CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

WEST ZONAL BENCH

CUSTOMS APPEAL NO: 86244 OF 2021

[Arising out of Order-in-Appeal No: MUM-CUSTM-AMP-APP-79/2020-21 dated 05th April 2021 passed by the Commissioner of Customs (Appeals), Mumbai – III.]

Reliance Sibur Elastomers Pvt Ltd
Bldg No.5-C, CA-22, Reliance Corporate Park
Ghansoli, Navi Mumbai - 400701 … ***Appellant***

versus

Commissioner of Customs (Import)
Air Cargo Complex
Sahar, Andheri (E), Mumbai - 400 ***…Respondent***

WITH

CUSTOMS APPEAL NO: 85482 OF 2022

[Arising out of Order-in-Appeal No: MUM-CUSTM-AMP-APP-1112/2021-22 dated 29th November 2021 passed by the Commissioner of Customs (Appeals), Mumbai – III.]

Reliance Corporate IT Park Ltd
Bldg No.5-C, CA-22, Reliance Corporate Park
Ghansoli, Navi Mumbai - 400701 … ***Appellant***

versus

Commissioner of Customs (Import)
Air Cargo Complex
Sahar, Andheri (E), Mumbai - 400 ***…Respondent***

AND

CUSTOMS APPEAL NO: 85483OF 2022

[Arising out of Order-in-Appeal No: MUM-CUSTM-AMP-APP 1270/2021-22 dated 08th December 2021 passed by the Commissioner of Customs (Appeals), Mumbai – III.]

Reliance Digital Platform & Project Services Ltd
Bldg No.5-C, CA-22, Reliance Corporate Park
Ghansoli, Navi Mumbai - 400701 … ***Appellant***

versus

Commissioner of Customs (Import)
Air Cargo Complex
Sahar, Andheri (E), Mumbai - 400 ***…Respondent***

APPEARANCE:

Shri JC Patel and Ms Shilpa Balani, Advocates for the appellants

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

CORAM:

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

FINAL ORDER NO: 85783-85785 /2025

DATE OF HEARING: 07/10/2024
DATE OF DECISION: 07/04/2025

PER: C J MATHEW

These appeals of M/s Reliance Sibur Elastomers Pvt Ltd, M/s Reliance Corporate IT Park Ltd and M/s Reliance Digital Platform & Project Services Ltd, all challenging orders-in-appeal that upheld re-classification of 'CISCO UC/IP' phones of different models, are, from commonality of finding and similarity in issue, taken up together for disposal. It is common ground that the impugned goods find coverage within

> *'Telephone sets, including smartphones and other 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).....*
>
> \- *telephone sets, including smartphones and other telephones for cellular networks or for other wireless networks:'*

corresponding to heading 8517 of First Schedule to Customs Tariff Act, 1975 and were, in bills of entry no. 8506132/17.10.2018, no. 5818070/25.11.2019 and no. 7597837/05.05.2020 filed by M/s Reliance Sibur Elastomers Pvt Ltd. M/s Reliance Corporate IT Park Ltd and M/s Reliance Digital Platform & Project Services Ltd respectively, claimed to be most aptly described as 'other than'

> *'line telephone sets with cordless handsets'*

which, being description of subheading 8517 11 of First Schedule to Customs Tariff Act, 1975, renders tariff item 8517 1810 in First Schedule to Customs Tariff Act, 1975 to cover 'push button type' below

> *'telephone sets, including smartphones and other telephones for cellular networks or for other wireless networks:'*

corresponding to subheading 8517 18 of First Schedule to Customs Tariff Act, 1975.

2. The claim did not resonate well with the 'proper officer' for

assessment of the three bills of entry as, in his view, the impugned goods were akin to 'video conferencing equipment' that, according to him, was beyond dispute for classification against tariff item 8517 6990 of First Schedule to Customs Tariff Act, 1975 in imports of M/s Reliance Sibur Elastomers Pvt Ltd, and tariff item 8517 6290 of First Schedule to Customs Tariff Act, 1975 in imports of the other two appellants inasmuch as finality was accorded by the Tribunal, in *Ingram Micro India Pvt Ltd v. Commissioner of Customs, ACC, Mumbai [2019 (2) TMI 505 – CESTAT MUMBAI]*, for all 'voice over internet protocol (VoIP)' devices owing to which differential duty thereto was liable to be recovered. The revised classification lies within

> *'Machines for the reception, conversion and transmission or regeneration of voice, images and other data, including switching and routing apparatus;'*

corresponding not only to subheading 8517 62 of First Schedule to Customs Tariff Act, 1975 and below

> *'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)….'*

but also within a sub-classification that does not include 'telephone sets'; it is the affirmation of this structuring of logic for classification of 'phones' by Commissioner of Customs (Appeals), Mumbai-III in order[1] disposing off appeal of M/s Reliance Sibur Elastomers Pvt Ltd, in order[2] disposing off appeal of M/s Reliance Corporate IT Park Ltd and in order[3] disposing off appeal of M/s Reliance Digital Platform & Project Services Ltd that has brought the three appellants before us.

3. According to Learned Counsel for the appellants, the original authority had faulted in not considering the absence of 'video camera' in the 'phones' as disqualification for use in 'video conferencing' and it was submitted that only the pursuit of refuge in denying the exemption that appeared to have persuaded the 'proper officer' to resort to a classification which settled the dispute in *re Ingram Micro India Pvt Ltd* without even examining the impugned goods for conformity with description corresponding to the revised tariff item. It was further submitted that the first appellate authority was remiss in having upheld the logic of that conclusion. It was pointed out that the impugned goods being, undeniably, used only for telephony, and specifically tailored as 'voice over internet protocol (VoIP)' device, could not be equated, and notwithstanding usage of similar platforms, with 'video conferencing equipment' which is an entirely different device. It was contended that the Tribunal, in *Ingram Micro India Pvt Ltd v. Dy Commissioner of Customs, New Delhi [2023 (383) ELT 204 (Tri.Del.)]*, had had occasion

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[1] [order-in-appeal no. MUM-CUSTM-AMP-APP-79/2020-21 dated 5th April 2021]
[2] [order-in-appeal no. MUM-CUSTM-AMP-APP-1112/21-22 dated 29th November 2021]
[3] [order-in-appeal no. MUM-CUSTM-AMP-APP-1270/220-21 dated 8th December 2021]

to look into such 'phones' adapted for 'voice over internet protocol (VoIP) and, though with 'touch screen' feature, was held as not being video conferencing equipment in the absence of a video camera. It was pointed out that this decision of the Tribunal was followed subsequently in *Ingram Micro India Pvt Ltd v. Commissioner of Customs (Import), ACC, Mumbai [2024 (4) TMI 42 – CESTAT MUMBAI]*.

4. We have heard Learned Authorized Representative who took us through the findings of the original and first appellate authorities.

5. On perusal of the records, we find that the impugned goods are 'push button' telephones and that there is nothing on record about inbuilt video camera. The dispute is about fitment within one or another description of goods in the First Schedule to Customs Tariff Act, 1975. The Hon'ble Supreme Court having held, 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……'*

adjudgement of correctness of substituted 'rate of duty' brooks no course of action but to ascertain compliance with such onus and conformity thereof with the General Rules for Interpretation of the Tariff appended to Customs Tariff Act, 1975.

6. The lower authorities preferred the residual tariff item below

> *'Machines for the reception, conversion and transmission or regeneration of voice, images and other data, including switching and routing apparatus;'*

corresponding subheading 8517 62 of First Schedule to Customs Tariff Act, 1975. Doubtlessly, and by stretching of the expressions upon ignoring 'images' and 'other data', which are placed together with 'voice' and with 'and' as conjunction, this could encompass 'telephones' but it is not the case of the lower authorities that such discard of conjunctive expression is possible. Furthermore, this and later subheadings are below

> *'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)….',*

incorporated as sub-classification and distinguished by '-' without corresponding code, implying that the placement of preceding sub-classification at '-' cannot be ignored. Consequently, with 'telephone sets' clearly segregated as a sub-classification of the heading, all and any type of 'phone' finds fitment only against tariff item within the sub-headings below the sub-classification. On both these counts, the tariff item proposed by the 'proper officer' fails the test of the General Rules for Interpretation of the Tariff appended to Customs Tariff Act, 1975 and has to be discarded.

7. The decision of the Tribunal in *re Ingram Micro India Pvt Ltd* holding that

> *'5. Feeling aggrieved by the aforesaid order passed by the Deputy Commissioner, the appellant filed an appeal before the Commissioner (Appeals). The Commissioner (Appeals) also did not accept the submissions made on behalf of the appellant and rejected the appeal. The relevant portion of the order passed by the Commissioner (Appeals) is reproduced below:*
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> > *"5.2 ** ** ***
> >
> > *The IP Phone works on voice over Internet protocol. The product catalogue also indicates that the product has various network features like power over Ethernet, network access control etc. and also works over Web management portal. Thus the product is an apparatus for transmission and reception of data also besides working as apparatus for transmission and reception for voice. Thus the impugned goods are classifiable under "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):" which is a separate single '-' heading under CTH 8517.*
>
> *5.3 It is also noted that the phone has HD video camera compatibility and the ability to connect to the PC, and thus is usable for video calling and transfer of data as Voice over Internet Protocol is a category of hardware and software that enables people to use the Internet as the transmission medium for telephone calls by sending voice data in packets using IP rather than by traditional circuit transmission of the PSTN. These facts simply place the phone in second single '-' head under CTH 8517.*
>
> *5.4 Further when we refer to the General Rules for the Interpretation of the first schedule to the Custom Tariff Act, 1975, it is noted that 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:*
>
> *** ** ***
>
> *Accordingly the heading 85176990 which occurs later in numerically order vis a vis contesting heading 85171890 is required to be adopted.*
>
> *5.6 Thus in view of the findings above, I find that item '(IP Phone) executive IP Phone with 7th colour touch screen, 100 Programmable keys-FON-670i' imported by the appellant is rightly covered under tariff heading no. 85176990 as held by the Adjudicating Authority in impugned order." [emphasis supplied]*

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21. Only those goods which are not covered by the first single dash entry are covered under the second dash entry, as has been held by the Supreme Court in Delton Cables (P.) Ltd. (supra). It would, therefore, be necessary to first examine whether this particular IP Phone would be covered by the first single dash entry and only if it is found that it is not covered by this entry that it has to be examined whether it would be covered by the second single dash entry.

22. The description of goods under the first single dash of Tariff Item 8517 is telephone sets, including telephones for cellular networks or for other wireless networks. The *description of goods under the 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.*

23. The appellant imported, as noticed above, an Executive Level IP Phone of model FON 670i. It is, therefore, an IP Phone. The description of the goods under consideration will not fall in either of the two Sub-Headings 8517 11 or 8517 12. Being an IP telephone it would fall under Sub-Heading 8517 18 (third double dash) under which the description of the goods is 'others'. It is a push button type telephone and, therefore, would fall under Tariff Item No. 8517 18 10.

24. Rule 1 of the General Rules also provides that the titles of Section, Chapters and Sub-Chapters are provided for ease of reference. In CCE v. Simplex Mills Co. Ltd.2005 taxmann.com 777/2005 (181) ELT 345, the Supreme Court held that rule I gives primacy to the Section and Chapter Notes along with the terms of the Headings and so this rule should be applied first. It is only when a clear picture is not emerging that the subsequent rules have to be applied. The observations of the Supreme Court are as follows:

> *"11. The rules for the interpretation of the Schedule to the Central Excise Tariff Act, 1985have been framed pursuant to the powers under section 2 of that Act. According to Rule 1 titles of Sections and Chapters in the Schedule are provided for ease of reference only. But for legal purposes, classification "shall be determined according to the terms of the heading sand any relevant section or Chapter Notes". If neither the heading nor the notes suffice to clarify the scope of a heading, then it must be construed according to the other following provisions contained in the Rules. Rule-I gives primacy to the Section and Chapter Notes along with terms of the headings. They should be first applied. If no clear picture emerges then only can one resort to the subsequent rules. The appellants have relied upon Rule 3. Rule 3 must be understood only in the context of sub- rule (b) of Rule 2 which says inter alia that the classification of goods consisting of*

> *more than one material or substance shall be according to the principles contained in Rule 3. Therefore when goods are prima facie, classifiable under two or more headings, classification shall be effected according to sub-rules (a), (b) and (c) of Rule 3 and in that order.*
>
> *** ** ***
>
> *12. Applying the Rules of Interpretation particularly Rule 1, we are of the opinion that the reasoning of the Tribunal in Jyoti Overseas is unexceptionable and in our opinion the decision in Simplex-I was correctly overruled." (emphasis supplied)*

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47. This contention of learned the Authorized Representative of the Department cannot also be accepted. The classification of goods has to be done in accordance with the terms of Headings and any relative Section or Chapter Note. The classification is not required to be done in terms of any Exemption Notification. This is what was also observed by the Tribunal in Ruchi Soya Industries Ltd. v. Commissioner of Customs (Acc& Imp.), 2019 (369) ELT 1529 (Trib - Mum.). The relevant portion of the decision is reproduced below:

> *"5.3 In the present case the benefit of Exemption Notification as claimed by the appellants under Notification No. 21/2002-Cus., dated 1-3-2002 has been allowed by the lower authorities. However, the issue that appellants have raised is two folds- (i) The classification of the goods imported by them should have been done by following the classification as per the exemption notification and not by application of*
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> *Chapter Note 3 to the Chapter 12.*
>
> *(ii) Since no rate of duty has been mentioned under column 5 of the Notification No. 21/2002- Cus., assessment should have been made allowing them full exemption from Additional Duty.*
>
> *5.4 We are not in position to agree with the said submissions-*
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> *As per Rule 1 of "Genera Rules of Interpretation of Import Tariff"*
>
> *"1. The 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:"*
>
> *Thus by application of the said rule classification of the goods is to be done in accordance with the terms of headings and any relative Section or Chapter Note. It is not the case of the appellant that by application of the above Rule 1, the classification as done by the Revenue is erroneous but appellants are contending that the classification should have followed the exemption notification. We are not in position to agree with the said contention.*
>
> *The decision of Indian Tobacco Association referred by the appellants in their appeal do not advance the case of appellant as the said decision do not state so and is also not on the issue of classification. The said decision is authority for giving liberal interpretation to the exemption notification in accordance with the objective of the notifications. Hence the contentions of appellant in respect of classification cannot be agreed to." (emphasis supplied)'*

arrived at the very same conclusion on similar phones that were sought to be re-classified

8. *Per contra*, the decision in re *Ingram Micro India Pvt Ltd* that

> *'5.6 Entire essence of the argument advanced by the appellants is that the system imported by them comprises of Speakers, microphone, codec, camera and monitor. These taken together constitute the Video Conferencing System. The said argument do not advance the case of appellant's. Any system for audio and visual communication will have all these devices either inbuilt in one unit or built as a system of interconnected devices to perform the same function. The codec which in view of the appellants and in view of the opinion given by Shri Kannan, is a distinguishing feature is devoid of any merits. As per*
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> - *techterms.com ""Codec" is short for "coder*-decoder*." It is an algorithm used to encode data, such as an audio*

or video clip. The encoded data must be decoded when played back.";

- *dictionary.cambridge.org, "Codec" is a device or computer program that compresses data (= makes it use less space) so it can be sent or stored, and decompresses it (= returns it to its original form) so it can be seen or used:*

- *collinsdictionary.com, "Codec" is a set of equipment that encodes an analogue speech or video signal into digital form for transmission purposes and at the receiving end decodes the digital signal into a form close to its original;*

5.7 Thus codec in view of the above discussions we are of the view that codec, which is nothing but a coder/ decoder, is part of every system transmitting audio or video messages over a digital media and internet protocol. Codec cannot be distinguishing feature for the goods under import from the VOIP Equipments.'

was about, admittedly, goods that were not 'phones' with discussion about 'phones' merely in the light of benefit of exemption notification claimed and in which suggestion that intent of exclusions thereto, enumerating, *inter alia*, 'VoIP phones' did not extend to other equipment using 'VoIP' was repelled by the Tribunal. The Tribunal was adjudging eligibility of claim that 'video conference equipment' was exempted and not exclusions of 'phones' from tariff item 8517 1810 of First Schedule to Customs Tariff Act, 1975. It was patently erroneous for the lower authorities to be guided by the said decision as binding legal precedent.

9. In the light of the above errors in the findings, the impugned orders are set aside to allow the appeals.

(Order pronounced in the open court on 07/04/2025)

(AJAY SHARMA)
Member (Judicial)

(C J MATHEW)
Member (Technical)

**/as*