CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

REGIONAL BENCH - COURT NO. 01

Customs Appeal No. 86750 of 2021

(on behalf of Appellant/Respondent)

(Arising out of Order-in-Appeal No. 37 to 42/FTWZ/ARSHIYA/2021/JNCH/APPEALS dated 25.06.2021 passed by Commissioner of Customs (Appeals), Mumbai-II)

M/s Bharti Airtel Ltd. **.....Appellant**
Airtel Centre Plot No 16, UdyogVihar, Phase IV,
Gurugram, Haryana-122015.

VERSUS

Commissioner of Customs NhavaSheva-II **.....Respondent**
JNPT, Customs House, NhavaSheva, Raigad-400707.

WITH

(i) Customs Appeal No. 86752 of 2021 (M/s Bharti Airtel Ltd.);
(ii) Customs Appeal No. 86753 of 2021 (M/s Bharti Airtel Ltd.);
(iii) Customs Appeal No. 86754 of 2021 (M/s Bharti Airtel Ltd.);

(Arising out of Order-in-Appeal No. 37 to 42/FTWZ/ARSHIYA/2021/JNCH/APPEALS dated 25.06.2021 passed by Commissioner of Customs (Appeals), Mumbai-II)

Appearance:

Shri Nikhil Gupta, Advocate for the Appellant
Shri Ashwini Kumar, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)

FINAL ORDER NO. A/85908-85911/2023

Date of Hearing: 04.08.2022
Date of Decision: 03.02.2023

PER : S.K. MOHANTY

Briefly stated, the facts of the case are that the appellants herein had filed the Bills of Entry for clearance of the goods namely, "Antenna for Base Station", which were procured from Arshiya SEZ

Unit. The said goods were classified under CTH 85176290, attracting Basic Customs Duty (BCD) @ 20% along with Social Welfare Surcharge (SWS) @10%. On the basis of declaration made by the appellants, the proper officer of customs had assessed the Bills of Entry and upon payment of applicable duties, the subject goods were allowed clearance for home consumption. Subsequently, the appellants have entertained the belief that they had inadvertently classified the goods in the Bills of Entry and accordingly, had submitted the representation to the department, stating that they had wrongly classified the goods and the correct classification of the impugned goods would be under CTH 85177090 as "parts", which does not attract payment of the BCD amount. On the basis of change in classification of the goods, the appellants have filed appeals before the learned Commissioner (Appeals) against the assessed Bills of Entries. The appeals filed by the appellants were disposed of by the learned Commissioner of Customs (Appeals), Mumbai-II vide Order No. 37 to 42 (FTWZ Arshiya)/2021 (JNCH) Appeals dated 25.06.2021 (for short, referred to as the "impugned order"). Vide the said order, the learned Commissioner (Appeals) has disposed off the appeals, holding that the assessments of imported Antenna (Parts of telecommunication equipment's) under CTH 85176290 in respect of the disputed 05 nos. of Bills of Entry are sustainable and accordingly, rejected the appeals filed by the appellants. In support of rejection of appeals, the learned Commissioner (Appeals) has relied on paragraphs (iii) and (iv) of the Circular No. 01/2008-Customs dated 15.01.2018 issued by the CBEC; also referred to the provisions of Section 151A of the Customs Act, 1962 to state that the instructions issued by the

Board has to be strictly followed; that in this regard, he has relied upon the judgement of the Hon'ble Supreme Court in the case of Commissioner of Central Excise Jaipur II vs. Super Synotex (India) Ltd. – 2014 (301) ELT 273 (S.C.) and stated that instructions issued by the Board are binding in law on the authorities under the respective statutes. With regard to the decision of this Tribunal in the case of C.C. (import) Vs. Reliance Jio Infocom Ltd.- 2019 (369) ELT 1713 (Tri.-Mumbai), relied upon by the appellants, he has conveyed the decision of the Board not to withdraw the circular, which classify Antenna under sub-heading No. 8517 62 90 inasmuch as against the said order of the Tribunal, Revenue has already filed appeal before the Hon'ble Supreme Court.

2. Learned Advocate appearing for the appellants submitted that the issue arising out of the present dispute regarding correct classification of the goods in question is no more *res integra,* in view of the decisions of the Tribunal in the case Commr. Of Cus.(Import), Mumbai Vs. Reliance Jio Infocom Ltd. – 2019 (369) E.L.T. 1713 (Tri.-Mumbai) and Reliance Jio Infocom Ltd. Vs. Commissioner of Customs (Air Cargo),Chennai – 2022-VIL-135-CESTAT-CHE-CU. Accordingly, the appellant has prayed for a direction to the respondent-revenue for re-assessing the bills of entry under CTH 85177090 and for grant of consequential relief of refund of duty along with interest.

3. On the other hand, the Learned Authorized Representative appearing for the Revenue reiterated the findings recorded in impugned order.

4. Heard both sides and perused the records.

5. The issue involved in these appeals for consideration by the Tribunal is, whether "Antenna" for Base Station is classifiable as "Machine for reception, conversion and transmission or regeneration of voice, images or other data" under CTH 85176290, as claimed by Revenue; or, under CTH 85177090 as "Parts", claimed by the appellant, for the purpose of availing the benefit of the duty structure designed in such CTH.

6. On careful consideration of the functional test of the product in dispute and on examination of the related documents available in the case file, we are of the considered view that the disputed goods can only be used for transmitting and receiving signals for base stations, but cannot perform any other function of their own, like conversion or re-generation of voice, images or other data signals and switching/routing of signals. Thus, the goods in question cannot be consider as 'Machines', by themselves, in order to be classified under CTH 85176290; rather, the appropriate classification would be under entry 85177090, in accordance with Section Note 2 of Section XVI. We find that the issue arising out of the present dispute is no more open for any debate, in view of the decisions rendered by the Tribunal in the above referred cases, relied upon by the Learned Advocate for the appellants. In the case of Reliance Jio (supra), the Tribunal has held that CTH 851762 is meant only for the machines and that antennas for BTS, since are not machines on their own as they lack such functionality, the same should merit classification under entry 85177090 only. We find that the said decisions were also referred to by the learned Commissioner (Appeals) in the impugned order passed by him. However, he has not considered the ratio of such order, holding that the Department

had filed appeal against the said orders before the Hon'ble Supreme Court. Thus, by placing reliance on the Circular No. 1/2018-Customs dated 15.01.2018 issued by the CBEC, the impugned order has rejected the appeals filed by the appellants.

7. It is observed that operation of both the orders (supra) referred to by the appellants have not been stayed or overruled by the higher appellate authorities. Thus, under such circumstances, the decision of the Tribunal has force as binding precedent and must be followed by the lower authorities, without questioning the maintainability or interpreting the provisions differently. In this context, the law is well settled in the case of UOI v. Kamlakshi Finance Corporation Ltd., 1991(55) E.L.T. 433 (S.C.) that a view expressed by the higher authorities, or the courts is binding on all authorities operating below. The relevant paragraph in the said judgment is extracted herein below:-

> ***"6.*** *Sri Reddy is perhaps right in saying that the officers were not actuated by any mala fides in passing the impugned orders. They perhaps genuinely felt that the claim of the assessee was not tenable and that, if it was accepted, the Revenue would suffer. But what Sri Reddy overlooks is that we are not concerned here with the correctness or otherwise of their conclusion or of any factual mala fides but with the fact that the officers, in reaching their conclusion, by-passed two appellate orders in regard to the same issue which were placed before them, one of the Collector (Appeals) and the other of the Tribunal. The High Court has, in our view, rightly criticised this conduct of the Assistant Collectors and the harassment to the assessee caused by the failure of these officers to give effect to the orders of authorities higher to them in the appellate hierarchy. It cannot be too vehemently emphasised that it is of utmost importance that, in disposing of the quasi-judicial issues before them, revenue officers are bound by the decisions of the appellate authorities. The order of the Appellate Collector is binding on the Assistant Collectors working within his jurisdiction*

> *and the order of the Tribunal is binding upon the Assistant Collectors and the Appellate Collectors who function under the jurisdiction of the Tribunal. The principles of judicial discipline require that the orders of the higher appellate authorities should be followed unreservedly by the subordinate authorities. The mere fact that the order of the appellate authority is not "acceptable" to the department - in itself an objectionable phrase - and is the subject-matter of an appeal can furnish no ground for not following it unless its operation has been suspended by a competent Court. If this healthy rule is not followed, the result will only be undue harassment to assessees and chaos in administration of tax laws."*

8. We also find that the Learned Commissioner (Appeals) has wrongly interpreted the statutory provisions contained in Section 151A of the Customs Act, 1962 inasmuch as the *proviso* clause appended thereto was completely ignored by him. It has been mandated therein that no such orders, instructions or directions shall be issued by the Board, so as to require any such officer of customs to make a particular assessment or to dispose of a particular case in a particular manner; or, so as to interfere with the discretion of the Commissioner of Customs (Appeals) in the exercise of his appellate functions. Further, the circular issued by the Board cannot have the binding effect on the appellate authorities functioning under the statute. This position of law has also been considered by the Hon'ble Supreme Court in the case of Super Synotex (India)Ltd. (Supra) Therefore, we are of the consider opinion that rejection of appeals by solely placing reliance on the CBEC Circular cannot sustain judicial scrutiny and on such ground alone the impugned order is also liable to be set aside.

9. In view of the foregoing decisions, we do not find any merits in the impugned order, insofar as it has classified the subject goods under CTH 85176290. Therefore, by setting aside the impugned order, the appeals filed by the appellants are allowed, with consequential relief, as per law.

(Order pronounced in the open court on 03.02.2023)

(C J Mathew)
Member (Technical)

(S. K. Mohanty)
Member(Judicial)

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