# CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL MUMBAI

REGIONAL BENCH - COURT NO. I

**Customs Early Hearing Application No. 85981 of 2024**

**In**

**Customs Appeal No. 86806 of 2024**

(Arising out of Order-in-Appeal No. 675 (Gr.V)/2023(JNCH)/Appeals dated 27.06.2023 passed by the Customs (Appeals), Mumbai-II)

**Commissioner of Customs, Nhava Sheva-V** .... **Appellant**
Jawaharlal Nehru Customs House,
Nhava Sheva, Dist. Raigad,
Maharashtra- 400 707.

Versus

**R.N. Chindakashi Technologies Private Limited** .... **Respondent**
Flat No. 4, Plot No. 82, Stambhtirth,
RA Kidwai Road, Wadala West,
Mumbai- 400 031.

**APPEARANCE:**

Shri Ranjan Kumar, Authorized Representative for the Appellant
Shri Prakash Shah a/w Shri Suyog Bhave, Advocate for the Respondent

**CORAM:**

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

**FINAL ORDER NO. A/87576/2024**

Date of Hearing: 26.08.2024
Date of Decision: 26.08.2024

***Per: S.K. MOHANTY***

Respondent has filed this miscellaneous application, seeking early hearing of appeal on the grounds that in a similar matter of classification of impugned goods relating to imports made by self-same respondent, the Tribunal has passed Final Order No. A/85341/2024 dated 19.03.2024 upholding the classification in their favour. We find that there exists sufficient ground for giving out-of-turn hearing in the above matter as the issue in dispute has already been decided by the Co-ordinate Bench of the Tribunal. Therefore, the miscellaneous application filed by the respondent is allowed and with the consent of both sides, the appeal is taken up for hearing and disposal.

2. The brief facts of the case are that the respondent is a consumer robotics company engaged, *interalia*, in the business of import and manufacture of Automatic Data Processing (ADP) machine for learning, educating and interacting with humans under the brand name 'MIKO'. For the aforesaid purpose, the respondent had filed a Bill of Entry (B/E) No. 7135962 dated 19.01.2022 under self-assessment for clearance of 960 Units of 'ADP machine for learning and entertainment' imported from M/s. Pacific Industries Ltd., Hong Kong by classifying it under Customs Tariff Item (CTI) 8471 4190 and claiming the benefit of Basic Customs Duty (BCD) exemption vide Sr. No. 8 of Notification No. 24/2005-Cus. dated 01.03.2005. The said self-assessment made by the respondent was verified by the proper officer of Customs by examination of the subject goods and the product catalogue of such goods. On the understanding that the imported goods are intended to be used for children of the age group 5 to 12 years for educational and play purposes, the proper officer of Customs had revised the classification of goods under CTI 9504 9090 attracting BCD of 20% and rejecting the classification adopted by the respondent, by issue of speaking order vide Order-in-Original dated 14.02.2022 in terms of Section 17(5) of the Customs Act, 1962. Being aggrieved by the said order dated 14.02.2022, the respondent had preferred the appeal before the Commissioner of Customs (Appeals), Mumbai-II, Nhava Sheva. In the appellate proceedings, the Learned Commissioner (Appeals) had examined the facts of the case, and on the basis of Chapter Note 5(A) to Chapter Sub-heading 8471 providing the definition of the phrase 'Automatic Data Processing Machine' and based on the registration obtained by the respondent from the BIS, has upheld the classification adopted by the respondent and set aside the order of re-assessment vide Order-in-Appeal dated 27.06.2023 (for short, referred to as 'the impugned order'). Being aggrieved with the impugned order, the Revenue has preferred this appeal before the Tribunal.

3. Heard both sides and examined the case records.

4. Records of the case indicate that import of ADP Machines by the self-same respondent from the same supplier M/s. Pacific Industries Ltd., during the period January, 2019 to August, 2019 in eight B/Es by claiming Customs duty exemption were objected to by the department, by initiating show cause proceedings which culminated in confirmation of duty demands vide order dated 30.03.2023 passed by the Commissioner of Customs. In the appeal preferred by the respondent-importer, the Co-ordinate Bench of the Tribunal vide order dated 19.03.2024 have held the classification of impugned goods under Chapter Heading 8471 by extending the Basic Customs duty exemption and rejecting the classification adopted by the department under Chapter Heading 9503. The relevant paragraphs of order dated 19.03.2024 are extracted herein below:

> *"16. ……..We fail to perceive the dearth of complexity that may justify shift of classification from within heading 8471 to heading 9503 of First Schedule to Customs Tariff Act, 1975. The findings are conjectures and assumptions that are not backed by authoritative texts, notes or definitions in law or even logical sequencing. These are not tenable in a classification exercise.*
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> *17. The impugned order has not established the primacy of heading 9503 of First Schedule to Customs Tariff Act, 1975 nor the inappropriateness of heading 8472 of First Schedule to Customs Tariff Act, 1975. The rules of engagement enunciated by the Hon'ble Supreme Court for altering classification has not been followed by the adjudicating authority. The facts, indelibly clear, does not controvert conformity with the essential requirements set out in note 5(A) in chapter 84 of First Schedule to Customs Tariff Act, 1975 There is no finding that the impugned goods, by incorporating or working in conjunction with 'automatic data processing (ADP) machines', performs the function of 'toys' which should be the consummation of resort to note 5(E) in chapter 84 of First Schedule to Customs Tariff Act, 1975 and such finding is wellnigh impossible in the absence of any authoritative guidance on 'toys' and its intended functions. A thought process conditioned by one's own childhood or parenting experience is not a tenable substitute. Even if this note comes into play insofar as the impugned goods are concerned, the impossibility of appending 'toys' renders the claimed classification to be the only one remaining in the ring. Consequently, the classification claimed must remain. The impugned order is set aside to allow the appeal."*

Since the issue of classification of impugned goods has already been settled in favour of the self-same respondent by classifying the same under Chapter 84 in the above order of the Tribunal, we are of the considered view that a different opinion cannot be taken on the very same issue.

5. In view of the above, we do not find any merits in the appeal filed by the Revenue. Therefore, by upholding the impugned order dated 27.06.2023, the appeal filed by the Revenue is dismissed.

(Operative portion of the order pronounced in open court)

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

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

SM