputed supplier of networking products and services worldwide.

Cisco provides scalable and affordable conferencing for organizations of all sizes. Cisco wishes to confirm the following in relation to the SKUs mentioned below (Annexure A):

- These SKUs are used for High Definition Video Conferencing and registration of the same is not mandatory.
- These SKUs can work independently as well.
- These SKUs are not VOIP Equipment. VOIP Equipment are limited to voice and do not cover Telepresence Equipment

Thank you,

"Approved by Legal"

For Cisco Systems International B.V.,

Annemieke de Groot
Managing Director
29 NOV. 2016

Authorised Signatory

Cisco Systems International BV
Haarlerbergweg 13-19
1101 CH Amsterdam - The Netherlands

NPTEL

Kannan Krishnamurty
Executive Producer
Virtual Classrooms & Video Productions
National Program on Technology Enhanced Learning
IC&SR Building, Third Floor, Data Centre,
Indian Institute of Technology Madras, Chennai- 600036
Phone: +914422575900, Email:kankrish@nptel.iitm.ac.in

Technical Opinion on VoIP Equipment Vs Video Conferencing Equipment

Product : **Video Conferencing Equipment**

Brand : **CISCO**

Model No. **CTS-SX20-PHD12X-K9**

Description: **CISCO TelePresence SX20 Quick Set**

Requested by : **Ingram Micro India Pvt. Ltd., Chennai**

NOTARY R. K. SINGH Area Greater Mumbai & Thane Distt. Regd. No. 11212 GOVT. OF INDIA

Background:

Ingram Micro India Pvt. Ltd has provided a sample of CISCO Telepresence SX20 Quick Set (Video Conferencing Equipment) Model No. CTS-SX20-PHD12X-K9 with a request to study the product and advise whether this product is a VoIP Equipment or distinctly different and independent product.

The following documents have been provided:

- Datasheet (8 pages) of CISCO TelePresence SX20 Quick Set (attached).
- CISCO Systems International B.V. letter dtd. 29.11.2016 with Subject: Video Conferencing Unit.
- Department of Revenue Notification No. 11/2014 – Customs, New Delhi, the 11th July, 2014.

Methodology:

Examined the sample provided and studied the related datasheet and technical views of the Brand. Have also gone through the Customs Notification which refers to " Soft switches and Voice over Internet Protocol (VoIP) equipment, namely VoIP phones, ..."

Examined the sample and datasheets of Video Conferencing Equipment and give my technical opinion of the differences between VoIP Equipment and Video Conferencing Equipment.

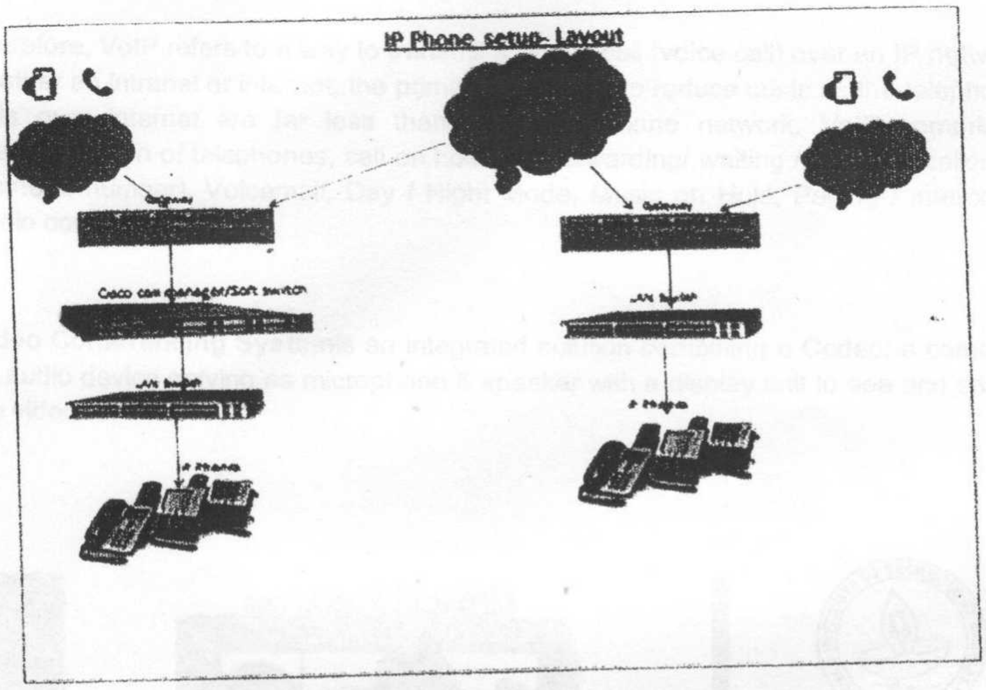
Technical Explanation:

Voice over Internet Protocol (VoIP) is a methodology which requires a hardware and software connected to an internet that enables a user to use the medium (Internet) to transmit telephone (Voice) calls by sending voice data using a IP address rather than the conventional telephones lines.

With VoIP or IP Telephony, the main focus is always on voice services which means just audio. Voice over Internet Protocol (VoIP) is a technology that allows you to make voice calls using a broadband Internet connection instead of a regular (or analog) phone line. Some VoIP services may only allow you to call other people using the same service but others may allow you to call anyone who has a telephone number - including local, long distance, mobile, and international numbers. While some VoIP services only work over your computer (e.g. X-Lite, Zoiper) or a special VoIP phone, other services allow you to use a traditional phone connected to a VoIP adapter.

(Ref: - https://www.fcc.gov/general/voice-over-internet-protocol-voip)

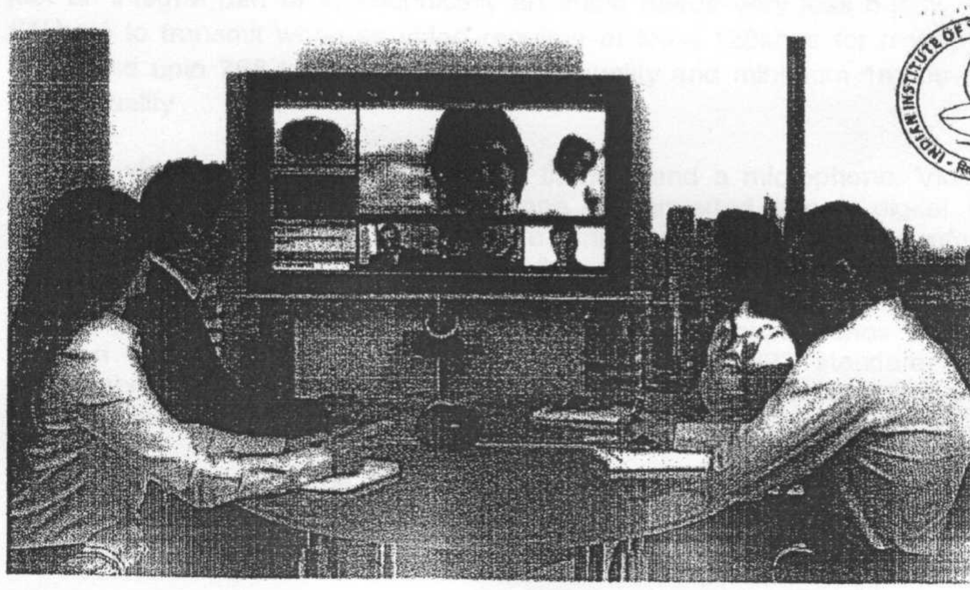
A typical IP Telephony setup requires a Gateway, Soft switch & an IP Phone.

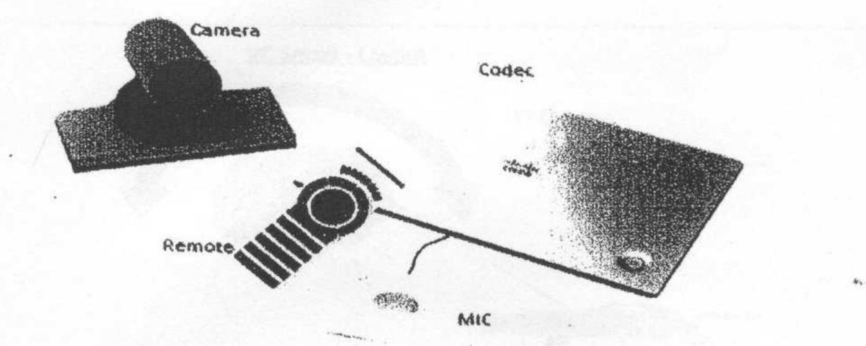


Hardware based IP phones or software based Phones initially register with the Soft Switch (IP PBX Server). When they want to communicate they request the Server for establishing the connection. The IP PBX has a directory or the database of all phones or users with the corresponding SIP (Session Initiation Protocol) Address or extension. When the request is placed from the IP Phone, the IP address is first resolved to the SIP Address or extension No. in the IP PBX and then it is routed to the destination. Thus the routing of the internal calls are done directly. The routing of external calls are done through VoIP Gateway. Analog Trunk Gateway allows the IP PBX to connect to the PSTN or PBX. Digital Trunk Gateway supports both digital T1/E1 connectivity to the PSTN and conferencing.

Therefore, VoIP refers to a way to transmit a phone call (voice call) over an IP network whether an intranet or internet, the primary aim being to reduce costs as the telephone calls over internet are far less than traditional phone network. VoIP comprises interconnection of telephones, call on hold, call forwarding/ waiting / transfer, caller ID (name & number), Voicemail, Day / Night Mode, Music on Hold, Paging / intercom, Audio conferencing, etc.

Video Conferencing Systemis an integrated solution combining a Codec, a camera, an audio device serving as microphone & speaker with a display unit to see and share the video.

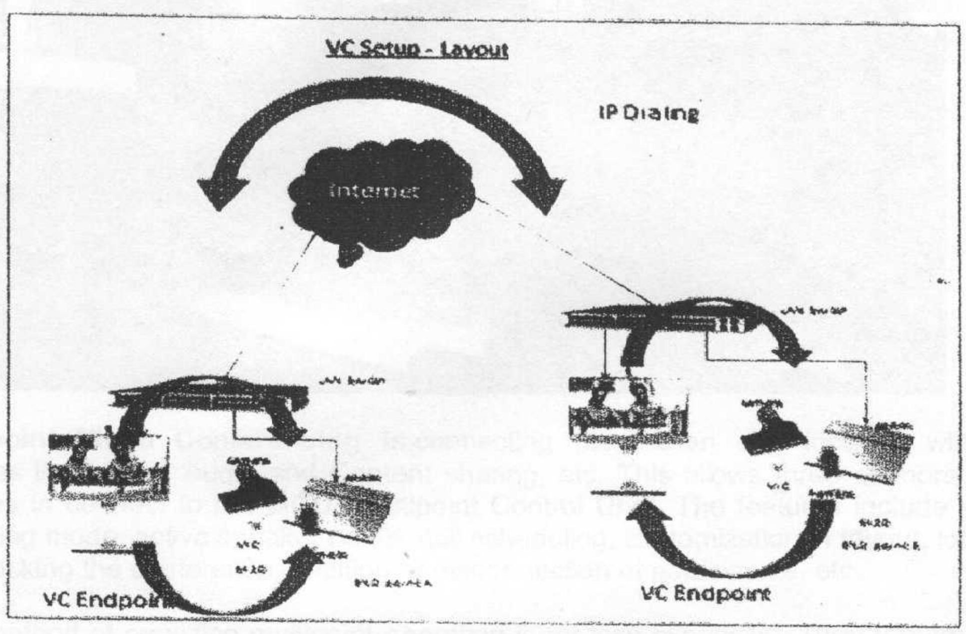




A Video Conference as the name denotes is primarily sharing of video and audio is just an integral part of it. Technically an audio needs very less bandwidth (approx. 64kbps) to transmit whereas video requires at least 128kbps for a very low quality video and upto 768 kbps for considerable quality and minimum 1mbps onwards for better quality .

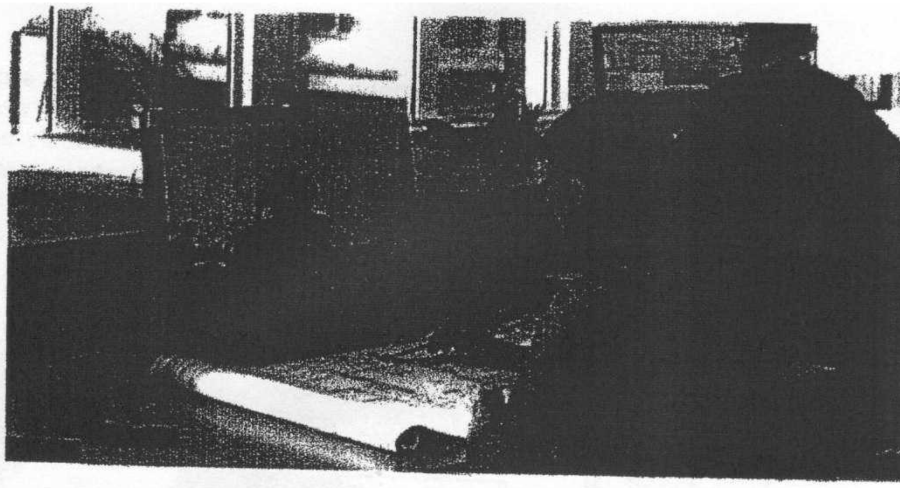
A basic video conference setup has a camera and a microphone. Video from the camera and audio from the microphone is converted into a digital format and transmitted to a receiving location using a coding and decoding device referred to as a "codec". At that receiving location is another codec device that decodes the receiving digital stream into a form that can be ***seen*** and heard on monitors or televisions. At the same time, video and audio from cameras and microphones at the receiving location is sent back to the original location. The H.323 standard specifies the components, protocols, and procedures for the transmission of real-time audio, video, and data communications over IP (packet-based) networks.

In Video Conferencingthe call is set up by dialing the other location device's /IP Address.



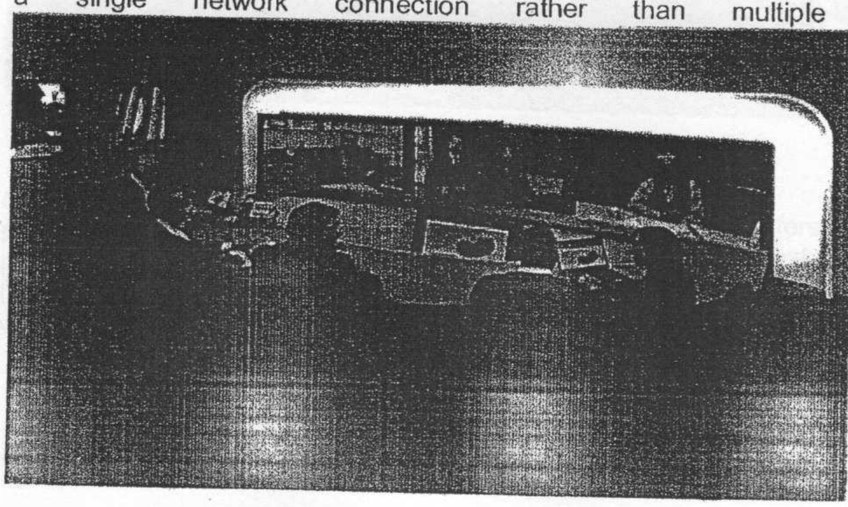
A video conference device also has all the interfaces that are required to integrate and share like the VGA (Video Graphics adapter) to connect computers or similar devices, DVI (Digital Video interface), HDMI(High Definition Media Interface) and corresponding audio that are inbuilt into the codec device.

Point to point video conferencing is its simplest form. H.323 video conferencing consists of two H.323 video conferencing systems talking to each other over the Internet. This is called "point to point" conferencing where one station initiates the call and the other either accepts or rejects. Once accepted, encoded and compressed audio and video flows between the two stations.

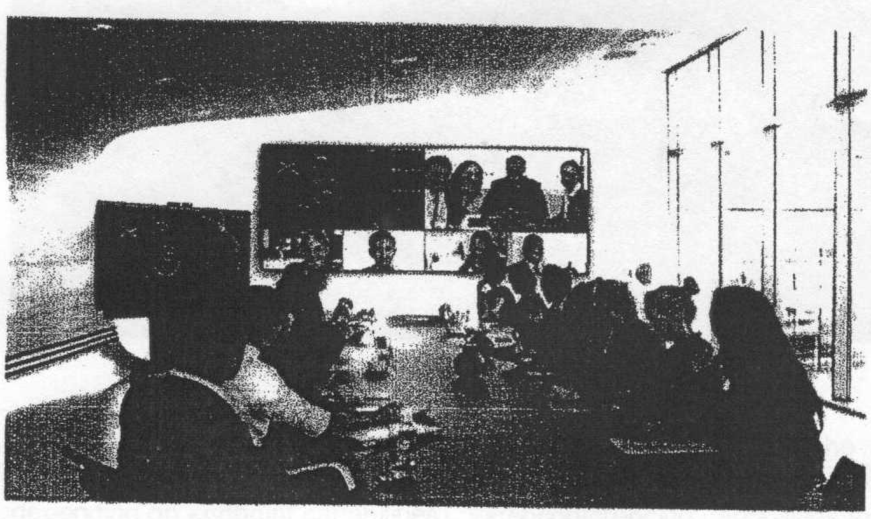


Multipoint Video Conferencing is connecting more than one location with all features like Video, Audio and Content sharing, etc. This allows three or more user stations to connect to the MCU (Multipoint Control Unit). The features include voice switching mode, active speaker mode, call scheduling, customization of layout, locking or unlocking the conference, addition or disconnection of participants, etc.

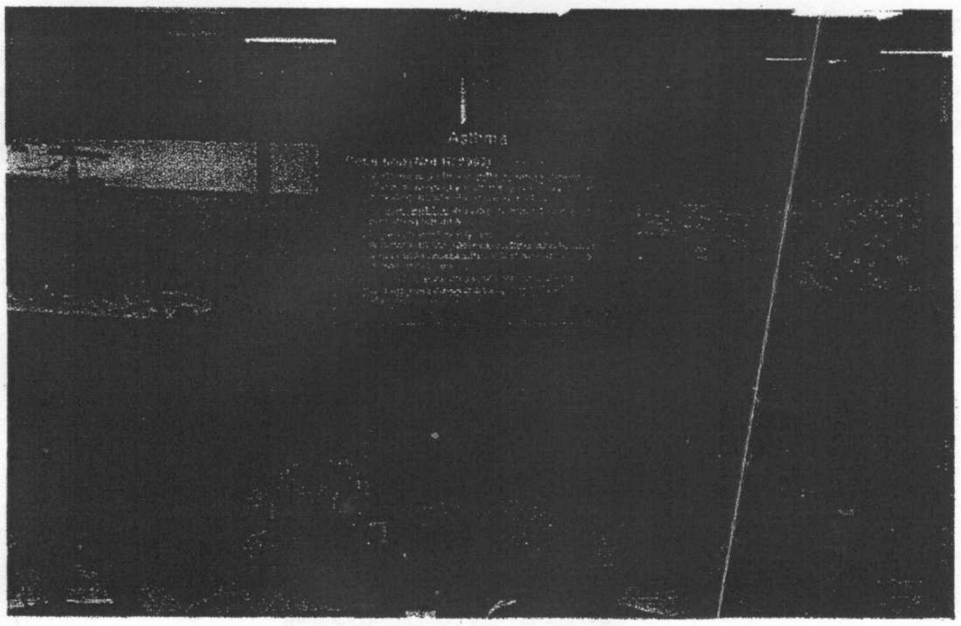
This method of providing multipoint operation is far less expensive. They require only a single network connection rather than multiple ISDN lines...



"People plus content" is a standard that allows a video conferencing system to process high resolution VGA graphics along with the standard video signal. This means video conferencing system in the conference sends and receives two video streams - video and VGA graphics. Example: In a classroom equipped with two monitors, the students could see both the instructor and the presentation on the two different displays nor single display.



Continuous Presence is a feature available during video conferences that allows all participants to be visible on the screen at the same time. For instance, if there are 12 participants in the video conference, the screen everyone sees will have 12 windows (which can be of various client defined sizes) with each participant in their own window.



Both VoIP & Video Conferencing Equipments are based on the H.323 and SIP protocols. Using these protocols you can call other endpoints (voice and video depending on endpoint capabilities). Videoconferencing capabilities are builtinside the protocol H.323 and SIP which are both referred to as "call control" protocols. They allow a device, such as a desk phone, softphone or videoconferencing system to place a video call (including audio) to another person over IP.

The Customs Notification clearly describes the goods covered therein as Soft switches and Voice over Internet protocol equipment which indicates those equipments which are used in a system that uses a soft switch and a VoIP Equipment. Very clearly in a Video Conferencing System there is no soft switch used. In Video Conferencing only a Codec device is used for digital streaming of video and audio.

A Video conferencing system is a different technology when compared to a VoIP Phone although using identical protocols. Video Conferencing System is being used extensively as a communication system mostly replacing the physical presence in Medicine, Engineering, Agriculture, Space Research, Judiciary, School and College Education and lots of many areas of occupation and services.

To conclude:A Video Conference System is more simply a video and audio streaming system and certainly not an audio system like VoIP Equipment (VoIP Phones).

(KANNAN KRISHNAMURTY)

KANNAN KRISHNAMURTY
EXECUTIVE PRODUCER
VIRTUAL CLASSROOMS & VIDEO PRODUCTIONS
INDIAN INSTITUTE OF TECHNOLOGY MADRAS,
CHENNAI - 600 036.

NPTEL - IC&SR
17 APR 2017
IIT MADRAS

NOTARY
R. K. SINGH
Area Greater Mumbai & Thane Distt.
Regd. No. 11212
GOVT. OF INDIA

CERTIFIED TRUE COPY
21-4-17
R. K. Singh
Advocate & Notary (Govt. Of India)
Greater Mumbai & Thane District
Regd. No. 11212

R. K. SINGH
Area Greater Mumbai & Thane Distt.
Regd. No. 11212
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5.5 Of the three opinions produced we are inclined to go with opinion given by Department of Telecommunications, Ministry of Communication, Government of India. The reasons for discarding the other two opinions are as follows:

i. Opinion given by the manufacturer CISCO is nothing but description of the product. It is not giving any reasons for justifying that the said equipment do not qualify as "VOIP Equipment."

ii. Opinion purported to be given by someone who is Executive Producer, Virtual Classroom & Video Productions National Program on Technology enhanced Learning, cannot be said to be given by someone who is an technical authority on the subject. The opinion where specifies as to qualifications and competence of the person giving the opinion. In absence of any such specifications about the person giving the opinion the said opinion do not inspire confidence

iii. On page 9, Shri Kannan, even goes beyond the scope and ambit of the technical expert opinion and opines in respect of Custom Notification stating *"The Customs Notification clearly describes the goods covered therein as soft switches and Voice over Internet Protocol Equipment which indicates those equipments which are used in a system that* *uses a soft switch and VOIP Equipment. Very clearly in a Video Conferencing system there is no soft switch used in Video Conferencing only a Codec device is used for digital streaming of video and audio."*

5.6 Entire essence of the argument advanced by the appellants is that the system imported by them comprises of Speakers, microphone, codec, camera and monitor. These taken together constitute the Video Conferencing System. The said argument do not advance the case of appellant's. Any system for audio and visual communication will have all these devices either inbuilt in one unit or built as a system of interconnected devices to perform the same function. The codec which in view of the appellants and in view of the opinion given by Shri Kannan, is a distinguishing feature is devoid of any merits. As per

- techterms.com "*"Codec" is short for "coder-decoder." It is an algorithm used to encode data, such as an audio or video clip. The encoded data must be decoded when played back.";*
- dictionary.cambridge.org, *"Codec" is a device or computer program that compresses data (= makes it use less space) so it can be sent or stored, and decompresses it (= returns it to its original form) so it can be seen or used:*

- collinsdictionary.com, *"Codec" is a set of equipment that encodes an analogue speech or video signal into digital form for transmission purposes and at the receiving end decodes the digital signal into a form close to its original;*

5.7 Thus codec in view of the above discussions we are of the view that codec, which is nothing but a coder/ decoder, is part of every system transmitting audio or video messages over a digital media and internet protocol. Codec cannot be distinguishing feature for the goods under import from the VOIP Equipments.

5.8 In view of the above expert opinion given by Department of Telecommunication, Ministry of Telecommunication, we do not have any hesitation in holding that the goods imported are nothing but **"VOIP Equipment"**.

5.9 Now coming to the entry in the exemption Notification No 25/2004-Cus at Sl No 13. Appellants have relied upon the Hon'ble Apex Court decision in case of Sree Durga Distributors to argue that by using the word "namely", the notification has given exhaustive list of equipments to be excluded. Since what has been excluded is VOIP Phones, then all other VOIP Equipments should be covered by the said notification. In that case Hon'ble Apex Court has held as follows:

*“**5.**We do not find any merit in the arguments. The above quoted Entry 5 shows that animal feed and feed supplements is one category. It is after the expression “animal feed and feed supplements” that the Legislature has inserted the comma, therefore, animal feed and feed supplements constitute one class of products, they do not constitute two separate classes. Further, the expression “animal feed and feed supplements” is not only followed by the comma, it is followed by the word ‘namely’, which indicates that the items mentioned after the word ‘namely’ like poultry feed, cattle feed, pig feed, fish feed etc. are specific instances of animal feed and feed supplements, which would fall in Entry 5. That list is exhaustive. In that list, the Legislature has not included dog feed/cat feed, therefore, the products of the appellant do not fall under Entry 5 of the First Schedule of the Act. In our view, the basic premise on which the arguments of the assessee proceeds is that Entry 5 covers three categories of goods, namely, animal feed, feed supplements and feed supplements and mineral mixtures. This premise is wrong. A bare reading of the said entry indicates ‘animal feed and feed supplements’ as constituting one category. They are not two separate categories. The punctuation mark “comma” has been used expressly after the words “animal feed and feed supplements”, which indicates that the Legislature intended to classify these two items as one class/category. Further, the Legislature intended to restrict that category by confining that category to processed commodity alone and that too for certain named animals. In the present case, we are concerned with cat feed and dog feed. Cat feed carries a fishy smell on account of processing. However, cat feed though processed is not put in Entry 5. Similarly, dog feed is also excluded from Entry 5. In the circumstances, we do not find any*

merit in the arguments advanced on behalf of the assessee."

5.10 The issue before the Supreme court in the case of Sree Durga Distributors as evident from the para 3 of the said decision was in respect of interpretation of entry in the Schedule to the Act. The principles of interpretation as laid down by the Apex Court in that case in relation to the entry in the schedule to the Act cannot be made applicable to the interpretation of entry in the exemption notification. Hon'ble Supreme Court has in case of Dilip Gupta Company & Other [Civil Appeal No 3327 of 2007 Order Dated 30.07.2018] held as follows:

"12. We may, here itself notice that the distinction in interpreting a taxing provision (charging provision) and in the matter of interpretation of exemption notification is too obvious to require any elaboration. Nonetheless, in a nutshell, we may mention that, as observed in ***Surendra Cotton Oil Mills Case*** (supra), in the matter of interpretation of charging section of a taxation statute, strict rule of interpretation is mandatory and if there are two views possible in the matter of interpretation of a charging section, the one favourable to the assessee need to be applied."

5.11 Further if the argument of the appellants is to be accepted than quite a few words used in the notification will become redundant. It is the contention of the appellants that the entry *"VOIP Equipment"* used in the notification should be restricted to *"VOIP Phones"* only because of the interconnecting word "namely" used in the notification. A plane reading of the entry "*Soft switches and voice over internet protocol, equipment, namely VOIP Phones, media gateways, gateway controllers and session border controllers;*" would clearly show that *"VOIP Equipments"* are excluded from the notification and if the intention of the Central Government issuing the said notification was to restrict the exclusion on to the "VOIP Phones", they would have not used the phrase "*voice over internet protocol, equipment."* It is settled law that any interpretation which renders the words and phrases used in a exemption notification redundant should be avoided. The Exemption Notification should be considered as a whole, so as to give meaning to every word and phrase used in the notification.

5.12 Appellants have relied upon various decisions with regards to trade understanding of the goods. There is no dispute or controversy in that regards. In case of Mukesh Kumar Aggarwal [2004 (178) ELT (3) SC], Hon'ble Supreme Court laid down the law stating "***4.****In a taxing statute words which are not technical expressions or words of art, but are words of everyday use, must be understood and given a meaning, not in their technical or scientific sense, but in a sense as understood in common parlance i.e. "that sense which people conversant with the* *subject-matter with which the statute is dealing, would attribute to it". Such words must be understood in their 'popular sense'. The particular terms used by the legislature in the denomination of articles are to be understood according to the common, commercial understanding of those terms used and not in their scientific and technical sense "for the legislature does not suppose our merchants to be naturalists or geologists or botanists"."* In this case to understand the imported goods the opinion of Department of Telecommunication, Ministry of Telecommunication, Government of India has been taken. It is on the basis the opinion given by them, we have held that the goods under importation are VOIP Equipment and not eligible to benefit of exemption.

5.13 In case of Favourite Industries [2012 (278) ELT 145 (SC)], Uttam Industries [2011 (265) ELT 14 (SC)] held that notifications need to be construed strictly. The referred para of the said decision is reproduced below:

"25. *The notification requires to be interpreted in the light of the words employed by it and not on any other basis. There cannot be any addition or subtraction from the notification for the reason the exemption notification requires to be strictly construed by the Courts. The wordings of the exemption notification have to be given its natural meaning, when the wordings are simple, clear and unambiguous. In Commissioner of Customs, Kolkata v. Rupa & Co. Ltd., (2004) 6 SCC 408 = 2004 (170) E.L.T. 129 (S.C.), this Court has observed that the exemption notification has to be given strict interpretation by giving* *effect to the clear and unambiguous wordings used in the notification."* Following the principles as laid down by the Apex Court in these decisions we are of the view that "VOIP Equipments" are excluded from the purview of the said Notification.

5.14 The view that exemption notification should be construed beneficially in favour of the subject as has been held in case of M Ambalal & Co [2010 (260) ELT 487 (SC)] *"interpretation should be beneficial so as to suppress mischief and advance remedy."*, has been over-ruled by the Apex Court in case of Dilip Gupta Company, supra. In said decision Hon'ble Apex Court has held-

"52.*To sum up, we answer the reference holding as under*

(1) Exemption notification should be interpreted strictly; the burden of proving applicability would be on the assessee to show that his case comes within the parameters of the exemption clause or exemption notification.

(2) When there is ambiguity in exemption notification which is subject to strict interpretation, the benefit of such ambiguity cannot be claimed by the subject/assessee and it must be interpreted in favour of the revenue.

(3) The ratio in **Sun Export case** *(supra) is not correct and all the decisions which took similar view as in* **Sun Export Case** *(supra) stands overruled."*

5.15 Appellants have submitted that the benefit of the said exemption has been allowed in respect of subsequent import of the same goods by made Chennai Customs, Delhi Customs & Mumbai Customs. They have also filed the produced the copy of Bill Of Entries in this regard. Thus on the basis of the benefit being allowed in case of subsequent imports, they relying on the decisions in case of RK Chemicals [2007 (220) ELT 160 (T) and Damodar J Malpani [2002 (146) ELT 483 (SC)], claimed that the benefit of exemption should be allowed to them. The matter for consideration in the present case before us is in respect of the admissibility of the exemption notification in respect of the imported goods. We are in appeal adjudicating the matter in respect of a particular Bill of Entry and the goods sought to be imported against the said Bill of Entry. The benefit of exemption has been denied by the authorities below in respect of the goods sought to be cleared against specific bill of entry. On examination of facts we are of the view that authorities below have rightly denied the benefit of exemption. We are not bound by the orders/ view taken by the authorities below in respect of the subsequent Bill of entries. It is for the revenue authorities to investigate that when Commissioner (Appeal) had disallowed the benefit of this exemption, and matter was sub-judice before us, why the assessing authorities have allowed the benefit of the exemption in case similarly placed imported goods. Chief Commissioner of the concerned ports should cause an investigation in the matter if they deem fit. However the incorrect/ erroneous order of an authority cannot be binding precedent and reason for allowing the benefit to the appellant, as has been held by the Hon’ble

Apex Court in case of Chandigarh Administration vs Jagjit Singh [1995 SCC (1)745]-

“8.We are of the opinion that the basis or the principle, if it can be called one, on which the writ petition has been allowed by the High Court is unsustainable in law and indefensible in principle. Since we have come across many such instances, we think it necessary to deal with such pleas at a little length. Generally speaking, the mere fact that the respondent authority has passed a particular order in the case of another person similarly situated can never be the ground for issuing a writ in favour of the petitioner on the plea of discrimination. The order in favour of the other person might be legal and valid or it might not be. That has to be investigated first before it can be directed to be followed in the case of the petitioner If the order in favour of the other person is found to be contrary to law or not warranted in the facts and circumstances of his case, it is obvious that such illegal or unwarranted order cannot be made the basis of issuing a writ compelling the respondent authority to repeat the illegality or to pass another unwarranted order. The extraordinary and discretionary power of the High Court cannot be exercised for such a purpose. Merely because the respondent authority has passed one illegal/unwarranted order, it does not entitle the High Court to compel the authority to repeat that illegality over again and again. The illegal/unwarranted action must be corrected, if it can be done according to law indeed, wherever it is possible, the Court should direct the appropriate authority to correct such wrong orders in accordance with law but even if it cannot be corrected, it is difficult to see how it can be made a basis for its repetition. By refusing to direct the respondent authority to repeat the illegality, the Court is not condoning the earlier illegal act/order nor can such

illegal order constitute the basis for a legitimate complaint of discrimination. Giving effect to such pleas would be prejudicial to the interests of law and will do incalculable mischief to public interest. It will be a negation of law and the rule of law. Of course, if in case the order in favour of the other person is found to be a lawful and justified one it can be followed and a similar relief can be given to the petitioner if it is found that the petitioners' case is similar to the other persons' case. But then why examine another person's case in his absence rather than examining the case of the petitioner who is present before the Court and seeking the relief. Is it not more appropriate and convenient to examine the entitlement of the petitioner before the Court to the relief asked for in the facts and circumstances of his case than to enquire into the correctness of the order made or action taken in another person's case, which other person is not before the case nor is his case. In our considered opinion, such a course barring exceptional situations would neither be advisable nor desirable. In other words, the High Court cannot ignore the law and the well-accepted norms governing the writ jurisdiction and say that because in one case a particular order has been passed or a particular action has been taken, the same must be repeated irrespective of the fact whether such an order or action is contrary to law or otherwise. Each case must be decided on its own merits, factual and legal, in accordance with relevant legal principles. The orders and actions of the authorities cannot be equated to the judgments of the Supreme Court and High Courts nor can they be elevated to the level of the precedents, as understood in the judicial world."

6.1 In their appeal memo appellants have raised issue in respect of the classification of the imported goods. They have also filed a Miscellaneous Application to raise additional grounds in support of the classification under CTH 85176990 as claimed by them. Revenue has classified the said goods under heading 85176290. For ease of reference the said headings are reproduced below:

	-	Other apparatus for transmission or reception of voice, images or other data, including apparatus for communication in a wired or wireless network (such as a local or wide area network):
8517 61 00	--	Base stations
8517 62	--	Machines for the reception, conversion and transmission or regeneration of voice, images or other data, including switching and routing apparatus:
8517 62 10	---	PLCC equipment
8517 62 20	---	Voice frequency telegraphy
8517 62 30	---	Modems (modulators-demodulators)
8517 62 40	---	High bit rate digital subscriber line system (HDSL)
8517 62 50	---	Digital loop carrier system(DLC)
8517 62 60	---	Synchronous digital hierarchy system(SDH)
8517 62 70	---	Multiplexers, statistical multiplexers
8517 62 90	---	Other
8517 69	--	Other:
8517 69 10	---	ISDN System
8517 69 20	---	ISDN terminal adaptor
8517 69 30	---	Routers
8517 69 40	---	X 25 Pads

8517 69 50	---	Subscriber end equipment
8517 69 60	---	Set top boxes for gaining access to internet
8517 69 70	---	Attachments for telephones
8517 69 90	---	Other

6.2 From the structure of heading we find that heading 851762 & 851769 are double dashed heading. The heading 851762, covers specific category of equipments and devices which is for reception, conversion and transmission or regeneration of voice, images or other data. The equipments under import are used for reception, conversion and transmission or regeneration of voice and video (images) and hence get classified under double dash heading 851762, and at triple dash under heading 85176290. In our view the classification as made by the department is justifiable.

7.1 We do not find any merits in the appeal filed by the appellant and dismiss the same, the miscellaneous application is also disposed off accordingly.

(Pronounced in court on 22.01.2019)

(Ajay Sharma)
Member (Judicial)

(Sanjiv Srivastava)
Member (Technical)

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