CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI

REGIONAL BENCH - COURT NO. I

Customs Appeal No. 87268 of 2022

(Arising out of Order-in-Appeal No. MUM-CUSTM-AMP-APP-823 to 825/2022-23 dated 08.08.2022 passed by the Commissioner of Customs (Appeals), Mumbai Zone-III)

Ingram Micro India Pvt. Ltd. **.... Appellant**
5 Floor, B Block, Godrej IT Park,
LBS Road, Vikhroli (West),
Mumbai – 400079.

Versus

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

Appearance:

Shri Akhilesh Kangasia a/w Ms. Madhura Khandekar, Advocates for the Appellant
Shri Deepak Sharma, 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/85672/2024

Date of Hearing: 02.07.2024
Date of Decision: 02.07.2024

Per: S.K. MOHANTY

Briefly stated, the facts of the case are that the appellant M/s Ingram Micro India Pvt. Ltd. had imported 'Mobile Touch Computers' of different models by self-classifying the said goods under CTI 8471 30 90. At the time of post clearance audit of the Bill of Entry (B/E) No. 4887230 dated 13.09.2019, the Department had noticed that the said goods had built in features like data connectivity 2G/3G/4G/ LTE, Android Operating System, Bluetooth, Wi-Fi connectivity, dedicated SIM Card slot etc. and accordingly, interpreted that the same should be classified under CTH 8517. On the basis of the observations made by the Department, showcause proceedings were initiated by the Department for change in classification of the subject goods and for confirmation of the differential duty demand. In the adjudication order dated 18.09.2021, the learned Deputy Commissioner of Customs (Import), Mumbai has reassessed the subject Bill of Entry No. 4887230 dated 13.09.2019 and classified the imported goods under CTI 8517 12 90. In the said order, differential duty demand along with interest was confirmed on the appellant and penalty was also imposed under Section 112(a) of the Customs Act, 1962. Further, in respect of the goods viz., 'Mobile Touch Computers', the B/Es No. 6024561 dated 27.10.2021 and 6486606 dated 01.12.2021 were self-assessed by the appellant under sub-section (1) of Section 17 ibid, claiming classification under CTI 8471 30 90. The said classification claimed by the appellant was changed by the proper officer, and to such effect, no speaking order as contemplated under Section 17(5) *ibid* was passed by him. On appeal against the adjudication order dated 18.09.2021, the learned Commissioner (Appeals) has rejected the appeal in the impugned order 08.08.2022. In the said impugned order, the learned Commissioner (Appeals) has also rejected the appeals filed by the appellant with regard to re-assessment of B/Es, where no speaking orders were passed. Feeling aggrieved with the impugned order, the appellant has filed the present appeal before the Tribunal.

2. Learned Advocate appearing for the appellant, at the outset, submitted that the B/Es filed by the appellant were self-assessed under sub-section (1) of Section 17 *ibid*. However, the said B/Es were reassessed by the Department under sub-section (4) of Section 17*ibid,* without following the mandatory requirement prescribed under sub-section (5) of Section 17 *ibid*, for passing of speaking order. Thus, he submitted that since no speaking order has been passed with regard to

the B/Es dated 27.10.2021 and 01.12.2021 by the proper officer, the re-assessment made with regard to change in classification of goods cannot be sustained. Learned Advocate further submitted that classification of the subject goods is no more *res integra*, in view of the adjudication order dated 24.06.2023, wherein the product has been classified under CTI 8471 30 90. He also submitted that the order dated 24.06.2013 has been accepted by the administrative Commissioner, being no appeal was preferred there against before the appellate forum. Thus, he submitted that rejection of appeal in the impugned order with regard to the adjudication order 18.09.2021 in classifying the goods under CTI 8517 12 90 cannot be sustained.

3. On the other hand, learned AR appearing for the Revenue reiterates the findings recorded in the impugned order.

4. Heard both sides and perused the case records.

5. It is an admitted fact on record that the appellant had classified the Mobile Touch Computers in the Bill of Entry under CTI 8471 30 90 and the said classification was changed by the Department by way of re-assessment under different CTI 8517 12 90. Insofar as reassessment of the self-assessed Bill of Entry is concerned, though the proper officer is empowered under the statute to reassess the Bill of Entry, but for such purpose, speaking order is mandatorily required to be passed under sub-section (5) of Section 17 *ibid*, which admittedly has not been complied with by the proper officer in the case of the said two B/Es dated 27.10.2021 and 01.12.2021. Since sub-section (5) of Section 17*ibid* has vested the power with responsibility to the proper officer of Customs for passing of the speaking order with regard to reassessment of Bills of

Entry, we are of the view that the matter should go back to the original authority for compliance with the requirement of sub-section (5) of Section 17 *ibid* for passing of the speaking order with regard to change in classification of the subject goods claimed by the appellant. In respect of the B/E No. 4887230 dated 13.09.2019, though the original authority had passed the speaking order, but change in classification of the goods cannot be sustained in view of the order dated 24.06.2023, passed by the Deputy Commissioner of Customs. It is also an admitted fact on record that the said order dated 24.06.2023 was accepted by the administrative Commissioner of Customs, since no appeal was preferred against such order before the appellate authorities. In view of the fact that the classification claimed by the appellant under CTI 8471 30 90 was accepted by the department for the earlier imports, such stand cannot be changed in the present case for denying the benefit arising out of such classification made by the department, in respect of self-same imported goods.

6. In view of the foregoing discussions, we are of the considered opinion that the goods in question should be appropriately be classified under CTI 8471 30 90. Accordingly, the impugned order disposing of the original order dated 24.06.2023 is set aside to such extent and the appeal is allowed in favour of the appellant. With regard to the B/Es dated 27.10.2021 and 01.12.2021, since the mandatory requirement contained under Section 17(5) *ibid* has not been complied with by the original authority, by setting aside that portion of the impugned order, the matter is remanded back to the original authority for passing of the speaking order as mandated in Section 17(5) *ibid*. It is made clear that since the statute clearly mandates for passing of the speaking order within a period of 15 days from the date of re-assessment, we expect

that the original authority should complete the process of passing of speaking order within such time frame. For the purpose of passing of speaking order, the original authority should refer to this earlier order dated 24.06.2023 and the letter dated 28.03.2024 digitally signed by the Assistant Commissioner of Customs, Review/Legal/TCU(I), ACC, Mumbai.

7. The appeal is disposed of in the above terms.

(Dictated and pronounced in open court)

(S.K. Mohanty)
Member (Judicial)

(M.M. Parthiban)
Member (Technical)

Sinha