

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

REGIONAL BENCH - COURT NO. I

**Customs Appeal No. 85345 of 2016**

(Arising out of Order-in-Original No. 04/2015-16, NS-V dated 15.12.2015 passed by the Commissioner of Customs (NS-V), JNCH, Nhava Sheva)

**M/s Kripa Electronics (India) Pvt. Ltd.**

**.... Appellant**

G-52, Roopmangal, 16<sup>th</sup> Road, Santacruz (W),  
Mumbai – 400 054

Versus

**Commissioner of Customs (NS-V), Nhava Sheva**

**.... Respondent**

JNCH, Nhava Sheva,  
Tal. Uran, Dist. Raigad, Maharashtra – 400 707

Appearance:

Shri Anil Balani, Advocate 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/87564/2024**

Date of Hearing: 20.03.2024

Date of Decision: 20.03.2024

***Per: M.M. Parthiban***

This appeal has been filed by M/s Kripa Electronics (India) Private Limited, Mumbai (herein after, referred to as 'the appellants'), assailing Order-in-Original No. 04/2015-16, NS-V dated 15.12.2015 (herein after, referred to as 'the impugned order') which was passed by the Commissioner of Customs (NS-V), Jawaharlal Nehru Custom House (JNCH), Nhava Sheva, Taluka Uran, District Raigad, Maharashtra.

2.1 Briefly stated, the facts of the case are that the appellants herein, had imported audio & video equipment from M/s. D&M Electronics, Singapore and M/s Anthem Electronics, Canada. This imported equipment were sold as such by the appellants in the domestic market. It was the contention of the department that the appellants had imported multi-functional audio video equipment with radio broadcast receivers by mis-declaring the same as "AV Receivers" (AVR) and as "CD Receivers" (CDR) and classified them under Customs Tariff Item (CTI) 8518 4000 as "audio frequency electric

amplifiers”, instead of classifying the same under CTI 8527 9100, thereby evading additional duty of customs (CVD) which is applicable on the basis of MRP/Retail Sale Price in terms of Notifications No. 14/2008-C.E. (N.T.) dated 01.03.2008 (Sl. No.96) and No. 26/2012-C.E. (N.T.) dated 01.05.2012 (Sl. No.94).

2.2 On the above basis, Directorate of Revenue Intelligence, Bangalore Zonal Unit (DRI) conducted detailed investigation in respect of various imports undertaken by the appellants-importer during the period December, 2008 to September, 2013 by filing more than 119 Bills of Entry (B/Es) covering the B/Es of date 26.12.2008 to 13.09.2013. Detailed investigation conducted by DRI, included recording of statements from CEO of the appellants company, their Custom Broker/CHA, and other persons concerned. The department had interpreted that AV receivers appear to be radio reception apparatus for AM/FM signals with additional features of video play back and sound amplification with the aid of external input source, such as CD player or a DVD player, Blu-Ray disc player, and thus based on the brochure and technical details of the imported product being traded by the appellants, the Department came to the conclusion that these equipment appear to be part of home theatre system without speakers. Similarly, in the case of goods declared as CD receivers, the department had interpreted that in-built AM/FM tuner receives the radio broadcast signals and feed it to the amplifying section and for subsequent output through speakers; for playing other media, even the so-called CD receivers need a CD media or other external input signal to process the same and send the output for speakers or a monitor/TV. Department had therefore concluded that the so-called the CD receivers are not merely a standalone audio frequency amplifier. They also relied upon the product literature of such category of goods, which does not mention that the principal or main function of the subject goods is amplification. Thus, the Department was of the view that in its standalone form the so-called CD receivers function as a radio broadcast receiver with the in-built AM/FM tuner without the aid of any other external input or media.

2.3 On the above basis, in respect of 119 B/Es, the department had objected to the classification adopted by the appellants under CTI 8518 4000 and proposed for re-classification under CTI 8527 9100 of the Customs Tariff Act, 1975 by issue of Show Cause Notice (SCN) dated 24.12.2013. In the said SCN, it was proposed for rejecting the classification declared by the importer under CTI 8518 4000, and instead revise the classification of

imported goods under CTI 8527 9100 by reassessment and demanding differential duty of Rs.1,08,41,265/- under Section 28(1)/28(4) of the Customs Act, 1962; besides proposing for confiscation of goods covered under above B/Es under Sections 111(d) and 111(m) *ibid*, imposition of penalty on the appellants under Sections 112/114A and 114AA *ibid*. The SCN dated 24.12.2013 was adjudicated by the original authority in Order-in-Original dated 15.12.2015 by re-classifying the product as proposed in the SCN, confirming the demand of short paid customs duty under Section 28 of the Customs Act, 1962 along with interest and also confirmed the proposal for confiscation of imported goods and imposition of penalty on the importers, Director and CEO of the appellants-importer. Being aggrieved with the impugned order dated 15.12.2015, the appellants have filed this appeal before the Tribunal.

3.1. Learned Advocate submits that the appellants had imported amplifiers which is used for home theatre system, and in the trade parlance these are called as ACRs and CDRs. Simply because they have the function of radio incorporated therein, it does not change the classification of the product. The product literature of the imported goods was supplied at the time of import to the customs officers at the port of import and upon assessment, such goods were removed from customs control, and hence there is no suppression or mis-declaration in such cases.

3.2 Learned Advocate submitted that the classification of imported goods declared by the appellants were duly supported by the Harmonized System of Nomenclature (HSN) which provides for coverage of the various types of goods under the heading 8518 as amplifiers, loud speakers. Hence, the appellants have correctly classified the item. Further, he stated that in the impugned order the adjudicating authority had invoked Rule 3(a) of Interpretative Rule incorrectly as this applies between two equally contending classifications; and since the imported goods do not contain the reception apparatus, adoption of classification 8527, it does not merit consideration, and therefore the application of such rule is incorrect.

3.3 Learned Advocate also submitted that CBEC Circular No.27/2013-Customs dated 01.08.2013, categorically states that based on the specifications "multifunction speaker systems" may be classified under heading 8519, heading 8527 or the appropriate heading as the case may be.

3.4 In support of their stand, learned Advocate had relied upon following decisions of the Tribunal and judgements of Hon'ble Supreme Court, in the respective cases mentioned below:

*(i) Onkyo Sight & Sound Media Pvt. Ltd. Vs. Commissioner of Customs, Chennai – 2019 (368) E.L.T. 683 (Tri.- Chennai)*

*(ii) Commissioner of Customs, (Seaport Import), Chennai Vs. Onkyo Sight & Sound Media Pvt. Ltd. – 2023 (383) E.L.T. 497 (S.C.)*

*(iii) Logic India Trading Co. Vs. Commissioner of C. Ex. Cus. & S.T., Bangalore-I - 2023 (382) E.L.T. 244 (Tri. – Bang.) and*

*(iv) Logic India Trading Co. Vs. Commissioner of Customs, Cochin - 2016 (337) E.L.T. 65 (Tri. – Bang.) upheld by the Hon'ble Supreme Court in Civil Appeal No. D 25388 of 2016 – 2016 (342) E.L.T. A34(S.C.)*

*(iv) Collector of Central Excise, Bangalore Vs. Tetragon Chemie (P) Ltd. – 2001 (132) E.L.T. 625 (S.C.)*

*(v) Global Enterprises Vs. Commissioner of Central Excise – Delhi-II – 2017 (354) E.L.T. 546 (Tri. - Del.)*

4. Learned Authorised Representative (AR) reiterated the findings made by the Commissioner of Customs in the impugned order and submitted that issue of classification of impugned goods, has been examined in detail by the learned adjudicating authority. Hence, the classification of impugned goods as held in the impugned order under heading 8527 is sustainable.

5. We have heard both sides and perused the case records and additional paper books submitted in this case by both sides.

6.1 The issue involved herein is to decide the classification of imported goods by the appellants as to whether, the same merits classification under Customs Tariff Item (CTI) 8518 4000 as claimed by the appellants; or, is it classifiable under CTI 8527 9100 as determined by the learned Commissioner of Customs, for deciding on the appropriate levy of customs duty, in respect of various Bills of Entries filed during the disputed period. Further, it is also required to be decided whether the confirmation of the demand of the differential duty, confiscation, imposition of penalty is legally sustainable based on the determination of the classification of impugned goods.

6.2 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 Section or 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 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."*

6.3 From 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.

7. In the case before us, the contending classification of imported goods discussed in the impugned order are either under CTI 8518 4000 or CTI 8527 9100 of the First Schedule to the Customs Tariff Act. Thus, it is clear that at the Chapter heading level itself, there is difference of opinion among the department and the appellants. The dispute in classification therefore lies in the narrow compass of analysis of the appropriate Headings under which the impugned goods are covered as per the Customs Tariff and then classifying the impugned product under the corresponding Sub-heading, Tariff Item. Now, we may closely examine the scope of the contending classification for determining correct classification of the imported goods. The relevant headings and their tariff entries in the First Schedule to the Customs Tariff Act of contending Chapter headings 8518 and 8527 are extracted as below:

**"CHAPTER 85**

***Electrical machinery and equipment and parts thereof; sound recorders and reproducers, television image and sound recorders and reproducers, and parts and accessories of such articles***

**Notes :**

| XX          | XX                                                                                                                                                                                                                                               | XX | XX | XX |
|-------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----|----|----|
| Tariff Item | Description of goods                                                                                                                                                                                                                             |    |    |    |
| (1)         | (2)                                                                                                                                                                                                                                              |    |    |    |
| 8518        | <b>MICROPHONES AND STANDS THEREFOR; LOUDSPEAKERS, WHETHER OR NOT MOUNTED IN THEIR ENCLOSURES; HEADPHONES AND EARPHONES, WHETHER OR NOT COMBINED WITH A MICRO PHONE, AND SETS CONSISTING OF A MICROPHONE AND ONE OR MORE LOUDSPEAKERS; AUDIO-</b> |    |    |    |

| Tariff Item | Description of goods                                                |
|-------------|---------------------------------------------------------------------|
|             | <b>FREQUENCY ELECTRIC AMPLIFIERS; ELECTRIC SOUND AMPLIFIER SETS</b> |
| xxx         | xxx                                                                 |
| 8518 40 00  | -- Audio-frequency electric amplifiers                              |

And

| Tariff Item | Description of goods                                                                                                                                     |
|-------------|----------------------------------------------------------------------------------------------------------------------------------------------------------|
|             |                                                                                                                                                          |
| (1)         | (2)                                                                                                                                                      |
| <b>8527</b> | <b>RECEPTION APPARATUS FOR RADIO-BROADCASTING WHETHER OR NOT COMBINED, IN THE SAME HOUSING, WITH SOUND RECORDING OR REPRODUCING APPARATUS OR A CLOCK</b> |
|             | <i>- Radio-broadcast receivers capable of operating without an external source of power:</i>                                                             |
| 8527 1200   | -- Pocket-size radio cassette-players                                                                                                                    |
| 8527 1300   | -- Other apparatus combined with sound recording or reproducing apparatus                                                                                |
| 8527 1900   | -- Other                                                                                                                                                 |
|             | <i>- Radio-broadcast receivers not capable of operating without an external source of power, of a kind used in motor vehicles:</i>                       |
| 8527 2100   | -- Combined with sound recording or reproducing apparatus                                                                                                |
| 8527 2900   | -- Other                                                                                                                                                 |
|             | <i>- Other:</i>                                                                                                                                          |
| 8527 9100   | -- Combined with sound recording or reproducing apparatus                                                                                                |
| 8527 9200   | -- Not combined with sound recording or reproducing apparatus                                                                                            |
| 8527 9900   | -- Other                                                                                                                                                 |

8.1 It could be seen that by applying the GIR 1, the position is made clear that Chapter Heading 85.18 covers within its scope and ambit, mainly of four broad categories of goods:

- (i) first one i.e., "Microphones and stand therefor";
- (ii) the second one i.e., "Loud speakers";
- (iii) the third one i.e., "head phones and ear phones"; and
- (iv) the fourth one i.e., "audio frequency amplifiers and electric sound amplifiers".

As there is no specific sub-heading or tariff item to be further classified in different individual item level, and that the sub-heading 8518 40 itself takes into account all categories of the goods under it, there is no need to further go down into any specific tariff items for examining its coverage at CTI level and its scope.

8.2. Similarly, by applying same GIR 1, it could also be seen that Chapter Heading 8527 covers within its scope and ambit, mainly of three broad categories of goods:

(i) first one i.e., "Radio-broadcast receivers capable of operating without an external source of power", covered under CTI 8527 1200, 8527 1300 and 8527 1900;

(ii) the second one i.e., "Radio-broadcast receivers not capable of operating without an external source of power", covered under CTI 8527 2100 and 8527 2900;

(iii) the third one i.e., "residuary items of other radio-broadcast reception apparatus" covered under CTI 8527 9100, 8527 9200 and 8527 9900.

8.3 Broadly, we find that the chapter sub-heading 8518 deals with "Sound amplifiers, loudspeakers", which receive input and by changing the frequency of the sound to be amplified, changing the wave form etc., produce much higher level of output with other features such as equalization, tone-control, mixing effects etc. In other words, the input signal received by such amplifier equipment may only measure few hundred microwatts, but its output may be in tens, hundreds or thousands of watts, giving much amplified effect with more precise sound for theatrical effect. Whereas the chapter heading 8527 deals with products of "reception apparatus for radio broadcasting" which have separate mechanism for reception and broadcasting facility.

8.4 In the impugned order, the adjudicating authority had recorded about the imported goods as follows and given his findings for its classification under sub-heading 8527 as below:

*"32. ... On scrutiny of the commercial brochures pertaining to these imported goods, it is noticed that they are figuring under the category of 'High-end home theatre products' and referred to as 'network music systems'. The specifications given in the product catalogue show the goods declared to be 'AV Receivers' to consist of Power amplifier section, FM section, AM section, Power supply with input ports for HDMI component, S-Video, Composite video, Analogue Audio Digital optical, Digital optical, Digital coaxial Phone MM, output ports for HDMI monitor, Component, S-Video, Analogue Audio, Digital optical, Phones and other features of Tigger, Tuner antenna AM/FM, Ethernet, Wi-Fi, USB, dock control etc. Thus the Equipment/devices are having the inbuilt AM/FM digital tuner. However, in order to use all other features, it needs an external input audio/video source like CD player, Blue ray/DVD player or Input of Video and Sound through input ports. The specifications given in the product catalogue show the goods declared as 'CD receivers' to consist of Power amplifier section, FM Section, AM section, DAB tuner, CD player section and power supply. Though both the subject goods are not simple equipment with a single specific feature, M/s KEPL have described them as 'AV Receivers' and 'CD Receivers' and did not declare all the other features (especially radio aspect) of the imported goods..."*

*34...Therefore, it is noticed that only the equipment that performs amplification of audio signals is to be treated as audio frequency amplifiers. As against that M/s KEPL classifying these multi-functional audio/video equipment under tariff item 8518 4000 applicable to 'audio frequency electric amplifiers'. Chapter heading 8518 of the Customs Tariff Act, 1975 covers microphones and stands therefore; loudspeakers, whether or not mounted in their enclosures; headphones and earphones, whether or not combined with microphone, and sets consisting of a microphone and one or more loudspeakers; audio-frequency electric amplifiers; electric sound amplifier under tariff item covers all Audio- frequency amplifiers.*

*41.... Both the items, declared as AVRs and CDRs, are in fact devices which have reception apparatus, for radio broadcasting combined, in the same housing with sound reproducing apparatus. As both subject items, are with features for radio broadcast reception with the inbuilt AM/FM tuner, categorically classifiable under HS Code 8527 for such equipment."*

8.5 In this regard, we find that Central Board of Excise and Customs (CBEC) in the matter of classification of multifunction devices, multi-function speaker systems had examined the issue referred by the trade claiming their classification of "multifunction speaker system" (combination of one or more of the following: Universal Serial Bus (USB) port, USB playback, Frequency Modulation (FM) radio as loudspeakers) under heading 8518 based on premise that the principal function is that of a speaker system, which involves conversion of digital signal to analogue, amplification, and relay to the listener. In the circular No.27/2013-Customs dated 01.08.2023, it was clarified as follows:

*"2. This issue was discussed in the Conference of Chief Commissioners of Customs and Directors General on Customs Tariff and Allied Matters, held on 5-6 June 2013, at Vishakhapatnam. Broadly following types of "multifunction speaker system", were taken up for discussion, viz. (a) Speaker with USB port but without USB playback or FM radio, (b) Speaker with USB Port having USB playback but without FM radio (c) Speaker with USB port having FM radio but without USB playback (d) Speakers with USB port, FM radio, and USB playback.*

*3. The competing headings are :*

**8518** - Loudspeakers, whether or not mounted in their enclosures; headphones and earphones, whether or not combined with a microphone, and sets consisting of a microphone and one or more loudspeakers: audio-frequency electric amplifiers: electric sound amplifier sets;

**8519** - Sound recording or reproducing apparatus;

**8527** - Reception apparatus for radio-broadcasting whether or not combined, in the same housing, with sound recording or reproducing apparatus or a clock.

*4. The view that in case of a "multifunction speaker system", the "reception apparatus for radio-broadcasting (heading 8527)" or*

*"reproduction function of sound as provided by USB playback (heading 8519)" is less important than the function of amplification and relay of sound, thereby leading to the inference that such products are classifiable in heading 8518, overlooks the fact that the HS nomenclature only mentions functions and does not refer to the complexity or sophistication of these functions. It appears that any sound reproducing playback device or reception apparatus for radio-broadcasting will need speakers for its effective functioning.*

*5. The classification of goods is to be determined by application of the General Rules for the Interpretation (GRIs) of the First Schedule to the Customs Tariff Act (CTA), 1975. GRI 1 requires that, "in classifying articles, for legal purpose it shall be determined according to the terms of the headings and any relative Section or Chapter Notes,..". Hence, all relevant legal texts must be considered. In this regard, Note 3 to Section XVI stipulates that, "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".*

*6. During discussions held at the time of Conference, there was general agreement that in case of :*

*(a) "Speaker with USB port but without USB playback or FM radio", the product would be classified in heading 8518, by application of General Rules 1. Speakers classified under heading 8518 include both passive speakers and active speakers. Active speakers, like many subwoofers, contain a built-in audio amplifier. The subheading under which speakers are classified depends on the number of 'drive units' - the actual loudspeaker cones or ribbons - in each cabinet or enclosure. Speakers with a single drive unit in each cabinet are classified under subheading 851821. Speakers with more than one drive unit in each cabinet - for example one woofer and one tweeter - are classified under subheading 851822. Speakers that are not mounted in a cabinet or enclosure are classified under subheading code 851829.*

*(b) "Speaker with USB Port having USB playback but without FM radio", the principal function of the device is imparted by USB playback facility. Therefore the said multifunction speaker system is classifiable in subheading 851981 of the Harmonized Customs Tariff, which provides for Sound recording or reproducing apparatus : Other apparatus : Using magnetic, optical or semiconductor media : Other : Other.*

*(c) "Speaker with USB port having FM radio but without USB playback" the principal function of the device is imparted by Radio (reception apparatus for radio-broadcasting) and hence the multifunction speaker system classifiable under subheading 852799 by virtue of General Rules 1, Note 3 to Section XVI and 6.*

*(d) "Speaker with FM, USB port and USB playback", if it is held that the principal function of the device is imparted equally by Radio (reception apparatus for radio-broadcasting) and USB playback facility then it would*

*be classified by sequential application of GRI, according to Rule 3(c). According to this rule, of all the possible heading or subheading that could equally apply the heading/subheading that comes last in numerical order is used to classify the goods. Hence the said product is classifiable under subheading 852799 by virtue of General Rules 1, Note 3 to Section XVI, 3(c), and 6.*

*7. The issue has also been examined by the Board. In view of the general consensus arrived at the Conference, Board desires that as mentioned in para 6 above, based on the specifications "multifunction speaker systems" may be classified under heading 8519, heading 8527 or the appropriate heading as the case may be.*

*8. Suitable instructions in the matter may be issued to field formations for strict compliance and pending cases if any, may be decided accordingly."*

On plain reading of the above clarification issued by CBEC, it is seen that depending upon features available in each of the product, the classification has to be adopted either in one of the customs classification under sub-heading 8518, 8519 or 8527. On perusal of the details of the imported product, as stated above, even though the AV/CD receivers, amplifiers have various input slots for receipt and amplification, the function of USB play back or the FM/AM radio, does not qualify as the principal function of the product. Thus, in terms of the CBEC clarification, we are of the considered view that the imported products are rightly classifiable with respect to its principal function of amplification of input sounds, i.e. under the category of audio frequency amplifiers and electric sound amplifiers under CTI 8518 4000.

9. We find that the two contending classification i.e., one under CTI 8518 4000 with specific description of "audio/video receivers/amplifiers" as claimed by the appellants and CTI 8527 9100 with general residuary description 'Other' adopted by the department, both in the impugned order as well as in the SCN, does provide sufficient ground for comparison of the scope of coverage of the goods, at the level of the 'terms of headings', to apply GIR-1 to come to the conclusion as to which of these two classification is more appropriate for classification of impugned goods. In fact such an exercise had been carried out by us in paragraphs 7 and 8.1 to 8.4; alongwith the detailed analysis of the scope of coverage of goods under the specific tariff entries, in order to arrive at appropriate classification of imported goods.. Therefore, we find that there is no need to examine the specific customs tariff entries under the two contending headings, in terms of other Rules of GIR. From the careful reading of the GIRs, it could be seen that

these are required to be followed sequentially; in other words when the classification of goods is not possible to be arrived under the first rule GIR-1, then one need to proceed further, one by one. Further, for invoking GIR-3(a), the preceding rules i.e., GIR 1 & GIR 2, is to be exhausted. As it could be seen that in the present case, when the classification of goods can be arrived at by following GIR-1, by detailed analysis of the specific customs tariff items under the respective headings, then there is no case for invoking GIR-3(a) arbitrarily. Thus, it is not feasible to determine appropriate classification by application of GIR-3(a) alone as concluded in the impugned order.

10. We find that in the case of *Logic India Trading Co. (supra)*, the Tribunal had held that multimedia speakers with FM/AM radio facility along with USB play back would be rightly classified under 8518 as these are known in the market as speakers and the radio is not the principal function of such goods. As is seen from the above, the Ministry itself, while expressing opinion on the classification of the mobile phones having a number of additional features, by issue of Circular No. 17/2007-Customs dated 19.04.2007 had concluded that inasmuch as the essential purpose of the mobile phone is to communicate, the additional features of having so many other functions will not convert the phones into any other item. As the goods are being marketed and being purchased by the consumers as smart phone or other similar cellular or mobile phone, the additional facilities will not convert the phones into any other item. The relevant paragraphs of the said judgements is extracted and given below:

**"4.3** *In fact to the same effect is another circular of the Board being Circular No. 20/2013-Cus., dated 14-5-2013 wherein it was held that the classification of the 'Tablet Computer' having an additional facility of connecting to an cellular network to make a voice calls will not make the Table Computer divert from its main function and Table Computer would remain so.*

**4.4** *When all the three circulars are viewed together, it is seen that the opinion expressed by the Board in Circular dated 1-8-2013 in respect of 'multifunctional speaker system' is diagonally opposite to the opinion expressed in the earlier two circulars being Circular No. 17/2007-Cus., dated 19-4-2007 and Circular No. 20/2013-Cus., dated 14-5-2013. In the other two circulars, the same Interpretative Rules have been taken into consideration and the same Section Note 3 to Section XVI stands taken note of and the products have been held to be classifiable according to their main and principal and essential function. We really fail to understand as to how subsequent circular stands issued wherein a different view stands expressed without assailing the fact that a speaker remains a speaker but with some additional facilities and features.*

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**7** *As we have already observed that even the lower authorities are not disputing the fact that the goods in question are speakers with added function, as such the main role of the item in question remains amplifying the sound received by it either from outside source or from inbuilt feature. As such, going by the Interpretative Rules and Section Note 3 to Section XVI, the criteria for classifying the product is the principal and the main function it performs, which in the present case remains to be that of a speaker. We accordingly hold that the goods in question are properly classifiable under Chapter Heading 8518 22 00. We may also add that the invoices raised by the seller of the goods stand examined by it and the description stand given as "Multimedia Speaker". This also reflects upon the fact that the goods in question, in common parlance are also traded as speakers. The appellants have also submitted an affidavit of the dealers, the invoices raised by them against the customers and the statement of Service Manager of the assessee. Examination of these documents shows that goods are primarily sold as speakers. Even the brochures placed on record indicate that the goods are being traded as speakers only and not as either FM radio or the sound reproduction system."*

In the appeal filed by the department against the above decision of the Tribunal in Diary No. D 25388 of 2016, the Hon'ble Supreme Court have held that there is no reason to interfere with the judgement of the Tribunal, and accordingly dismissed the Civil Appeal filed by the department.

11. We further find that in the case of *Global Enterprises (supra)*, the Tribunal had adopted the classification of sub-heading 8518 for the multimedia speakers with FM function and held that the department's classification under sub-heading 8527 is not maintainable. Furthermore, we also find that the Tribunal in another case of *Logic India Trading Co. (supra)* have also held that classification of multi-media speakers is a settled issue and decided the classification of such goods under sub-heading 8518.

12. The concept of 'Self-Assessment' of Customs duty in respect of imported goods by the importer was introduced with effect from date of enactment of the Finance Bill, 2011 i.e., 08.04.2011. This means that while the responsibility for assessment would be shifted to the importer, the Customs officers would have the power to verify such assessments and make re-assessment, where warranted in the post self-assessment period. It is on record that the period of dispute of clearance of imported goods in the present case, cover both pre and post self-assessment period, meaning thereby that both when the imported goods were assessed by the proper officer of Customs in pre self-assessment regime; as well as during the post self-assessment regime, neither there was any occasion wherein the assessment was revised by the proper officer of customs, nor during

verification of such self-assessments any objection was raised by the department for revising the classification claimed by the appellants. This factual position bring out clearly that there was no ground for any collusion, suppression of facts, wilful mis-representation, fraud etc., for invoking the extended period of limitation for demand of duty. Further, the disputed issue is only with respect to method of determination of additional duty of customs, whether it is on the basis of transaction value or on the basis of MRP/Retail Sale Price depending upon the classification of goods. It has been held in a number of cases by the Hon'ble Supreme Court that when all the facts relating to imports were within the knowledge of the Department, then the Department was not justified in invoking the extended period of limitation. Accordingly, we are of the view that in the present case, the Department would not be entitled to invoke the proviso to Section 28 of the Customs Act and avail of extended period of limitation.

13. In view of the foregoing discussions and analysis, and on the basis of the judgements of the Hon'ble Supreme Court and the decision of the Tribunal as discussed above, we are of the considered view that the impugned goods are classifiable under 8518 4000 of the First Schedule to the Customs Tariff Act, 1975. Accordingly, the impugned order dated 15.12.2015 classifying imported goods under heading 8527 9100 does not stand the scrutiny of law and therefore it is liable to be set aside. Consequently, confirmation of adjudged demands, including imposition of fine, penalty and confiscation of the goods is not legally sustainable.

14. In the result, by setting aside the impugned order dated 15.12.2015, we allow the appeal in favour of the appellants with consequential relief, if any, as per law.

(Operative portion of the order pronounced in open court)

**(S.K. Mohanty)**  
**Member (Judicial)**

**(M.M. Parthiban)**  
**Member (Technical)**