CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

WEST ZONAL BENCH

CUSTOMS APPEAL NO: 88236 OF 2019

[Arising out of Order-in-Appeal No: 1255 (Gr.VB)/2019(JNCH)/Appeal-II dated 11th September 2019 passed by the Commissioner of Customs (Appeals), Mumbai – II.]

MIRC Electronics Limited
Onida House, G-1, MIDC, Andheri (E)
Mumbai - 400093 … ***Appellant***

versus

Commissioner of Customs (NS-V)
Jawaharlal Nehru Customs House, Nhava Sheva
Tal: Uran, Dist: Raigad - 400707 ***…Respondent***

WITH

CUSTOMS APPEAL NO: 85988 OF 2020

[Arising out of Order-in-Appeal No: 365 (Gr.VB)/2020(JNCH)/Appeal-II dated 14th February 2020 passed by the Commissioner of Customs (Appeals), Mumbai – II.]

MIRC Electronics Limited
Onida House, G-1, MIDC, Andheri (E)
Mumbai - 400093 … ***Appellant***

versus

Commissioner of Customs (NS-V)
Jawaharlal Nehru Customs House, Nhava Sheva
Tal: Uran, Dist: Raigad - 400707 ***…Respondent***

WITH

CUSTOMS APPEAL NO: 85488 OF 2020

[Arising out of Order-in-Appeal No: 36 to 39 (Gr.VB)/2020(JNCH)/Appeal-II dated 14th January 2020 passed by the Commissioner of Customs (Appeals), Mumbai – II.]

MIRC Electronics Limited
Onida House, G-1, MIDC, Andheri (E)
Mumbai - 400093 … ***Appellant***

versus

Commissioner of Customs (NS-V)
Jawaharlal Nehru Customs House, Nhava Sheva
Tal: Uran, Dist: Raigad - 400707 ***…Respondent***

WITH

CUSTOMS APPEAL NO: 87412 TO 87414 OF 2023

[Arising out of Order-in-Appeal No: 36 to 39 (Gr.VB)/2020(JNCH)/Appeal-II dated 14th January 2020 passed by the Commissioner of Customs (Appeals), Mumbai – II.]

MIRC Electronics Limited
Onida House, G-1, MIDC, Andheri (E)
Mumbai - 400093 … ***Appellant***

versus

Commissioner of Customs (NS-V)
Jawaharlal Nehru Customs House, Nhava Sheva
Tal: Uran, Dist: Raigad - 400707 ***…Respondent***

AND

CUSTOMS APPEAL NO: 86587 TO 86607 OF 2022

[Arising out of Order-in-Appeal No: 200 to 226 (Gr.VB)/2022(JNCH)/Appeals dated 29th March 2022 passed by the Commissioner of Customs (Appeals), Mumbai – II.]

MIRC Electronics Limited
Onida House, G-1, MIDC, Andheri (E)
Mumbai - 400093 … ***Appellant***

versus

Commissioner of Customs (NS-V)
Jawaharlal Nehru Customs House, Nhava Sheva
Tal: Uran, Dist: Raigad - 400707 ***…Respondent***

APPEARANCE:

Shri Hans Raj Garg, Consultant for the appellant

Shri DS Maan, Joint Commissioner (AR) for the respondent

CORAM:

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

FINAL ORDER NO: _____ 86007-86033/2025

DATE OF HEARING: 01/05/2025
DATE OF DECISION: 01/05/2025

PER: C J MATHEW

These 26 appeals, arising from as many bills of entry, and disposed off by the first appellate authority in four sets of appeals are before us. The issue in question was the classification of 'open cell and other parts' for imports that the appellant had claimed to be subject to effective rate of duty corresponding to tariff item 9013 9010 and tariff item 9013 9090 of First Schedule to Customs Tariff Act, 1975, for 'LED panel' and 'other parts' respectively, to be used in the manufacture of television sets. The classification adopted for assessment was tariff item 8529 9090 of First Schedule to Customs Tariff Act, 1975 and the consequence of such re-classification was denial of exemption from 'basic customs duty' to the extent provided in impugned notification[1].

2. Learned Consultant for the appellant submitted that the issue in dispute is no longer *res integra* as the Hon'ble Supreme Court in

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[1] [no. 24/2005-Cus dated 1st March 2005 (sr. no. 29)]

Commissioner of Central Excise, Noida v. Samsung India Electronics Pvt Ltd [(2023) 11 Centax 182 (SC) had, following its own decision in *Commissioner of Central Excise, Aurangabad v. Videocon Industries Ltd [2023 (3) TMI 1338 – SUPREME COURT]*, decided the classification.

3. We have heard Learned Authorized Representative.

4. It is apparent that the lower authorities have not taken into consideration the decision of Hon'ble Supreme Court that are claimed to have settled the issue once and for all. Furthermore, we also found the orders of the first appellate authority impugned before us are nothing but replication of the order[2] in challenge of M/s MIRC Electronics Ltd to the order[3] of Joint Commissioner of Customs, Gr. VB, NS-V, JNCH, Nhava Sheva.

5. It is interesting to perceive that the entire discussion and narration in the order of the original authority, is about heading no. 9013 of First Schedule to Customs Tariff Act, 1975 being les appropriate than heading 8529 of First Schedule to Customs Tariff Act, 1975. Notwithstanding the paucity of discussion, and, in particular, the lack of identification of the tariff items involved, the first appellate authority, and merely relying upon earlier decisions, upheld the order of the original authority.

[2] [order-in-appeal no. 1255 (Gr.VB)/2019(JNCH)/Appeal-II dated 11th September 2019]
[3] [order-in-original no. 721/2018-19/JC/NS-V/CAC/JNCH DATED 11th September 2018]

6. The Hon'ble Supreme Court, in *Hindustan Ferodo Ltd v. Collector of Central Excise [1997 (89) ELT 16 (SC)]*, held 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……'*

setting out the terms of engagement in classification dispute.

7. From the above, it is seen that the impugned orders affirmed the orders of the original authority without adherence to the manner in which a declared classification was to be disputed and without any reference to the General Rules for Interpretation of the Import Tariff appended to Customs Tariff Act, 1975. The precedent cited on behalf of the appellant, insofar as the classification dispute itself is

concerned, is yet another flaw.

8. In view of the above, it would be appropriate to set aside the impugned order and remand the matter back to the original authority for a fresh decision in accordance with law as enacted and decisions as judicially determined.

9. Appeals are allowed by way of remand.

(Operative part of the order pronounced in the open court on 1st May 2025)

(AJAY SHARMA)
Member (Judicial)

(C J MATHEW)
Member (Technical)

**/as*