CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI
REGIONAL BENCH

Customs Appeal No. 85246 of 2021

[Arising out of Order-in-Appeal No. NGP/EXCUS/000/APPL/74/20-21 dated 28.10.2020 passed by the Commissioner of Customs, Central Excise & GST (Appeals), Nagpur.]

M/s. Dish TV India Ltd. ....Appellant
FC-19, Film City, Sector 16A,
Noida, Uttar Pradesh – 201 301

VERSUS

Commissioner of Customs, ...Respondent
Central Excise & GST, Nagpur
P.O. Box 81, Telangkhedi Road,
Civil Lines, Nagpur – 440 001

APPERANCE:

Shri A.R. Madhav Rao, Advocate with
Shri Krishna Rao, Advocate for the Appellant
Shri D.S. Maan, Dy. Commissioner, Authorised Representative for the Respondent

CORAM:

HON'BLE DR. SUVENDU KUMAR PATI, MEMBER (JUDICIAL)
HON'BLE MR. ANIL G. SHAKKARWAR, MEMBER (TECHNICAL)

FINAL ORDER NO. 85908/2025

Date of Hearing: 05.06.2025
Date of Decision: 16.06.2025

PER: DR. SUVENDU KUMAR PATI

Short issue involved in this appeal relates to classification of Low Noise Block Down Converter (LNB) which Appellant had classified under Customs Tariff Heading 85437099 on the basis of CBEC Circular No. 13/2013-Customs dated 05.04.2013 but the Assessing Officer of the Respondent-Department proposed the classification under Heading 85291099 as well as demanded differential Customs duty of ₹12,73,497/- with equal penalty and confirm the same through his adjudication order. Appellant's unsuccessful attempt before the

Commissioner (Appeals) had brought the dispute to the present forum and this Tribunal *vide* its order dated 17.05.2024 in Customs Appeal No. 85246 of 2021 had remanded the matter for redetermination by the Original Authority. Appellant assailed the said order before the Hon'ble Supreme Court who *vide* its order dated 24.03.2025 passed in Civil Appeal No. 9956/2024 remanded the matter to this Tribunal to consider applicability of the Circular No. 13/2013-Customs to the Appellant's case and to pass appropriate orders. Operating portion of the order passed by the Hon'ble Supreme Court reads as follows:

> *"3. We direct that the CESTAT shall give opportunity to all the parties including the learned counsel representing Customs, while inter alia considering the applicability of the circular and pass appropriate orders.*
>
> *4. We make it clear that we have not expressed any opinion on the merits of the case, including the application of the circular. It is for the CESTAT to pass appropriate orders."*

2. We have heard submissions from both the sides on the other day with reference to the said Circular issued by CBEC and precedent decision on the issue. Before analysing the applicability of Circular it would be prudent to reproduce para 3 of the said Circular which provides the basis of classification and para 4 which gives it final opinion. Both para 3 & 4 run as follows:

> *"3. The Harmonized Commodity Description and Coding System (HS) Explanatory Notes can be used to determine the proper interpretation of the entries in the Customs Tariff. In part, Explanatory Note (EN) 8543 includes, "High or intermediate frequency amplifiers (including measurement amplifiers and aerial amplifiers)", and Explanatory Notes to heading 85.18 also provides for, "High or intermediate frequency amplifiers are classified in*

heading 85.43 as electrical appliances having an individual function". Since the principal function of Low-Noise-Block (LNB) down converter is to amplify the weak signals and converts the frequencies from very high levels (2.5 to 12.45 GHz) to levels within the VHF and UHF range (less than 2 GHz), and this device performs an electrical function not specifically covered by any heading, the classification in subheading 8543 would seem most appropriate.

4. In view of the aforesaid, the Board is of the view that by application of GRIs 1 (Note 2 (a) to Section XVI), and 6, separately presented LNB down converter (LNB) would be appropriately classifiable in heading 85.43, more specifically in subheading 8543.70, tariff item 854370.99."

(Underlined to emphasise)

3. Period of dispute was from 12.12.2017 to 14.03.2018 Concerning assessment of six Bills of entry, Appellant affirms that it had classified the imported goods LNB appropriately under Tariff Item No. 85437099 for use in manufacture of Set Top Box for television for Videocon D2H. During course of hearing of the appeal learned Counsel for the Appellant Mr. A.R. Madhav Rao even had referred to the decisions of the Tribunal passed in 2000 & 2002 in the case of *Catvision Products Limited Vs. CCE [(2000) 119 ELT 410]* and *MCE Products Vs. CCE, Meerut [2002 (144) ELT 457]* respectively to justify that even before issue of said Circular No. 13/2013-Customs, this Tribunal had also confirmed the classification of Dish Antenna with individual functions and even T.V. Signal Booster under Tariff Heading No. 8543 respectively and not integral and inseparable parts of the unit that would fall under Heading 8529.

4. Respondent-Commissioner has taken a different stand on this issue of classification of LNB on the basis of amendment effected to

Customs Tariff by Notification No. 01/2017-Integrated Tax (Rate) dated 28.06.2017 and Notification No. 50/2017-Customs dated 30.06.2017 (as amendment by Notification No. 06/2018-Customs dated 02.02.2018) and justified that the same has becomes a statute as were made under Section 11A of the Customs Tariff Act, 1975, for which Circular No. 13/2013-Customs has become redundant and accordingly the Assessing Officer had proposed the classification under Tariff Heading No. 85291099 by discarding the classification made by the Appellant.

4.1 The entire dispute arose because of this. It would be worthwhile therefore, to see if upon changes brought through Integrated Tax (Rate) Notification No. 01/2017 issued on the onset of GST would override the Notification/Circular issued concerning interpretation of the provisions to arrive at a proper Tariff Heading. Our answer is an obvious "No" for the reason that:

(i) Integrated Tax (Rate) Notification issued under GST can't have direct effect on the Customs Tariff Act unless Section 11A of the Customs Tariff Act, 1975 is followed to make changes in the tariff which was not even done subsequently through Customs Notifications, except that under Section 25 of Customs Act, 1962 read with Section 12 of Section 3 of Customs Tariff Act, 1975 such Notification No. 50/2017-Customs as amended by Notification No. 06/2018-Customs and ultimately 47/2018 were issued to provide general exemption and effective rate of Customs duty to IGST specified goods. It is also conceded by learned Authorised Representative during course of argument that such Integrated Tax (Rate) Notification was not issued under Section 11A of the Customs Tariff Act, 1975 that empowers the

Central Government to alter or affect in any manner the rate specified in the scheduled in respect of goods at which duties of Customs shall be leviable under the Customs Act, as contained in its proviso.

(ii) For the sake of argument even if it is conceded that Integrated Tax (Rate) Notification issued under CGST Act, 2017 had made changes to the rate of duty, it would be worthwhile to look at the last para the said Notification No. 01/2017–Integrated Tax (Rate) dated 28.06.2017 (also noted in the show-cause notice) that would provide the answer to the dispute that with change in the rate of duty, Rules of Interpretation of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), including the Sections and Chapter Notes and the General Explanatory Notes of the First Schedule shall, so far as may be, apply to the interpretation of this Notification. This being so, the interpretation already done by the highest body of the Department concerning appropriate classification of LNB should never get disturbed with just variation in the rate of duty made through another statute.

5. In citing a decision of the Hon'ble Supreme Court passed in the case of *Varsa Plastic Pvt. Ltd. Vs. UOI, [2009 (235) ELT .193 (SC)]*. Learned Authorised Representative Mr. D.S. Maan argued that proviso to Section 151A of the Customs Act makes it abundantly clear that Customs Officer making particular assessment is not bound by such order or instruction or direction of the Board, as being a Quasi-Judicial Authority, he has to act independently in exercise office Quasi-Judicial powers and functions.

5.1 Per contra, learned Counsel for the Appellant Mr. A.R. Madhav Rao submitted, with reference to the judgment of *UOI Vs. Arviva*

Industries (I) Ltd., [2007 (209) ELT 5 (SC)] and *Saci Allied Products Vs. CCE Meerut, [2005 (183) ELT 225 (SC)],* that it was consistently held by the Hon'ble Supreme Court that Circulars issued by the Board are binding on the officers of the Department of Revenue. Having regard to the findings referred above by the adversaries, we consider it proper to look at the provision of law referred in Section 151A of the Customs Act to arrive at a just conclusion on the fact that both judgments were passed with reference to the factual aspect relevant to the issue and they are not contrary to each other. Section 151A reads as follows:

> *"151-A. Instructions to officers of customs - The Board may, if it considers it necessary or expedient so to do <u>for the purpose of uniformity in the classification of goods</u> or <u>with respect to the levy of duty</u> thereon [or for the implementation of any other provisions of this Act or of any other law for the time being in force, in so far as they relate to any prohibition, restriction or procedure for import or export of goods], <u>issue such orders, instructions and directions to officers of customs as it may deem fit and such officers of customs and all other persons employed in the execution of this Act **shall** observe and follow such orders, instructions and directions of the Board</u>:*
>
> *Provided that <u>no such orders, instructions or directions shall be issued</u>-*
>
> *(a) so as to require any such officer of customs to make a particular assessment or to dispose of a particular case in a particular manner; or*
>
> *(b) so as to interfere with the discretion of the [Principal Commissioner of Customs or Commissioner of Customs] (Appeals) in the exercise of his appellate functions.]"*
>
> *(Emphasis supplied)*

5.2 Relevant text to be taken into consideration from this statutory provision is that for the purpose of uniformity in the classification of goods or in respect of levy of duty, Board's order, instructions and directions are binding on the Officers of Customs who shall observe and follow such orders, instructions and directions of the Board. It is in this context, we find that the judgment referred by learned Counsel for the Appellant in *Arviva Industries (I) Ltd.* case was passed and the other judgment on *Varsa Plastic Pvt. Ltd.* relates to the proviso which states that Board should not issue orders, instructions or directions so as to require any Officer of the Customs to make a particular assessment or to dispose of a particular case in a particular manner and not to interfere with the discretionary power of the Principal Commissioner or Commissioner of Customs (Appeals) in exercise of his appellate functions. Literal meaning of this proviso would go to suggest that orders, instructions or directions concerning the way in which assessment is to be made should never be issued by the Board and we do not agree to the view that when Board issued a clarificatory instruction on classification of goods, it should be considered as interference in the assessment order for the reason that through such clarificatory instruction, Board wanted to streamline certain disputes concerning classification but that does not mean that assessment and adjudication order should be passed without even hearing the other side on the ground that classification issue was settled. This is what is we mean by not passing any particular assessment order in a particular manner but this would never suggest arbitrary use of such provision to make any assessment or pass any adjudication order without a rational basis and without following due process of law, as has happened in the instant case in putting forth a logic that change of rate of duty would automatically change the Rules of Interpretation and General Explanatory Note etc. despite the fact that explanation appended to the Notification No. 01/2017-Integrated Tax (Rate) has clearly stipulated that those rules of interpretation and general explanatory note would follow, apart from the fact that HSN Note and WTO both also have suggested for classification of the disputed goods (LNB) in the same manner as being explained by the Board Circular No. 13/2013-Cus. We are, therefore, of the view that the Circular is squarely applicable to the Appellant who had appropriately classified the disputed item LNB under Tariff Heading No. 85437099 and therefore, the order passed by the Commissioner (Appeals) in classifying it under Tariff Item No. 85291099 is held to be improper. Hence the order.

THE ORDER

6. The appeal is allowed and the order passed by the Commissioner of Customs, Central Excise & GST (Appeals), Nagpur *vide* Order-in-Appeal No. NGP/EXCUS/000/APPL/74/20-21 dated 28.10.2020 is hereby set aside with consequential relief to the Appellant, if any.

(Order pronounced in the open court on 16.06.2025)

(Dr. Suvendu Kumar Pati)
Member (Judicial)

(Anil G. Shakkarwar)
Member (Technical)

Prasad