CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI

REGIONAL BENCH - COURT NO. I

Customs Appeal Nos. 86023 to 86053 of 2021

(Arising out of Order-in-Appeal No. MUM-CUSTM-AMP-APP-1707 to 1739/ 2020-21 dated 28.02.2021 passed by the Commissioner of Customs (Appeals), Mumbai-III)

M/s CISCO Commerce India Pvt. Ltd. **.... Appellant**
Prestige Solitaire Level-II, No. 6, Bruton Road,
Bengaluru, Karnataka - 560001

Versus

Commissioner of Customs (Import), ACC, Mumbai **.... Respondent**
Air Cargo Complex, Sahar, Andheri (E), Mumbai-400099

WITH

Customs Appeal Nos. 86022, 86095-86100, 86104-86105, 86107-86120 of 2021

(Arising out of Order-in-Appeal No. MUM-CUSTM-AMP-APP-1830 to 1858/ 2020-21 dated 22.03.2021 passed by the Commissioner of Customs (Appeals), Mumbai-III)

M/s CISCO Commerce India Pvt. Ltd. **.... Appellant**
Prestige Solitaire Level-II, No. 6, Bruton Road,
Bengaluru, Karnataka - 560001

Versus

Commissioner of Customs (Import), ACC, Mumbai **.... Respondent**
Air Cargo Complex, Sahar, Andheri (E), Mumbai-400099

AND

Customs Appeal Nos. 87206 – 87207 of 2022

(Arising out of Order-in-Appeal No. MUM-CUSTM-AMP-APP-765 & 766/2022-23 dated 27.07.2022 passed by the Commissioner of Customs (Appeals), Mumbai-III)

M/s CISCO Commerce India Pvt. Ltd. **.... Appellant**
Prestige Solitaire Level-II, No. 6, Bruton Road,
Bengaluru, Karnataka - 560001

Versus

Commissioner of Customs (Import), ACC, Mumbai **.... Respondent**
Air Cargo Complex, Sahar, Andheri (E), Mumbai-400099

AND

Customs Appeal Nos. 85161, 85163– 85213, 85215-85245 & 85871 of 2022

(Arising out of Order-in-Appeal No. MUM-CUSTM-AMP-APP-903to987/ 2021-22 dated 29.10.2021 passed by the Commissioner of Customs (Appeals), Mumbai-III)

M/s CISCO Commerce India Pvt. Ltd. **.... Appellant**
Prestige Solitaire Level-II, No. 6, Bruton Road,
Bengaluru, Karnataka - 560001

Versus

Commissioner of Customs (Import), ACC, Mumbai **.... Respondent**
Air Cargo Complex, Sahar, Andheri (E), Mumbai-400099

AND

Customs Appeal Nos. 85522 – 85595 of 2022

(Arising out of Order-in-Appeal No. MUM-CUSTM-AMP-APP-1186 to 1259/ 2021-22 dated 30.11.2021 passed by the Commissioner of Customs (Appeals), Mumbai-III)

M/s CISCO Commerce India Pvt. Ltd. **.... Appellant**
Prestige Solitaire Level-II, No. 6, Bruton Road,
Bengaluru, Karnataka - 560001

Versus

Commissioner of Customs (Import), ACC, Mumbai **.... Respondent**
Air Cargo Complex, Sahar, Andheri (E), Mumbai-400099

AND

Customs Appeal Nos. 87688-87693, 87695-87696, 87700-87706 & 87708–87709 of 2022

(Arising out of Order-in-Appeal No. MUM-CUSTM-AMP-APP-1259 to 1280/ 2022-23 dated 02.09.2022 passed by the Commissioner of Customs (Appeals), Mumbai-III)

M/s CISCO Commerce India Pvt. Ltd. **.... Appellant**
Prestige Solitaire Level-II, No. 6, Bruton Road,
Bengaluru, Karnataka - 560001

Versus

Commissioner of Customs (Import), ACC, Mumbai **.... Respondent**
Air Cargo Complex, Sahar, Andheri (E), Mumbai-400099

AND

Customs Appeal Nos. 85320, 85354-85364, 85367-85414, 85416-85460, 85462-85464 & 85772 of 2023

(Arising out of Order-in-Appeal No. MUM-CUSTM-AMP-APP-1986 to 1989/ 2022-23 dated 13.12.2022 passed by the Commissioner of Customs (Appeals), Mumbai-III)

M/s CISCO Commerce India Pvt. Ltd. **.... Appellant**
Prestige Solitaire Level-II, No. 6, Bruton Road,
Bengaluru, Karnataka - 560001

Versus

Commissioner of Customs (Import), ACC, Mumbai **.... Respondent**
Air Cargo Complex, Sahar, Andheri (E), Mumbai-400099

Appearance:

Shri T. Vishwanathan, a/w Shri Akhilesh Kangasia, Advocate for the Appellants

Shri Sydeny D'Silva, Authorized Representative for the Respondents

CORAM:

HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR. M.M. PARTHIBAN, MEMBER (TECHNICAL)

FINAL ORDER NO. A/86416-86753/2023 &
A/86754-86755/2023

Date of Hearing: 10.08.2023

Date of Decision: 10.08.2023

Per: BENCH

1.1 The issue involved in these bunch of appeals relates to classification of "IP Phones" imported by Cisco Commerce (I) Pvt. Ltd., (herein after, referred to as 'the appellants'). During the disputed period, the appellants had imported different models of IP Phones, the details of which are contained in the affidavit filed by them during the course of hearing of the appeal. The appellants had filed the Bills of Entry (B/Es), by classifying the product in dispute under tariff item 8517 18 10, which provides 'NIL' rate of Basic Customs Duty (BCD). Contrary to the classification claimed by the appellants, the department had classified the said product under tariff item 8517 62 90, attracting BCD @20%. The speaking orders passed in this regard by the proper officer of Customs were appealed against by the appellants before the learned Commissioner of Customs (Appeals), which were disposed off vide different impugned orders passed by him in upholding the orders passed by the original authority. Feeling aggrieved with the impugned orders, the appellants have preferred these appeals before the Tribunal.

1.2 Learned Commissioner (Appeals) had rejected the appeals filed by the appellants holding that the product in question should appropriately be classified under tariff item 8517 62 90. Further, he has also held that since VolP Phone and Video Conferencing System are one and the same as both functions on IP using Session Initiation Protocol (SIP) or other proprietary protocols, the same cannot be classified under tariff item 8517 18 10. In support of classification of the disputed goods in favour of Revenue, learned Commissioner (Appeals) has relied upon the decision of this Tribunal in the case of M/s *Ingram Micro India Pvt. Ltd., Vs. Commissioner of Customs, ACC, Mumbai* reported in 2019 (2) TMI 505 - CESTAT MUMBAI.

2. Learned Advocate appearing for the Appellants, stated that IP Phones are 'telephones of push button type' and therefore, covered under sub-heading 8517.18 (Tariff Item 8517 18 10) attracting Tariff Rate "Nil or Free of duty". Further, by referring to the functionality tests of the product, he has stated that the IP Phones in question are indeed 'telephones', which enable voice calls via newer technology i.e., Internet; that use of newer technologies or protocols cannot take away the basic character of the imported goods i.e., of being a telephone. In support of the claim that the product in question is classifiable under tariff item 8517 18 10, learned Advocate has relied upon the decision of this Tribunal, in the case of *Ingram Micro India Pvt. Ltd. Vs. Deputy Commissioner of Customs, New Delhi* reported in 2020 (12) TMI 870.

3. Learned Authroised Representative appearing for the Revenue reiterated the findings recorded by the learned Commissioner (Appeals) in the impugned orders and stated that IP Phones (VoIP Phone) are rightly classifiable under CTH 8517 6290, as against appellants' claim under CTH 8517 1810. To support the claim of Revenue with regard to classification of product, he has relied upon entries of Notification Nos. 75/2018-Cus dated 11.10.2018 and 02/2019-Cus dated 29.01.2019 issued by the Central Government. Countering the arguments placed by the learned Advocate for the appellants that the case is squarely covered in their favour, in terms of the order passed by the Co-ordinate Bench in the case of M/s Ingram Micro India (supra), the learned AR submitted that the said decision of the Co-ordinate Bench cannot be relied upon for deciding the issue in hand, inasmuch as the technical features of the product in question have not been adequately dealt therein.

4. Heard both sides and perused the records of the case. We have also considered the additional written submissions given in the form of

paper book by learned Counsel for the appellants as well as Authorised Representatives for the Revenue, and the arguments advanced during the hearings of this case.

Issue to be decided:

5. Brief issue for consideration before us is the classification of imported goods by the appellants as to whether, the same merits classification under Customs Tariff Item 8517 1810 as claimed by the appellants; or, is it classifiable under Customs Tariff Item 8517 62 90 as contended by the Department, for deciding on the appropriate levy of customs duty, in respect of various Bills of Entries filed during the disputed period.

Legal provisions for classification of goods:

6. In order to address the above issue of classification of imported goods, we would like to refer the relevant legal provisions contained in Section 12 of the Customs Act, 1962; the Customs Tariff Act, 1975 and rules framed thereunder for consideration of proper and appropriate classification of the subject goods under dispute.

> "***Section 12. Dutiable goods.*** *-*
>
> *(1) Except as otherwise provided in this Act, or any other law for the time being in force, duties of customs shall be levied at such rates as may be specified under the Customs Tariff Act, 1975 (51 of 1975), or any other law for the time being in force, on goods imported into, or exported from, India.*
>
> *(2) The provisions of sub-section (1) shall apply in respect of all goods belonging to Government as they apply in respect of goods not belonging to Government."*

> "***Section 1. Short title, extent and commencement.*** *-*
>
> *(1) This Act may be called the Customs Tariff Act, 1975.*
>
> *(2) It extends to the whole of India.*
>
> *(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.*
>
> ***Section 2. Duties specified in the Schedules to be levied.*** *-*
>
> *The rates at which duties of customs shall be levied under the Customs Act, 1962 (52 of 1962), are specified in the First and Second Schedules.*
>
> *xxx xxx xxx xxx*

THE FIRST SCHEDULE – IMPORT TARIFF
(Refer Section 2)

THE GENERAL RULES FOR THE INTERPRETATION OF IMPORT TARIFF (GIR)

Classification of goods in this Schedule shall be governed by the following principles:

1. The titles of Sections, Chapters and sub-chapters are provided for ease of reference only; for legal purposes, classification shall be determined according to the terms of the headings and any relative Sectionor Chapter Notes and, provided such headings or Notes do not otherwise require, according to the following provisions:

2. (a) Any reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, as presented, the incomplete or unfinished articles has the essential character of the complete or finished article. It shall also be taken to include a reference to that article complete or finished (or falling to be classified as complete or finished by virtue of this rule), presented unassembled or disassembled.

(b) Any reference in a heading to a material or substance shall be taken to include a reference to mixtures or combinations of that material or substance with other materials or substances. Any reference to goods of a given material or substance shall be taken to include a reference to goods consisting wholly or partly of such material or substance. The classification of goods consisting of more than one material or substance shall be according to the principles of rule 3.

3. When by application of rule 2(b) or for any other reason, goods are, prima facie, classifiable under two or more headings, classification shall be effected as follows:

(a) The heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods.

(b) Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to (a), shall be classified as if they consisted of the material or component which gives them their essential character, in so far as this criterion is applicable.

(c) When goods cannot be classified by reference to (a) or (b), they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration.

4. Goods which cannot be classified in accordance with the above rules shall be classified under the heading appropriate to the goods to which they are most akin.

5. In addition to the foregoing provisions, the following rules shall apply in respect of the goods referred to therein:

(a) Camera cases, musical instrument cases, gun cases, drawing instrument cases, necklace cases and similar containers, specially shaped or fitted to contain a specific article or set of articles, suitable for long-term use and presented with the articles for which they are intended, shall be classified with such articles when of a kind normally sold therewith. This rule does not, however, apply to containers which give the whole its essential character;

(b) Subject to the provisions of (a) above, packing materials and packing containers presented with the goods therein shall be classified with the goods if they are of a kind normally used for packing such goods. However, this provisions does not apply when such packing materials or packing containers are clearly suitable for repetitive use.

6. For legal purposes, the classification of goods in the sub-headings of a heading shall be determined according to the terms of those sub headings and any related sub headings Notes and, mutatis mutandis, to the above rules, on the understanding that only sub headings at the same level are comparable. For the purposes of this rule the relative Section and Chapter Notes also apply, unless the context otherwise requires.

THE GENERAL EXPLANATORY NOTES (GEN) TO IMPORT TARIFF

1. Where in column (2) of this Schedule, the description of an article or group of articles under a heading is preceded by "-", the said article or group of articles shall be taken to be a sub-classification of the article or group of articles covered by the said heading. Where, however, the description of an article or group of articles is preceded by "- -", the said article or group of articles shall be taken to be a sub-classification of the immediately preceding description of the article or group of articles which has "-". where the description of an article or group of articles is preceded by "---" or "----", the said article or group of articles shall be taken to be a sub-classification of the immediately preceding description of the article or group of articles which has "-" or "--".

2. The abbreviation "%" in any column of this Schedule in relation to the rate of duty indicates that duty on the goods to which the entry relates shall be charged on the basis of the value of the goods as defined in section 14 of the Customs Act, 1962 (52 of 1962), the duty being equal to such percentage of the value as is indicated in that column.

3. In any entry, if no rate of duty is shown in column (5), the rate shown under column (4) shall be applicable.

ADDITIONAL NOTES

In this Schedule,—

(1)(a) "heading", in respect of goods, means a description in list of tariff provisions accompanied by a four-digit number and includes all sub-headings of tariff items the first four-digits of which correspond to that number;

(b) "sub-heading", in respect of goods, means a description in the list of tariff provisions accompanied by a six-digit number and includes all tariff items the first six-digits of which correspond to that number;

(c) "tariff item" means a description of goods in the list of tariff provisions accompanying eight digit number and the rate of customs duty;

(2) the list of tariff provisions is divided into Sections, Chapters and Sub-Chapters;

(3) in column (3), the standard unit of quantity is specified for each tariff item to facilitate the collection, comparison and analysis of trade statistics."

7. From the plain reading of the above legal provisions, it transpires that in order to determine the appropriate duties of customs payable on any imported goods, one has to make an assessment of the imported goods for its correct classification under the First Schedule to Customs Tariff Act, 1975 in accordance with the provisions of the Customs Tariff Act by duly following the General Rules for Interpretation (GIR) and the General Explanatory notes (GEN) contained therein. The First Schedule to the Customs Tariff Act, 1975 specifies the various categories of imported goods in a systematic and well-considered manner, in accordance with an international scheme of classification of internationally traded goods, i.e., 'Harmonized Commodity Description and Coding System' (HS). Accordingly, goods are to be classified taking into consideration the scope of headings / sub-headings, related Section Notes, Chapter Notes and the General Rules for the Interpretation (GIR) of the First Schedule to the Customs Tariff Act, 1975. Rule 1 of the GIR provides that the classification of goods shall be determined according to the terms of the headings of the tariff and any relative Section notes or Chapter notes and thus, gives precedence to this while classifying a product. Rules 2 to 6 provide the general guidelines for classification of goods under the appropriate sub-heading. In the event of the goods cannot be classified solely on the basis of GIR 1, and if the headings and legal notes do not otherwise require, the remaining Rules 2 to 6 may then be applied in sequential order. Further, while classifying goods, the

foremost consideration is the 'statutory definition', if any, provided in the Customs Tariff Act. In the absence of any statutory definition, or any guideline provided by HS explanatory notes, the trade parlance theory is to be adopted for ascertaining as to how the goods are known in the common trade parlance for the purpose of dealing between the parties.

8. In context with the case in hand, we note that the following are some of the important rules to be followed in the scheme of determining correct classification of imported goods:

(i) classification of goods shall be determined according to the terms of the headings and any relative Section or Chapter Notes; (GIR 1)

(ii) reference to an article, shall also include such article in the incomplete or unfinished state, subject to the condition that article, as presented, has the essential character of the complete or finished article. Further, reference in a heading to a material or substance shall be taken to include mixtures or combinations of that material or substance with other materials or substances, and to goods consisting wholly or partly of such material or substance; (GIR 2)

(iii)if the goods are found to be classifiable under two or more headings, then the classification shall be effected as per the rules provided under 3(a), 3(b) and 3(c) [GIR 3]

(iv) Goods which cannot be classified in accordance with the aforesaid rules, then the same shall be classified under the heading appropriate to the goods to which they are more akin. (GIR 4)

(v) For legal purposes, the classification of goods in the sub-headings shall be determined according to the terms of those sub-headings and any related sub-heading Notes (GIR 6)

(vi) When the description of the goods under a heading is preceded by 'single dash' i.e., "-", the said goods shall be taken to be a sub-classification of the article or group of articles covered by the said heading. (GEN1)

(vii) Where, however, the description of goods is preceded by "- -", the said goods shall be taken to be a sub-classification of the immediately preceding description of the goods or article or group of articles which has "-" single dash. (GEN1)

(viii) Where the description of goods is preceded by "---" or "----", the said goods shall be taken to be a sub-classification of the immediately preceding description of the goods or article or group of articles which has "-" or "--". (GEN1)

9. In the case before us, the contending classification of imported goods discussed in the impugned orders are either under customs tariff item 8517 1810 or customs tariff item 8517 62 90 of the First Schedule to the Customs Tariff Act. Thus, it is clear that at the Chapter and Heading level i.e., Chapter 85 and Heading 8517, there is no difference of opinion among the appellants and the department. The dispute in classification lies in the narrow compass of the Sub-headings and the respective Tariff Items falling there under. Now, we may closely examine the scope of the contending Sub-headings and Tariff Items thereof for determining correct classification of the imported goods. The relevant tariff entries in the First Schedule to the Customs Tariff Act are extracted as below:

Tariff Item	Description of goods	Unit	Rate of Duty	
			Standard	Preferential Areas
(1)	(2)	(3)	(4)	(5)
8517	Telephone sets, including telephones for cellular networks or for other wireless networks; other apparatus for the 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), other than transmission or reception apparatus of heading 8443, 8525,8527 or 8528			
	- Telephone sets, including telephones for cellular networks or for other wireless networks:			
8517 11	-- Line telephone sets with cordless handsets:			
8517 11 10	--- Push button type	u	Free	-
8517 11 90	--- Other	u	Free	-
8517 12	-- Telephones for cellular networks or for other wireless networks :			
8517 12 10	--- Push button type	u	20%	-
8517 12 90	--- Other	u	20%	-
8517 18	-Other :			-
8517 18 10	--- Push button type	u	Free	-
8517 18 90	--- Other	u	20%	-
	- Other apparatus for transmission or reception of voice, images or other data, including apparatus for communication in a wireless network (such as a local or wide area network) :			
8517 61 00	-- Base stations	u	10%	-

Tariff Item	Description of goods	Unit	Rate of Duty	
			Standard	Preferential Areas
(1)	(2)	(3)	(4)	(5)
8517 62	--Machines for the reception, conversion and transmission or regeneration of voice, images or other data, including switching and routing apparatus :	u	20%	-
8517 62 10	--- PLCC equipment	u	Free	-
8517 62 20	--- Voice frequency telegraphy	u	Free	-
8517 62 30	--- Modems (modulators-demodulators).	u	Free	-
8517 62 40	---High bit rate digital subscriber line system (HDSL)	u	Free	-
8517 62 50	---Digital loop carrier system (DLC).	u	Free	-
8517 62 60	---Synchronous digital hierarchy system (SDH).	u	Free	-
8517 62 70	---Multiplexers, statistical multiplexers.	u	Free	-
8517 62 90	---Other.	u	20%	-
8517 69	---Other:			
8517 69 10	---ISDN System.	u	Free	-
8517 69 20	---ISDN terminal adaptor.	u	Free	-
8517 69 30	---Routers.	u	Free	-
8517 69 40	---X25 Pads.	u	Free	-
8517 69 50	---Subscriber end equipment.	u	Free	-
8517 69 60	---Set top boxes for gaining access to internet. .	u	Free	-
8517 69 70	---Attachments for telephones.	u	Free	-
8517 69 90	---Other.	u	10%	-
8517 70	-Parts :			
8517 70 10	--Populated, loaded or stuffed printed circuit boards.	[u]	Free	-
8517 70 90	--Other.	kg	15%	-

10. It could be seen that by applying the GIR 1 - rule at (i) above, the position is made clear that Heading 8517 covers within its scope and ambit, mainly of two broad categories of goods for ascertaining proper classification:

(i) first one i.e., *"Telephone sets, including telephones for cellular networks or for other wireless networks"* and

(ii) the other, second one i.e., "*other apparatus for the 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)*",which are other than transmission or reception apparatus of heading 8443, 8525,8527 or 8528.

11. Hence, in simple words, it can be put that the distinction between these two categories of goods is that the first one is 'telephone sets' and second one is 'other apparatus'. In the present case, the appellants had filed the Bills of Entries (B/Es) in dispute, by describing the imported goods as 'CISCO IP Phones' of various models such as CP-8861, CP-8832, CP-8851, CP-8811, CP-3905, CP-6901, CP-7861, CP-8841, CP-8800,CP-7841, CP-7832, CP-7821, CP-7811 etc. The representative sample of the CISCO IP Phone model CP-8861 was also produced by the learned Advocate for the appellants for claiming the classification as made by them in the B/Es.

12. For ease of reference, the sample pieces of the product demonstrated by the appellants are picturized below:

From the above pictures, it could be seen the product essentially contain the telephone handset, push button keys, display panel for details relating to the numbers/contacts, message etc., speaker phone, various functional keys, backlit indicator and a number of other features related to telephone. The key specifications of the above CISCO IP Phone model 8861 as per company data-sheet is as follows:

<u>Product features and specifications of the Cisco IP Phone CP-8861</u>

S. No.	**Features**	**Specifications**
1	Audio	Automatic Gain Control, Comfort Noise Generation, Silence Suppression/Voice Activity Detection, Acoustic Echo Cancellation (AEC) Dynamic Noise Reduction
2	Audio codec support	G.711 a-law and mu-law, G.722, G.729a/b, Internet Low Bitrate Codec (iLBC), and Internet Speech Audio Codec (iSAC) , G.722.1, G.772.2, OPUS
3	Key call features support	+Dialing, Abbreviated dialing, Adjustable ring tones and volume levels, Adjustable display brightness, Agent greeting, Auto-answer, Auto-detection of headset, cBarge, Busy Lamp Field (BLF), Busy Lamp Field (BLF)

S. No.	Features	Specifications
		Pickup, Busy Lamp Field (BLF) speed dial, Callback, Call forward, Call forward notification, Call filter, Call history lists, Call park, Call pickup, Call timer, Call waiting, Call chaperone, Caller ID, Corporate directory, Conference, including traditional Join feature, Cross Cluster Extension Mobility (EMCC), Direct transfer, Extension mobility, Fast-dial service, Forced access codes and client matter codes, Group call pickup, Hold, Intercom, Immediate divert, Malicious-caller ID, Message-Waiting Indicator (MWI), Meet-me conference, Mobility, Music on Hold (MoH), Mute, Network profiles (automatic), On- and off-network distinctive ringing, Personal directory, Pick-Up, Pre-dialing before sending, Privacy, Private Line Automated Ringdown (PLAR), Redial, Ring tone per line appearance, Service URL, Shared line, Silent monitoring and recording, Speed dial, Time and date display, Transfer, Uniform Resource Locator (URI) dialing, Visual voice mail, Voice mail, Whisper coaching.

13. Besides the above, the data-sheet of the above product also contain information on network features, electronic hook switch, Cisco Intelligent proximity, physical features including weight, dimensions (Height x Width X Depth), phone casing composition, operational and non-operational temperature, details of 39 languages which it supports etc. From the plain appearance and the key functions as indicated in the data-sheet, it could be seen that the above product is basically a 'telephone set' consisting of various communication features which are useful in large organisations/business enterprises.

14. On the other hand, the Revenue's contention is that the imported goods are rightly classifiable under tariff item 8517 62 90, under the second category of 'other apparatus' on the basis of its functionality and the learned Commissioner (Appeals) had come to the conclusion that IP phone is an equipment using Voice over Internet Protocol (VoIP) technology as detailed in paragraphs 12 to 14 of the impugned orders.

15. Therefore, in order to decide further within the Chapter Heading 8517, whether the imported goods fall under the first category as 'telephone sets' or under the second category 'other apparatus', one needs to look further into relative Section or Chapter notes. In this regard, we find that Section Note 1 to Section XVI covering Chapters 84 and 85, provide for the list of goods that do not get covered under the said Chapters. Besides, Section Note 2 providing for classification of 'parts' of machines or articles are not relevant here. Thus, we find that

Section Notes 3 to 5 to Section XVI generally guide classification of goods under Chapter 84 and 85. The relevant Section Notes are extracted as below:

"***SECTION XVI***

MACHINERY AND MECHANICAL APPLIANCES; ELECTRICAL EQUIPMENT; PARTS THEREOF; SOUND RECORDERS AND REPRODUCERS, TELEVISION IMAGE AND SOUND RECORDERS AND REPRODUCERS, AND PARTS AND ACCESSORIES OF SUCH ARTICLES

NOTES :

1. This Section does not cover : ………………………

2. Subject to Note 1 to this Section, Note 1 Chapter 84 and to Note 1 to Chapter 85, parts of machines….

3. Unless the context otherwise requires, composite machines consisting of two or more machines fitted together to form a whole and other machines designed for the purpose of performing two or more complementary or alternative functions are to be classified as if consisting only of that component or as being that machine which performs the principal function.

4. Where a machine (including a combination of machines) consists of individual components (whether separate or interconnected by piping, by transmission devices, by electric cables or by other devices) intended to contribute together to a clearly defined function covered by one of the headings in Chapter 84 or Chapter 85, then the whole falls to be classified in the heading appropriate to that function.

5. For the purposes of these Notes, the expression "machine" means any machine, machinery, plant, equipment, apparatus or appliance cited in the headings of Chapter 84 or 85."

16. The above Section Notes specify that the principal function of the machine or apparatus would be the guiding factor for determination of the appropriate classification of the goods. Though 'telephone' is generally understood to be a device by which sound (such as speech) is converted into electrical impulses and transmitted (by wire or radio waves) to one or more specific receivers, the statutory definition of the phrase 'telephony' under the Indian Telegraph Rules lucidly explains the function of telephone. In terms of Section 2(vv) of Indian Telegraph Rules, 1951, 'telephony' means '*a system of telecommunications set up for the transmission of speech or other sound*'. The dispute with regard to classification of IP Phones under consideration has a clear functionality of telephony inasmuch as it is used for communication of speech or audio signals to other person. Its added features that enable the IP phone to communicate through internet, Ethernet cable or WiFi connection in the form of data does not change the essential nature of

communication device. As seen from the data-sheet as above, the IP phones consist of transmission and reception hardware such as telephone handset, speaker, dialing push buttons, transmission and reception of audio signals either by converting it as data packets or otherwise, power module etc. From the above discussion, we are of the *prima facie* view that the IP phones is classifiable under 8517 18 10, as the principal function of these equipment remain as 'telephony'.

17. In order to further examine the classification in terms of HS explanatory notes of the WCO, which describe in detail the scope and coverage of the goods under the Customs classification, the extract of HS classification in respect of heading 8517 is given below:

"Harmonized Commodity

Description and Coding System

Explanatory Notes

"8517- Telephone sets, including telephones for cellular networks or for other wireless networks; other apparatus for the 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), other than transmission or reception apparatus of heading 84.43, 85.25, 85.27 or 85.28(+).

	- Telephone sets, including telephones for cellular networks or for other wireless networks:
8517.11	*-- Line telephone sets with cordless handsets*
8517.12	*--Telephones for cellular networks or for other wireless networks*
8517.18	*-- Other*
	- 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	*-- Base stations*
8517.62	*-- Machines for the reception, conversion and transmission or regeneration of voice, images or other data, including switching and routing apparatus*
8517.69	*-- Other*
8517.70	*- Parts*

This heading covers apparatus for the transmission or reception of speech or other sounds, images or other data between two points by variation of an electric current or optical wave flowing in a wired network or by electro-magnetic waves in a wireless network. The signal may be analogue or digital. The networks, which may be *interconnected, include telephony, telegraphy, radio-telephony, radio-telegraphy, local and wide area networks."*

The Explanatory Notes to HSN describe the goods that are being covered by the <u>first single dash entry</u> for 85.17 i.e., 8517 10 as follows:

(I) TELEPHONE SETS, INCLUDING TELEPHONES FOR CELLULAR NETWORKS OR FOR OTHER WIRELESS NETWORKS

This group includes:

<u>(A) Line telephone sets.</u>

Line telephone sets are communication apparatus that convert voice into signals for transmission to another device. Upon receipt of a signal, a line telephone set will convert the signal back to voice. They consist of:

(1) The transmitter,………….

(2) The receiver, ………..

(3) The anti-side tone circuit, ……….

(4) The ringer, ……….

(5) The switching device or "switch hook",………

(6) The dialing selector, …………

When separately presented, microphones and receivers (whether or not combined as hand-sets), and loudspeakers are classified in heading 85.18 while bells and buzzers are classified in heading 85.31.

Telephone sets may incorporate or have fitted: a memory for storing and recalling telephone numbers; a visual display for showing the number dialed, incoming caller's number, date and time, and duration of call; an extra loudspeaker and microphone to enable communication without using the hand-set; devices for automatically answering calls, transmitting a recorded message, recording incoming messages and playing back the recorded message on command; devices for holding a connection on line while communicating with a person on another telephone. Telephone sets incorporating these devices may also have keys or push-buttons which enable their operation, including a switching key which enables the telephone to be operated without removing the hand-set from the cradle. Many of these devices utilize a microprocessor or digital integrated circuits for operation.

The heading covers all kinds of telephone sets including:

(i) Cordless telephone sets. …………

(ii) Telephones sets. …………

<u>(B) Telephones for cellular networks or for other wireless networks.</u>

This group covers telephones for use on any wireless network. Such telephones receive and emit radio waves which are received and retransmitted, e.g., by base stations or satellites.

These include, inter alia:
(1) Cellular phones or mobile phones.

(2) Satellite phones.

The Explanatory Notes to HSN describe what would be covered by the second single dash entry for 8517 60 as follows:

(II) 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)

(A) Base stations.

The most common types of base stations are those for cellular networks, which receive and transmit radio waves to and from cellular telephones or to other wired or wireless networks. Each base station covers a geographical area (a cell). If the user moves from one cell to another while telephoning, the call is automatically transferred from one cell to another without interruption.

(B) Entry-phone systems.

The systems usually consist of a telephone handset and keypad or a loudspeaker, a microphone and keys. These systems are usually mounted at the entrance of buildings housing a number of tenants. With these systems, visitors can call certain tenants, by pressing the appropriate keys and talk to them.

(C) Videophones.

Videophones for buildings, which are a combination consisting principally of a telephone set for line telephony, a television camera and a television receiver (transmission by line).

(D) Apparatus for telegraphic communication other than facsimile machines of heading 84.43.

These apparatus are essentially designed for converting characters, graphics, images or other data into appropriate electrical impulses, for transmitting those impulses, and at the receiving end, receiving these impulses and converting them either into conventional symbols or indications representing the characters, graphics, images or other data or into the characters, graphics, images or other data themselves.

Examples are….

(E) Telephonic or Telegraphic Switching Apparatus. …………………

(F) Transmitting and receiving apparatus for radio-telephony and radio-telegraphy…..

(G) Other communication apparatus.

This group includes apparatus which allows for the connection to a wired or wireless communication network or the transmission or reception of speech or other sounds, images or other data within such a network.

Communication networks include, inter alia, carrier-current line systems, digital-line systems and combinations thereof. They may be configured, for example, as public switched telephone networks, Local Area Networks (LAN), Metropolitan Area Networks (MAN) and Wide Area Networks (WAN), whether proprietary or open architecture.

This group includes:

(1) Network interface cards (e.g., Ethernet interface cards).
(2) Modems (combined modulators-demodulators).
(3) Routers, bridges, hubs, repeaters and channel to channel adaptors.
(4) Multiplexers and related line equipment (e.g., transmitters, receivers or electro-optical converters).
(5) Codecs (data compressors/decompressors) which have the capability of transmission and reception of digital information.
(6) Pulse to tone converters which convert pulse dialed signals to tone signals."
The third single dash entry at 8517 70 covers only 'parts'.

18. We have examined each of the 'single dash' entry and the goods covered thereunder as shown above. The scope of coverage of goods under the three different single dash entries of Chapter Heading 8517 is as follows:

First one at 8517 10 is 'Telephone sets, including telephones for cellular networks or for other wireless networks';

second one at 8517 60 is for 'Other apparatus for transmission or reception of voice, images or other data, including apparatus for communication in a wired or a wireless network (such as a local or wide area network)'; and

third one at 8517 90 is for 'Parts'.

19. It is obvious that since IP Phones are complete products by themselves, the classification is feasible either under the 'first single dash' or the 'second single dash' entries and classification under 'third single dash' entry is ruled out, as these are not 'parts'.

20. The description of goods covered under first single dash entry 8517 grouped under various double dash entry items are i.e., Sub-Heading 8517 11 (first double dash) are *line telephone sets with cordless sets*, while under Sub-Heading 8517 12 (second double dash) are *telephones for cellular networks or for other wireless networks*. Since IP phones neither work as conventional line telephones or it works on cellular or other wireless network, classification under the above two double dash category of goods is not feasible. Thus, the third double dash entry 8517 18 is the only possible classification within the first group (I) of single dash entry for considering the classification of IP Phones.

21. From perusal of the detailed coverage of the goods under the scope of the above entries in the second single dash entry, it would become clear that IP Phones does not match the specific description of

any of the apparatus mentioned in the double dash/'--' entry of the second group at (II) above, namely 'Base stations' and various triple dash/'---' entries, such as 'PLCC equipment, voice frequency telegraphy, Modems, High bit rate digital subscriber line system, Digital loop carrier system, Synchronous digital hierarchy system and Multiplexers' which are also explained in detail under paragraphs (A) to (G) of HS Explanatory Notes. Even if, one would like to attempt to bring IP phones under second group of '-' items, treating it as an apparatus which allows for connection to a wired or wireless communication network or the transmission or reception of speech or other sounds, images or other data within such a network, then the only entry that could be feasible is 'others'.

22. However, in terms of GIR 3, in a situation where for any reason goods are, *prima facie*, classifiable under two or more headings, classification shall be preferred under the heading which provides the most specific description to the heading rather than the one providing a more general description. Inasmuch as the tariff item 8517 18 10 covering "telephone sets of push button type" (other than line telephone and cellular networks or other wireless networks) is more specific than the contending tariff item 8517 62 90 covering "other" of machines for the reception, conversion and transmission or regeneration of voice, images or other data, including switching and routing apparatus, the classification under tariff item 8517 1810 is appropriate as per GIR 3. Hence, in our considered view, the appropriate classification of the imported goods would be under Customs Tariff Item 8517 18 10. We also find that our such view has also been considered favourably by the Hon'ble Supreme Court in the case *Moorco (India) Ltd. Vs. Collector of Customs, Madras* (Civil Appeal No. 4342 of 1986),reported in 1994 (74) E.L.T. 5 (S.C.). The relevant paragraphs in the said judgement are extracted below:

> ***"4.*** *Does classification change and the goods are liable to be placed in Heading 90.29 by virtue of the Interpretory Rules appended to the Customs Schedule? These Rules are framed on Brussels Convention so that same description may apply to a particular class and character of goods in the world trade. The First Schedule appended to the Customs Act lays down general principles for the interpretation and classification of goods for import tariff. Rule 2(b) of the Rules provide that, `the classification of goods consisting of more than one material or substance shall be according to the principles of rule 3.' Rule 3 of the Rules is reproduced below :-*

"R. 3. - When by application of Rule 2(b) or for any other reason, goods are, prima facie, classifiable under two or more headings, classification shall be effected as follows :

(a) The heading which provides the most specific descriptionshall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods.

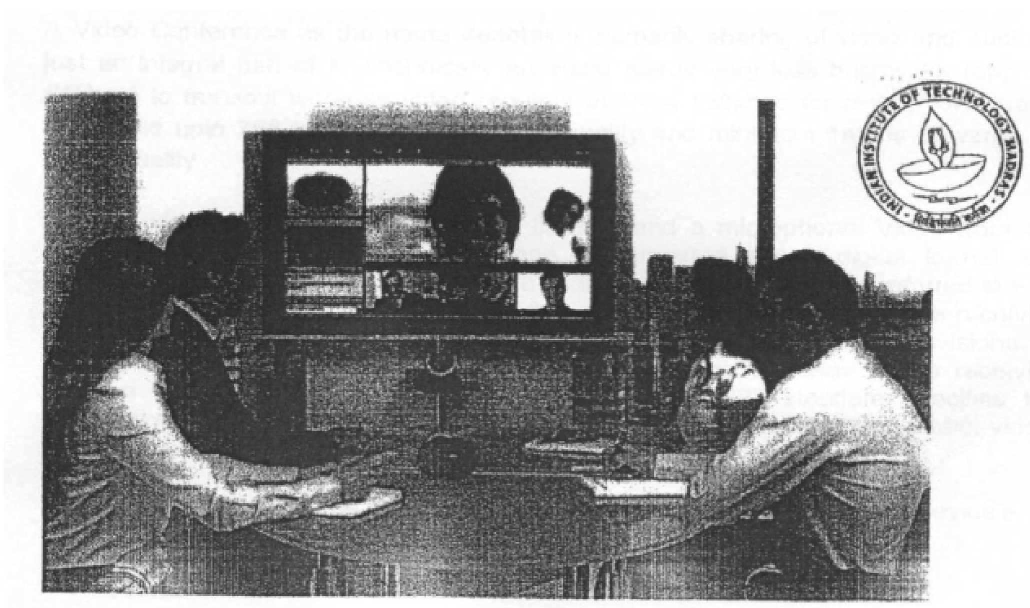
(b) Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to (a), shall be classified as if they consisted of the material or component which gives them their essential character, in so far as this criterion is applicable.

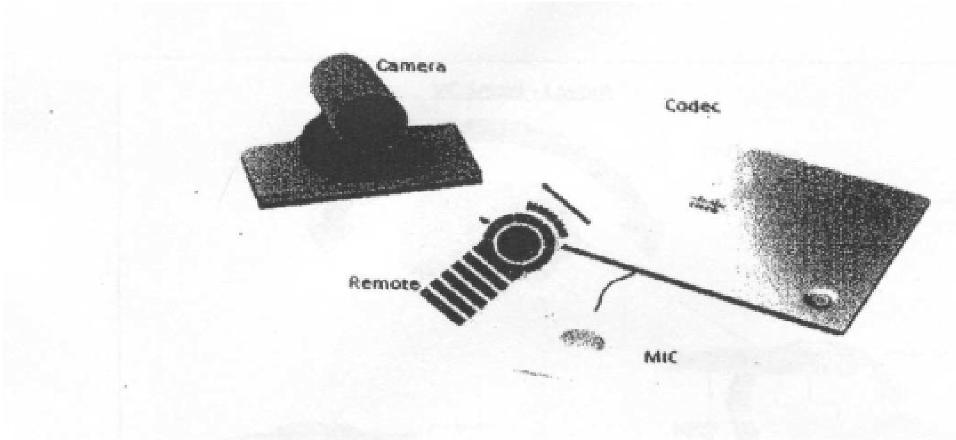
(c) When goods cannot be classified by reference to (a) or (b),they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration."

The applicability of the rule arises when the goods consisting of more than one material fall in two or more headings. It is further clear that each of the classes are mutually exclusive. What is covered in (a) cannot be classified in (b) and (c) operates when neither applies. It is like a residuary clause. The primary question, therefore, is whether the goods manufactured by the appellant fall in clause (a) as if it can be classified with reference to (a) then clauses (b) and (c) would not apply. Clause (a) incorporates the common and general principle that the goods which can be classified specifically with reference to any heading should be placed in that category alone. The specific heading of classification has to be preferred over general heading. The clause contemplates goods which may be satisfying more than one description. Or it may be satisfying specific and general description. In either situation the classification which is the most specific has to be preferred over the one which is not specific or is general in nature. In other words, between the two competing entries the one most nearer to the description should be preferred. Where the class of goods manufactured by an assessee falls say in more than one heading one of which may be specific, other more specific, third most specific and fourth general. The rule requires the authorities to classify the goods in the heading which satisfies most specific description. For instance, taking the case of the appellant the item manufactured by the appellant is described and used as flow meter. It is an instrument for measuring volume as well. Flow meter is specifically classified in Heading No. 90.24. Whereas the Heading 90.26 is general in nature. It applies to every production meter or calibrating meter for gas, liquid and electricity supply. Therefore, on the finding recorded by the Assistant Collector, the goods produced by the appellant specifically fall in Heading No. 90.24. They may also fall in Heading No.90.26 but that being more general entry preference should have been given to the entry 90.24 as the goods satisfy most specific description of being flow meter. The Tribunal or the appellate authority without adverting to it applied clause (c) and levied duty under 90.26 as it was a latter heading. But clause (c) would apply only if clauses (a) and (b) do not apply. Since the goods manufactured by the appellant satisfied the specific description of Tariff Heading 90.24 being a flow meter, the Tribunal committed an error of law in classifying it under Tariff Heading 90.26 as it was a latter item under the classification list.

> ***5.*** *In the result, this appeal succeeds and is allowed and it is held that the items imported by the appellant which are component part of the flow meter shall be classified for purpose of payment of duty under Tariff Heading 90.24.”*

23. Learned AR for Revenue has relied upon the decision of the Co-ordinate Bench of the Tribunal in the case of *Ingram Micro India Pvt. Ltd.* (supra), to state that the classification of CISCO IP Phones shall be under tariff item 8517 62 90, inasmuch as the phone uses voice over internet protocol for placing and transmitting telephone calls over an IP network such as internet. He has further stated that the said decision of Tribunal has been upheld by the Hon’ble Supreme Court, as the Civil Appeal No.6389 of 2019 filed by the party was dismissed. In order to appreciate the points put forth by the learned AR, we have carefully perused the above cited decision of the Co-ordinate Bench, and find that the product dealt with in that case was ”SX20 QUICK SET WITH 12 XPHDCAM, IMIC, REMOTE AND TC& SW, CTS-SX20-PHD12X-K9 (Video Conferencing System)”. The pictorial representation of the goods dealt therein has also been recorded in page 17 & 18 of that order. It could be seen that the product under discussion before us and the product dealt with in the order of the Co-ordinate Bench are entirely different. The product in question involved in the order passed by the Co-ordinate Bench is picturized below for proper appreciation of the facts:





24. On careful examination of the above system, we find that the Co-ordinate Bench had dealt with 'video conferencing systems'; whereas, in the case in hand, we are dealing with 'IP Phones' , whose features are entirely different than the products dealt with by the Co-ordinate Bench. Hence, the ratio of the judgement of Co-ordinate Bench does not apply to the facts of this case. Furthermore, for ascertaining the functionality of the instrument in question, the learned Advocate for the appellants was directed by the Bench for submission of the declaration to such effect. Pursuant to such direction, the appellants had filed an affidavit (duly notarized) in respect of various models of 'CISCO IP Phones' covered in the appeals before us. It has been sworn that there are thirty three different models of IP Phones, designed to capture voice/ audio communications only, but do not have the capacity of making/ receiving video calls. It has further been stated in the affidavit that in respect of one model CP-8865-NC-K9 which has the facility of both audio/voice and video capabilities, the appellants have been classifying such IP Phones under 8517 69 90 and they are not disputing such IP phones, which are not in dispute in these bunch of appeals.

25. We also find that the Co-ordinate Bench of this Tribunal, in the case of *Ingram Micro India Pvt. Ltd. Vs. Deputy Commissioner of Customs, New Delhi* vide Final Order No. 51640/2020 dated 17.12.2020 (in Customs Appeal No. C/50865/2020), has held that IP Phone (Model No. FON-670i), is classifiable under CTH 8517 18 10 and not under CTH 8517 69 90.

26. In view of the foregoing discussions and analysis, we conclude that the product under consideration i.e., "CISCO IP Phones" of various models would appropriately be classifiable under Customs Tariff Item/ CTH 8517 18 10 and not under Customs Tariff Item/CTH 8517 69 90, as claimed by Revenue.

27. Therefore, we are of the considered view that the impugned orders passed by the learned Commissioner (Appeals) cannot be sustained on merits. Accordingly, the impugned orders are set aside and the appeals are allowed in favour of the appellants.

(Operative portion of the order pronounced in open court)

(S.K. Mohanty)
Member (Judicial)

(M.M. Parthiban)
Member (Technical)

Sinha