

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
MUMBAI**

WEST ZONAL BENCH

CUSTOMS APPEAL NO: 86481 OF 2023

[Arising out of Order-in-Appeal No MUM-CUSTM-AMP-APP-55/2023-24 dated 18th April 2023 passed by the Commissioner of Customs (Appeals), Mumbai–III.]

MIRC Electronics Ltd

G-1, MIDC, Off: Mahakali Caves Road
Andheri (East), Mumbai-400 093.

... Appellant

versus

Commissioner of Customs (Imports)

Air Cargo Cargo Complex, Sahar
Andheri (East), Mumbai-400 099.

...Respondent

APPEARANCE:

Shri CM Sharma, Consultant for the appellant

Shri Ram Kumar, Assistant Commissioner (AR) for the respondent

CORAM:

**HON’BLE MR C J MATHEW, MEMBER (TECHNICAL)
HON’BLE MR AJAY SHARMA, MEMBER (JUDICIAL)**

FINAL ORDER NO: 86847/2024

DATE OF HEARING:	17/05/2024
DATE OF DECISION:	13/11/2024

PER: C J MATHEW

Both classification and valuation are involved in this appeal of
M/s Mirc Electronics India Pvt Ltd who had, *vide* bill of entry

7779418/29.05.200, imported 2000 pieces of that which was declared as 'infrared contactless thermometer' and valued at US \$ 18 apiece which the adjudicating authority revised to US \$ 30 per piece by resort to rule 5 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 and the rate of duty corresponding to tariff item 90251990 to that pertaining to tariff item 9025 1910 of First Schedule to Customs Tariff Act, 1975 leading to differential duty thereupon against self assessed duty of ₹ 7,98,931 on value of ₹ 28,80,588. The dispute was carried in appeal and the first appellate authority remanded the matter to the original authority for issue of a valid speaking order and, upon issue thereof to their detriment, was carried once again before the first appellate authority on the ground that the rule adopted for re-assessment in the bill of entry was substantially different from that reflected in the speaking order and consequently outside the scope of show cause notice. The classification adopted by the original authority was also challenged. It was contended by the appellant that the first appellate authority affirmed the order of the original authority discarding all their submissions.

2. It is contended before us that the duty, in consequence of enhancement of value as well as revision in classification, recoverable was computed at ₹ 14,62,000. It was also pointed out that in remand proceedings yet another of the methods prescribed in Customs Valuation (Determination of Value of Imported Goods) Rules, 2007

was adopted owing to which the entire case of the customs authorities is jeopardized.

3. We have heard Learned Consultant for the appellant and Learned Authorised Representative.

4. It is seen that the revision in classification has been arrived at solely on the finding that

‘15.2. As per the catalogue of the product provided by the importer with their written submission, the infrared thermometer is an electronic thermometer using an infrared sensor to measure human body temperature for people of all ages. Its operation is based on measuring the natural thermal radiation emanating from the forehead. It mainly contains shell, temperature probe, button, display screen and battery. Infrared non-contact thermometer which reads surface temperature of objects by measuring the infrared radiation emitted by the object and displaying the results on an LCD screen. The unit is powered by 2 AAA batteries. Hence, an Infrared Thermometer has all characteristics of a Digital Thermometer.’

5. The impugned order is unclear about the manner in which the impugned goods fit the description of ‘digital thermometers’ and while the characteristics of the imported goods as obtained from the product catalogue are enumerated, the standards by which the imported goods were to be evaluated for conformity with the description as ‘digital thermometers’ has not been set out. The

heading itself comprises several types of measuring instruments and thermometers, themselves, are found to be corresponding to sub-heading under 902511 and 902519 of First Schedule to Customs Tariff Act, 1975 implying that a range of thermometers would fall under either sub-heading. That the impugned goods are not covered by sub-heading 902511 is not in dispute inasmuch as this sub-heading deals with 'liquid filled measuring instruments' while the alternative sub-heading is a residuary one including 'digital thermometers' and 'pyrometers' but there is no description either in the notes to the chapter or in section notes and no reference been made to Harmonized System of Nomenclature (HSN). It would thus appear that the resort to classification has been done without any basis for the standard by which the comparison was to be made. It is abundantly clear from the decision of the Hon'ble Supreme Court in *Hindustan Ferodo Ltd v. Collector of Central Excise* [1997 (89) ELT 16 (SC)] that

'It is not in dispute before us as it cannot be, that onus of establishing that the said rings fell within Item No. 22-F lay upon the Revenue. The Revenue led no evidence. The onus was not discharged. Assuming therefore, the Tribunal was right in rejecting the evidence that was produced on behalf of the appellants, the appeal should, nonetheless, have been allowed.'

and in *HPL Chemicals Ltd v. Commissioner of Central; Excise, Chandigarh* [2006 (197) ELT 324 (SC)] that

‘28. This apart, classification of goods is a matter relating to chargeability and the burden of proof is squarely upon the Revenue. If the Department intends to classify the goods under a particular heading or sub- heading different from that claimed by the assessee, the Department has to adduce proper evidence and discharge the burden of proof. In the present case the said burden has not been discharged at all by the Revenue.....’

the onus lies with the ‘proper officer’ to establish that the goods are aptly classifiable against the proposed description. The enumeration of the characteristics of the impugned goods are meaningless in the absence of such benchmark or is used in common parlance as description of the product. From the submissions of Learned Consultant, it appears that the impugned goods are intended for measuring temperature from a distance by subjecting the forehead to exposure by infra red rays and for the reading to be displayed. To the extent of display in digital mode, there cannot be doubt that the impugned goods could be prescribed as digital thermometer but the similarity appears to end with that.

6. In any case, in such circumstances of lack of any definition or assistance from the notes referred *supra*, it was incumbent upon the lower authorities to ascertain the description intended by the several expressions below the sub-heading 902519. That exercise has not been carried out to and requires remedying. On the issue of valuation, it would appear that reliance has been placed on certain imports that

were available in records of the customs formation. It is also seen that rule 5 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 has been resorted to. Though resort to different rules on each occasion besides lack of certainty, it cannot be said that the notice was not alerted to the possibility of revision by one or other of the prescribed method inasmuch as the declared value was proposed to be discarded. We find no infirmity in the process by which the original authority justified the revision; however, with the issue of classification requiring fresh consideration, revision in valuation, as a consequence, does not acquire finality. It would, therefore, be appropriate for the applicability of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 to be redetermined only if warranted by change of classification.

7. Accordingly, we set aside the impugned order and remand the matter back to the original authority to decide on both the issues.

(Order pronounced in the open court on 13/11/2024)

(AJAY SHARMA)
Member (Judicial)

(C J MATHEW)
Member (Technical)