CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI

REGIONAL BENCH - COURT NO. I

Customs Appeal No. 86276 of 2021

(Arising out of Order-in-Appeal No. MUM-CUSTM-AMP-APP-1913/2020-21 dated 22.03.2021 passed by the Commissioner of Customs (Appeals), Mumbai-III)

M/s Ingram Micro India Pvt. Ltd. **.... Appellant**
Empire Plaza, Building 'A', 5th Floor,
LBS Marg, Vikhroli (West), Mumbai – 400 083

Versus

Commissioner of Customs (Import), ACC, Mumbai **.... Respondent**
Air Cargo Complex, Sahar, Andheri (East),
Mumbai – 400 099

Appearance:

Shri Amit Jain, Advocate for the Appellant
Shri Manoj Kumar, Authorized Representative for the Respondent

CORAM:

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

FINAL ORDER NO. A/85085/2024

Date of Hearing: 21.08.2023
Date of Decision: 16.02.2024

Per: M.M. Parthiban

1.1 The issue involved in this appeal relates to classification of different categories of "IP Phones" such as (i) IP Audio Phones (ii) IP Audio Conference Phones (iii) Wireless IP Phones (iv) IP Video Phones, imported by Ingram Micro India Private Limited, Mumbai (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 appeal papers filed by them during the course of hearing of the appeal. The appellants had filed 59 Bills of Entry (B/Es) for clearance of the aforesaid imported goods, which were self-assessed in few cases on the basis of Risk Management System (RMS) and in rest of the cases imported goods were assessed by the department by classifying the products in dispute under Customs Tariff Item (CTI) 8517 6990. The appellants had filed an appeal before the Commissioner of Customs (Appeal) claiming that the self-assessment/assessment made in this regard by the proper officer of Customs were incorrect and seeking reclassification of goods under CTI 8517 1810. Subsequently, the appellants had given additional submissions before the Commissioner (Appeal) vide letters dated 16.03.2020, 24.06.2020 and 13.11.2020, for claiming classification of imported goods in terms of assessment agreed by the department at the level of review of Commissioner (Appeal)'s order for classification of similar goods in other jurisdiction. Accordingly, the appellants claimed that the correct classification of IP Audio phones and IP Audio Conference phones under category (i) and (ii) above shall be under CTI 8517 1810 and Wireless IP Phones of category (iii) as under CTI 8517 1210, on which applicable Basic Customs Duty (BCD) is 'NIL'. As regards import of IP Video phones they had accepted the classification under CTI 8517 6990 on the grounds of adopting uniform practice at various ports of import, to be followed by them. Contrary to the classification claimed by the appellants, department had maintained that the classification of all imported goods shall be under CTI 8517 6990 and assessed these for BCD @20%. The learned Commissioner of Customs (Appeals) had disposed of the appeal by issue of an Order-in-Appeal No. MUM-CUSTM-AMP-APP-1913/2020-21 dated 22.03.2021 (herein after, in short, referred to as 'the impugned order') in determining the classification of all types of imported IP phones under CTI 8517 6290 and by dismissing the appeal filed by the appellants. Feeling aggrieved with the impugned order, the appellants have preferred this appeal before the Tribunal.

1.2 Learned Commissioner (Appeals) had rejected the appeal filed by the appellants holding that the product in question should appropriately be classified under tariff item 8517 6290/8517 6990. Further, he has also held that since VolP Phone and Video Conferencing System are one and the same, with respect to its functioning as both transmit data from one end to another over IP using same protocols, and hence the same cannot be classified under CTH 8517 18 10. In support of classification of the disputed goods in favour of Revenue, learned Commissioner (Appeals) had relied upon the decision of this Tribunal in Appeal No. C/85097/2018 in the case of M/s *Ingram Micro India Pvt. Ltd., Vs. Commissioner of Customs, Air Cargo Complex, Mumbai* reported in 2019 (2) TMI 505 - CESTAT MUMBAI.

2.1. 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 1810) 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 CTH 8517 1810, learned Advocate has relied upon the decision of Principal Bench of this Tribunal, in Appeal No. C/50865/2020 in the case of M/s *Ingram Micro Indian Pvt. Ltd.*, *Vs. Deputy Commissioner of Customs, New Delhi* reported in2023 (383) E.L.T. 204 (Tri.-Del).

2.2. Further, the learned Advocate had also submitted that as against the total 59 B/Es covering the imported goods of all four categories, in respect of fourth category i.e., (iv) IP Video phones, the appellants had accepted the classification under CTI 8517 6990 even before the Commissioner (Appeals) and they have not filed appeal before the Tribunal in these cases. Thus in their present appeal before the Tribunal, the imported goods covered under the above three categories (i) to (iii) are covered in respect of 48 B/Es, the details of which were furnished by them as additional submission dated 28.06.2022.

2.3. The learned Advocate also stated that the imported IP phones of different types of 'CISCO' brand IP Phones were initially brought into the country through their distributor i.e., Ingram Micro India Private Limited, the appellants, as in the above case. However, subsequently due to various reasons, CISCO themselves had started importing the IP phones.

3. Learned Authroised Representative appearing for the Revenue reiterated the findings recorded by the learned Commissioner (Appeals) in the impugned order 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 the Notification Nos. 75/2018-Customs dated 11.10.2018 and 02/2019-Customs dated 29.01.2019 issued by the Central Government. The learned AR had also submitted that the issue of classification of VOIP phones have been decided by the Co-ordinate Bench of this Tribunal in its Final Order dated 22.01.2019 in C/85097/2018 in the case of *Ingram Micro India Pvt. Ltd.* (supra) by holding that VoIP conferencing systems are VoIP equipment, which is used for reception, conversion and transmission or regeneration of voice and video (images) and hence is appropriately classifiable under CTI 8517 6290. It was also held that the benefit of notification number 24/2005–Customs is not available for VoIP equipment as the same are specifically excluded. Learned AR

also stated that the said order of this Tribunal was appealed against before the Hon'ble Supreme Court in the Civil Appeal No. 6389 of 2019 and the same was dismissed by holding that there is no ground to interfere with the order passed by Co-ordinate Bench of this Tribunal. In view of the above, learned AR prayed for dismissal of the appeal filed by the appellants as devoid of merits.

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

5. Brief issue for consideration before us is the classification of different categories of imported "IP Phones" such as (i) IP Audio Phones (ii) IP Audio Conference Phones (iii) Wireless IP Phones by the appellants, for deciding on the appropriate levy of customs duty, in respect of various Bills of Entries filed during the disputed period. The appellants have claimed classification of IP Audio phones and IP Audio Conference phones under CTI 8517 1810; and for Wireless IP Phones under CTI 8517 1210; whereas the department had contended for classification of these goods under CTI 8517 6290/8517 6990.

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
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 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 viz., IP Audio phones and IP Audio Conference phones are either under CTI 8517 18 10 or under CTI 8517 62 90; and in respect of Wireless IP Phones either under CTI 8517 12 10 or under 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	Free	-
	- 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%	-
8517 62	--Machines for the reception, conversion and transmission or regeneration of voice, images or other data, including switching and routing apparatus :	u		-
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	-

Tariff Item	Description of goods	Unit	Rate of Duty	
			Standard	Preferential Areas
(1)	(2)	(3)	(4)	(5)
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 stated 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 of the first category as (i) 'IP Audio phones' of various models such as CP-3905, CP-7811, CP-7821, CP-7832,CP-7841,CP-7861,CP-8811, CP-8841, CP-8851,etc. which facilitate voice communication between two persons. Similarly, B/Es filed for the second category of imported goods declaring these as (ii) 'IP Audio

Conference phones' of models CP-8831 and CP-8832 with the facility of voice communication among multiple users, who could connect to each other, thus facilitating conference.

12. For ease of reference, the sample pictures of the 'IP Audio phones' of CP-8841,of CP-8800 series, from the datasheet of manufacturer 'CISCO' as submitted by the appellants are picturized below:

<u>Illustrative pictures of the 'Cisco' IP Phone CP-8841</u>

From the above picture, it could be seen the product essentially contain the telephone handset, push button keys for visual notification of phone state-mute or speaker on, amplifier, handset, 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.

<u>Product features and specifications of the Cisco IP Phone CP-8841</u>

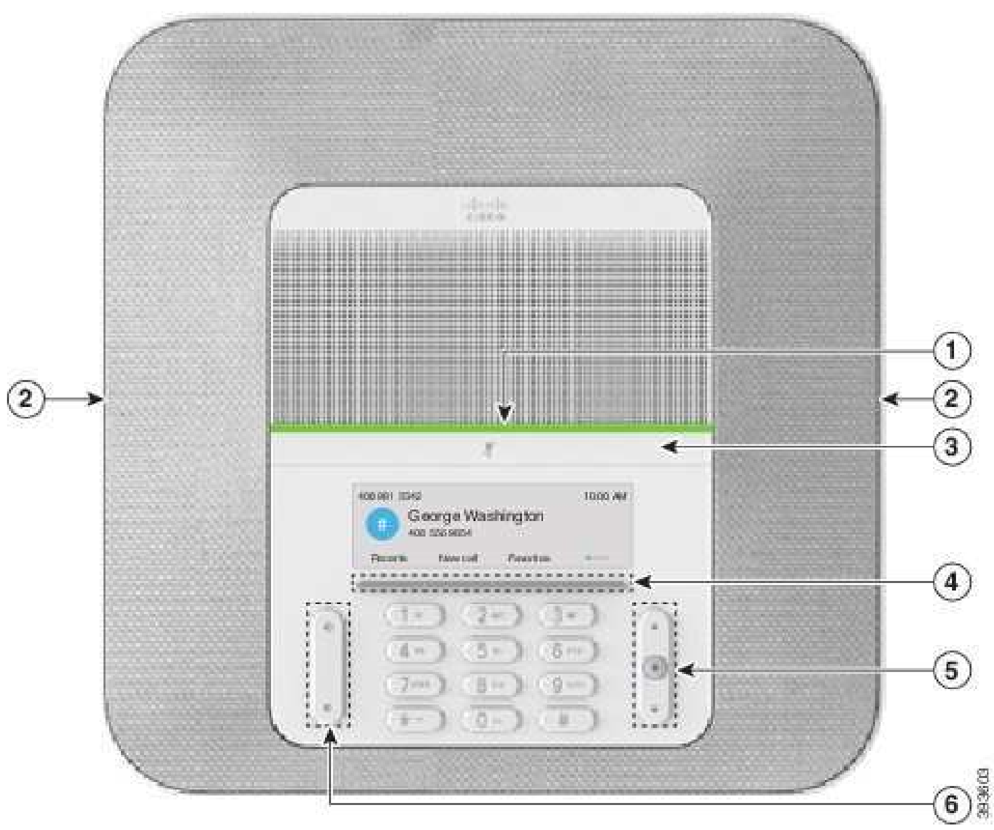
S. No.	**Features**	**Specifications**
1	Audio	Automatic Gain Control, Comfort Noise Generation, Silence Suppression/Voice Activity Detection, Acoustic Echo Cancellation (AEC), Dynamic Noise Reduction
2	Audio codec support	G.711 a-law and mu-law, G.722, G.729a/b, Internet Low Bitrate Codec (iLBC), and 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) Pickup, Busy Lamp Field (BLF) speed dial, Callback, Call forward, Call forward

S. No.	Features	Specifications
		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-dialling before sending, Privacy, Private Line Automated Ringdown (PLAR), Redial, Ring tone per line appearance, Service Uniform Resource Locator (URL), Shared line, Silent monitoring and recording, Speed dial, Time and date display, Transfer, Uniform Resource Locator (URI) dialling, Visual voice mail, Voice mail, Whisper coaching.

13. The above 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. Besides the above, the data sheet 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. Further, in respect of second category of imported goods declared as (ii) 'IP Audio Conference phones' of models CP-8831 and CP-8832, the representative picture of the 'IP Audio Conference phones' of CP-8832 from the datasheet of manufacturer 'CISCO' as submitted by the appellants are picturized below:

Illustrative pictures of the ‘Cisco’ IP Audio Conference Phone CP-8832



In the datasheet of Cisco IP Audio Conference Phone CP-8832 it is stated that this provides a simple, flexible, scalable solution for the requirement of more participants. It is ideal for executive offices, conference rooms, and boardrooms. With the base unit alone, it provides 360-degree coverage for any 20x20-foot room and up to 10 participants. With the optional wired extension microphone kit, it covers any 20x34-foot room and up to 22 participants. With the optional wireless extension microphone kit (using Digital Enhanced Cordless Telecommunications [DECT] technology), it covers any 20x40-foot room and up to 26 participants. With a daisy-chain configuration of two 8832 units along with the optional wireless extension microphone kit, it covers up to a 20x57-foot room and up to 42 participants.

From the above picture, it could be seen the product essentially contain the various features related to telephone.

Product features and specifications of Cisco IP Audio Conference Phone CP-8832

S. No.	Features	Specifications
1	LED bar	Indicates call states: Green, solid—Active call Green, flashing—Incoming call Green, pulsing—Held call Red, solid—Muted call
2	Expansion microphone port	The wired expansion microphone cable plugs into the port
3	Mute bar	 Toggles the microphone on or off. When you mute the microphone, the LED bar lights red.
4	Softkey buttons	 Access functions and services
5	Navigation bar and Select button	 Scroll through menus, highlight items, and select the highlighted item
6	Volume button	 Adjusts the speakerphone volume (off hook) and the ringer volume (on hook). When you change the volume, the LED bar lights white to show the volume change.

15. 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 broad 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 10 to 14 of the impugned order, by placing reliance on the decision of the Co-ordinate Bench of the Tribunal in Ingram Micro India Pvt. Ltd. (supra).

16. Therefore, in order to decide further within the Chapter Heading 8517, whether the imported goods fall under the first broad category as 'telephone sets' or under the second broad 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."

17. 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'.

18. 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 <u>second single dash</u> 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'.

19. 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'.

20. 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'.

21. The description of goods covered under first single dash entry 8517 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 the first two categories of IP phones viz., (i) IP Audio Phones(ii) IP Audio Conference 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. Further, in respect of third category of IP phones viz., (iii) Wireless IP Phones, since these work on wireless network, the classification of such goods under second double dash entry 8517 12 is appropriate.

22. 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 '--' entry of the second group at (II) above, namely 'Base stations' and various '---' 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'.

23. 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 000000preferred under the heading which provides the most specific description to the heading providing a more general description. Inasmuch as the customs tariff entry 8517 18 10 covering "telephone sets of push button type" (other than line telephone and cellular networks or other wireless networks) and customs sub-heading 8517 12 covering telephones for wireless networks, either under the tariff entry 851712 10 for push button type or under 8517 1290 for other types of telephones for wireless networks, is more specific than the contending CTI 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. Hence, in our considered view, the appropriate classification of the imported goods would be under Customs Tariff Item 8517 18 10 in respect of (i) IP Audio Phones (ii) IP Audio Conference Phones and similarly the appropriate classification for (iii) Wireless IP Phones would be under Customs Tariff Item 8517 12 90.

24. 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 description hall 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.

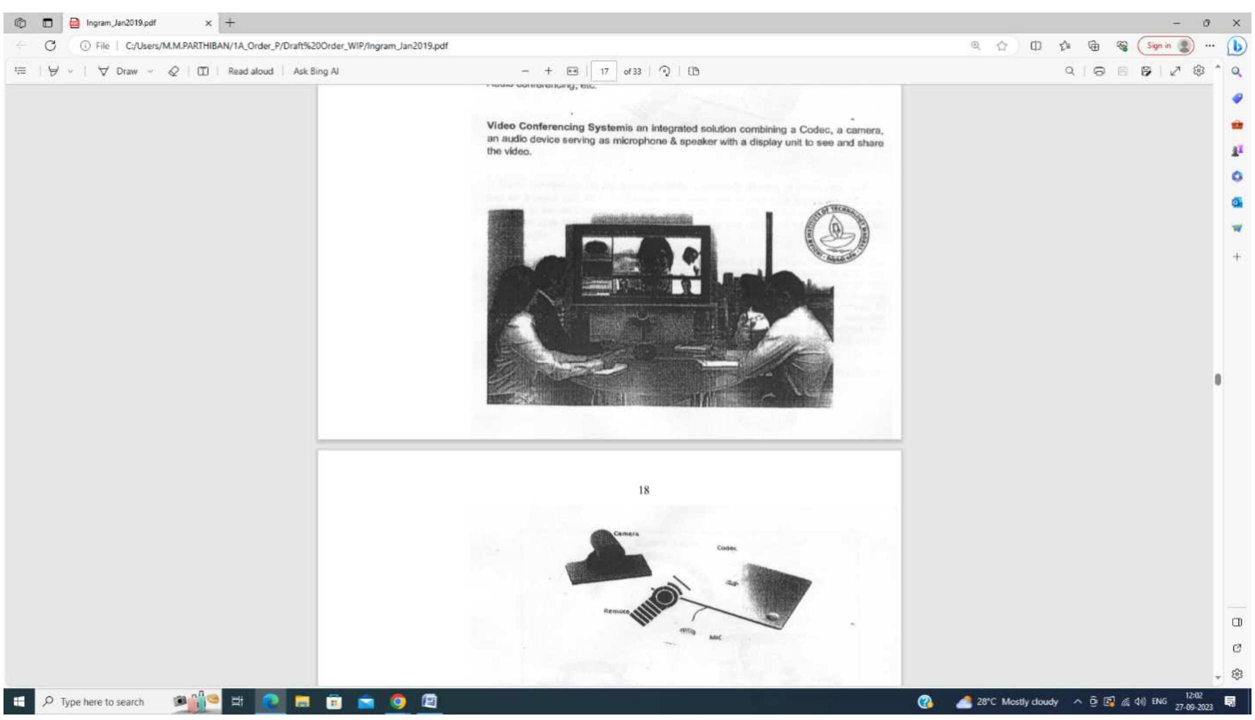
(c) When goods cannot be classified by reference to (a) or (b),they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration."

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.**"

25. We also find that classification of CISCO IP phones have also been decided by the Co-ordinate Bench of this Tribunal in the case of the manufacturer *Cisco Commerce (I) Pvt. Ltd. Vs. Commissioner of Customs, ACC, Mumbai* in Final Order No. dated …… by holding that "CISCO IP Phones" of various models would appropriately be classifiable under CTH 8517 18 10.

26.1 We had also considered the submission made by the Learned AR as he had relied upon the decision of the Coordinate 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 used 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 Coordinate 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)" and not "IP Phones". 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 products under discussion before us and the product dealt with in the order of the Coordinate Bench in that order are entirely different. The product in question involved in the order passed by the Coordinate Bench is picturized below for proper appreciation of the facts:



26.2 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, from the product data sheet submitted by the appellants as written submissions in respect of various models of 'CISCO IP Phones' covered in the appeals before us, it is shown that these phones 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 fourth category (iv)IP Video Phones, 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 this appeal.

27. We also find that the Co-ordinate Bench of this Tribunal, in the case of *Ingram Micro Indian 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.

28. In view of the foregoing discussions and analysis, we conclude that the products under consideration i.e., (i) 'IP Audio Phones' (ii) 'IP Audio Conference Phones' of various models of 'CISCO' brand would appropriately be classifiable under Customs Tariff Item (CTH) 8517 18 10 and not under CTH 8517 69 90, as claimed by Revenue. Further, we also conclude that the appropriate classification for (iii) 'Wireless IP Phones' of 'CISCO' brand would be under CTH 8517 12 90 and not under CTH 8517 69 90, as claimed by Revenue.

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

(Order pronounced in court on 16.02.2024)

(S.K. Mohanty)
Member (Judicial)

(M.M. Parthiban)
Member (Technical)

Sinha