(2021) 08 CESTAT CK 0004

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Customs Appeal No. 52239 Of 2019

Minda D-Ten Private Limited — APPELLANT

Vs

Commissioner Of Customs (Import) — RESPONDENT

Date of Decision : 03-08-2021

Acts Referred:

Customs Tariff Act,1975 — Heading No. 8409, 8431, 8448, 8466, 8473, 8503, 8522, 8529, 8538, 8517

Citation : (2021) 08 CESTAT CK 0004

Hon'ble Judges : Delip Gupta, J;P.V. Subba Rao, Technical Member

Bench : Division Bench

Advocate : B.L. Narasimhan, Rachit Jain, Jyoti Pal, Ashwini Bhatiya, Rakesh Kumar

Final Decision : Allowed

Judgement

S. No.,Applications,,,

,,,,

1.,Bluetooth-enabled automotive wireless gateways,,,

2.,Hands free car kits for embedded car audio system,,,

3.,Bluetooth audio source gateways for PND systems,,,

4.,High quality stereo Bluetooth headsets,,,

5.,High quality mono Bluetooth headsets,,,

6.,Bluetooth speakers,,,

7.,Bluetooth VoIP handsets,,,

8.,Multimedia USB dongles,,,

9.,,,,

10.,"Bluetooth multimedia photo frame

Bluetooth portable media player",,,

in these devices, so it cannot be termed as part and has been rightly pointed out by the Importer in the written submission. They had also",,,,

referred to the judgment of the Honâ??ble Supreme Court in the case of Commissioner of Central Excise Delhi Versus Insulation Electrical,,,,

Private Limited 2008 (224) ELT 512 (SC), wherein it has been averred that â??A part is an essential component of the whole cannot",,,,

functionâ?. Admittedly, all Bluetooth compliant devices can function without having Bluetooth Module. In the same judgment accessory has",,,,

been defined as â??Accessory is supplementary or subordinate in nature and need not be essential for actual functioning of the product.,,,,

Here the Bluetooth can be correctly termed as an accessory as it facilitates exchange of data between two devices upto a defined limit of,,,,

around 10 mtrs.,,,,

As delineated above, to be termed as a machine, it should independently perform a given function when attached to electric current, a",,,,

Bluetooth will provide transfer of data or voice etc., it will function only after attached to the desired device to perform an activity, as",,,,

desired. Hence can be termed as a machine. Thus Bluetooth Module has inbuilt devices to term it as an apparatus/machine but classifying,,,,

the same under CTH 85176290 does not appear in order.,,,,

The said partyâ??s submission that Bluetooth Module will attract classification under 85176290 in view of the chapter note 2 (b) to,,,,

annexed to section XVI of the customs tariff, Wherein it states that â??other parts if suitable for use â??other parts, if suitable for use",,,,

solely or principally with a particular kind of machine, or with a number of machines of the same heading (including a machine of heading",,,,

8479 or 8543) are to be classified with the machines of that kind or in heading 8409, 8431, 8448, 8466, 8473, 8503, 8522, 8529 or 8538 as",,,,

appropriate. However, parts which are equally suitable for use principally with the goods of heading 8517 and 8525 to 8528 are to be",,,,

classified in heading 8517â?, are to be classified in heading 8517. As Bluetooth Module does not come under the gambit of parts and duly",,,,

acknowledged by the importer and they have supported this argument by citing the judgment of Commissioner of Central Excise Delhi,,,,

Versus Insulation Electrical Private Limited, 2008 (224) ELT 512 (SC).",,,,

In view of the foregoing discussions, it is apparent that Bluetooth Module cannot be termed as part of car Infotainment systems. It can be",,,,

termed as an apparatus or machine. As the apparatus/machine do not specifically fall under any chapter heading, it will attract can be",,,,

safely classification under CTH 8543, which states that â??Electric Machine and apparatus having individual functions, not specified or",,,,

included elsewhere in the chapterâ? and CTH 85437099 is more akin to its classification. Further, as per note 2(b) of chapter note under",,,,

section XVI, wherein it states that â??other parts, if suitable for use solely or principally with a particular kind of machine, or with a",,,,

number of machine of the same heading (including a machine of heading 8479 or 8543) are to be classified with the machine of that kind.,,,,

Since Bluetooth Module is principally used in car infotainment system, as declared by the Importer, it will merit classification under CTH",,,,

85299090.â??,,,,

(emphasis supplied),,,,

10. The Commissioner (Appeals), as can be seen from the order itself, merely reproduced parts of the order passed by the Assistant Commissioner",,,,

and dismissed the appeal after upholding the assessment order. The relevant portions of the order passed by the Commissioner (Appeals) are,,,,

reproduced below:,,,,

â??5.1 The basic function of Bluetooth is to enable exchange of data between two Bluetooth enabled devices within a wired or wireless,,,,

network. Itâ??s application can be used for the following devices (a) Printer (b) Computers (c) Hard Drive (d) Keyboard/Mouse (e),,,,

Speaker (f) Compact Disc (g) Digital Camera (h) Global Positioning System (i) Clock Radio (j) Video Monitors/Televisions (k) Video game,,,,

Machines. As Bluetooth in used in so many devices as enumerated above and all these devices can work independently without having,,,,

Bluetooth Chip in these devices, so it cannot be termed as part.",,,,

5.2 In the case of Commissioner of Central Excise Delhi Vs. Insulation Electrical pvt. Ltd. 2008(224) ELT 512(SC) it is clarified that â??A,,,, part is an essential component of the whole without which the whole cannot function. Admittedly, all Bluetooth compliant devices can",,,,

function without having Bluetooth Module. In the same judgment accessory has been defined as â??Accessory is supplementary or,,,,

subordinate in nature and need not be essential for actual functioning of the product. Here the Bluetooth can be correctly termed as an,,,,

accessory as it facilitates exchange of data between two devices upto a defined limit of around 10 mtrs.,,,,

5.3 I find that Bluetooth Module will attract classification under 85176290 in view of the chapter note 2 (b) to annexed to section XVI of the,,,,

customs tarill, Wherein it states that â??other parts if suitable for use â??other parts, if suitable for use solely or principally with a",,,,

particular kind of machine, or with a number of machines of the same heading (including a machine of heading 8479 or 8543) are to be",,,,

classified with the machines of that kind or in heading 8409, 8431, 8448, 8466, 8473, 8503, 8522, 8529 or 8538 as appropriate. However,",,,,

parts which are equally suitable for use principally with the goods of heading 8517 and 8525 to 8528 are to be classified in heading,,,,

8517â?, are to be classified in heading 8517. As Bluetooth Module does not come under the ambit of parts and duly acknowledged by the",,,,

importer and they have supported this argument by citing the judgment of Commissioner of Central Excise Delhi Versus Insulation Electrical,,,,

Private Limited, 2008 (224) ELT 512 (SC). Similarly, the circular no. 36/2013-cus dated 05.09.2013 quoted by the Importer in support of",,,,

their defense, do not squarely cover Bluetooth Module. That circular settles the classification of Bluetooth wireless.",,,,

5.4 In view of the foregoing discussions, it is apparent that Bluetooth Module cannot be termed as part of car Infotainment systems. It can",,,,

be termed as an apparatus or machine. As the apparatus/machine do not specifically fall under any chapter heading, it will attract its",,,,

classification under CTH 8543, which states that â??Electric Machine and apparatus having individual functions, not specified or included",,,,

elsewhere in the chapterâ? and CTH 85437099 is more akin to its classification. Further, as per note 2(b) of chapter note under section",,,,

XVI, wherein it states that â??other parts, if suitable for use solely or principally with a particular kind of machine, or with a number of",,,, machine of the same heading (including a machine of heading 8479 or 8543) are to be classified with the machine of that kind. Since,,,,

Bluetooth Module is principally used in car infotainment system, as declared by the Importer, it will merit classification under CTH",,,,

85299090.â??,,,,

(emphasis supplied),,,,

11. Shri B.L. Narasimhan, learned counsel appearing for the appellant made the following submissions:",,,,

(i) The impugned goods are appropriately classifiable under CTH 8517 and not under CTH 8529. For any product to be classifiable under the sub-,,,,

heading 8517 62, it should receive, convert, and transmit voice, images and other data. The impugned goods receive, transmit and convert data, voice,",,,,

etc. through radio frequency signals to enable connectivity between the mobile phone of the user and car infotainment system. Accordingly, the",,,,

impugned goods squarely fall under sub-heading 8517 62 and consequently the appellant has rightly classified the impugned goods under CTH 8517 62,,,,

90;,,,,

(ii) The Bluetooth module cannot be called as â??partâ?? of car infotainment system for the reason that the car infotainment system can perform its,,,,

function even without the Bluetooth module and even the Assistant Commissioner and the Commissioner (Appeals) have given a finding that the,,,,

Bluetooth module is not a â??partâ??. The function of the Bluetooth module is to provide wireless connectivity to the car infotainment systems. Once,,,,

the Bluetooth module is not a â??partâ?? of car infotainment systems, it cannot be classified under CTH 8529 because the scope of entry is to cover",,,,

only â??partsâ?? suitable for use solely or principally with Heading 8525 to 8528 and not to cover accessories;,,,,

(iii) It can be seen from the findings recorded by the Commissioner (Appeals) that Bluetooth module can be used in printers, computers, speaker etc.",,,,

and all these devices can work independently without having Bluetooth chip in these devices. Therefore, Bluetooth module cannot be termed as",,,,

â??partâ?? of car infotainment systems. Despite this finding, the Commissioner (Appeals), in the last line of the impugned order just before the",,,,

operative portion of the impugned order, observed that since Bluetooth module is principally used in car infotainment systems, as declared by the",,,, importer, it will merit classification under CTH 8529. The classification upheld under CTH 8529 is, therefore, bad in law;",,,,

(iv) Even if it is assumed for the sake of argument that the Bluetooth module is â??partâ?? of car infotainment systems, still it cannot be classified as",,,,

â??partâ?? of car infotainment systems under CTH 8529 because of application of Section Note 2(a);,,,,

(v) There is no discussion of Section Note 2(a) by the Commissioner (Appeal). Clauses under Section Note 2 are to be sequentially applied and one,,,,

cannot, therefore, directly jump to Section Note 2(b) without exhausting the possibility of Section Note 2(a). In this connection, reliance has been",,,,

placed on the decision of the Supreme Court in Collector of Central Excise vs. Delton Cables Ltd., 2005 (181) E.L.T. 373 (S.C.); and",,,,

(vi) An order has to be sustained on the basis of the findings given thereunder and not on what could be the intention of the person passing the order.,,,,

In this connection, reliance has been placed on the judgment of the Supreme Court in Mohindhr Singh Gill and another vs. Chief Election",,,,

Commissioner, New Delhi and Others, (1978) 1 SCC 405.",,,,

12. Shri Rakesh Kumar, learned Authorized Representative of the Department, supported the impugned order and made the following submissions:",,,,

(i) Where the subject goods are principally (primarily/ mainly/chiefly) used with the apparatus/machines of Headings 8525 to 8528, the same shall be",,,,

classified under Heading 8529. The subject goods may not be an integral part, but can be a part principally used for the apparatus of Heading 8525 to",,,,

8528 to enhance its outcome;,,,,

(ii) Chapter Heading 8517 essentially talks about telephone/telecommunication but the appellant had declared the goods as â??partâ?? of Car,,,,

infotainment System;,,,,

(iii) The Tariff Heading of goods is ascertained on the basis of the description of subject goods as declared and not otherwise. The importer declared,,,,

the goods as â??Bluetooth EDR module (Module No. NF 2301-16M) part of car audioâ?, which means that the goods are customized for car audio",,,,

system only. Hence, the goods were correctly classified under CTH 8529 90 90. In this connection reliance has been placed on the judgment of the",,,,

Supreme Court in Westinghouse Saxby Farmers Ltd. vs. Commr. Of Central Excise, Calcutta, MANU/SC/0162/2021;",,,,

(iv) The submission of the appellant that the order of Commissioner (Appeals) under challenge has mentioned the subject goods as an independent,,,,

apparatus and not as â??partâ?? is incorrect as the assessment order and the order of Commissioner (Appeals) categorically classify the subject,,,,

goods under Chapter Heading 8529;,,,,

(v) The submission of the appellant that it is a general â??partâ?? which can be used anywhere is irrelevant as the subject goods shall only be used in,,,,

the apparatus (Car Audio) as declared by importer;,,,,

(vi) The submission about Chapter Note 2(a) is out of context as the declaration of the importer on the Bill of Entry is â??partsâ?? of car,,,,

infotainment systems;,,,,

(vii) Since Bluetooth is directly responsible for enhancing the features of the system, without which the system cannot function to give the desired",,,,

output, it has been correctly classified as a â??partâ?? of the system falling under CTH 8529 90 90; and",,,,

(viii) The benefit of Exemption Notification should not be extended to circumvent duty on goods and should never be elastically stretched to cover,,,,

such goods which may not come under its periphery. Reliance has been placed on the judgment of the Supreme Court in Commissioner of Customs,,,,

(Import) Mumbai vs. Dillep Kumar and Company & Ors, 2018 (361) E.L.T. 577 (S.C.).",,,,

13. The submissions advanced by the learned counsel for the appellant and the learned Authorized Representative of the Department have been,,,,

considered.,,,,

14. The appellant claims that the Bluetooth module imported by the appellant should be classified under CTH 8517 62 90 of the First Schedule to the,,,,

Tariff Act as it receives, transmits and converts data, voice, etc., through radio frequency signals to enable connectivity between the mobile phone and",,,,

car infotainment systems. However, the Department has sought to classify it under CTH 8529 90 90 as it would be a â??partâ?? principally used for",,,,

the apparatus of Headings 8525 to 8528 to enhance its outcome.,,,,

15. To appreciate the contentions advanced on behalf of the parties, it would be appropriate to reproduce the relevant portions of Chapter 85 and they",,,,

are as follows:,,,,

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",,,,

8517,"Telephone sets, including 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), other than transmission or

reception apparatus of heading 8443, 8525,

8527 or 8528.",,,

********,********,,,

,"-- 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)",,,

********,********,,,

8517 62

90",--- Other . . . .,u,10%,

********,********,,,

8529,"Parts suitable for use solely or principally with

the apparatus of headings 8525 to 8528",,,

********,********,,,

8529 90

90",--- Other . . . .,u,10%,

,Order of Assistant Commissioner,Order of Commissioner (Appeals),,

1.,"The basic function of Bluetooth is to enable exchange of data between two

Bluetooth enabled device within a wired

or wireless network. Itâ??s application

can be used for the following devices (a)

Printer (b) Computers (c) Hard Drive (d)

Keyboard/Mouse (e) Speaker (f) Compact

Disc (g) Digital Camera (h) Global

Positioning System (i) Clock Radio (j)

Video Monitors/Televisions (k) Video

game Machines. As Bluetooth in used in

so many devices as enumerated above and

all these devices can work independently

without having Bluetooth Chip in these

devices, so it cannot be termed as part","The basic function of Bluetooth is to

enable exchange of data between two

Bluetooth enabled devices within a wired

or wireless network. Itâ??s application

can be used for the following devices (a)

Printer (b) Computers (c) Hard Drive (d)

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Video Monitors/Televisions (k) Video

game Machines. As Bluetooth in used in so

many devices as enumerated above and all

these devices can work independently

without having Bluetooth Chip in these

devices, so it cannot be termed as part.",,

2.,"Admittedly, all Bluetooth compliant

devices can function without having

Bluetooth Module. In the same judgment accessory has been defined as â??Accessory is supplementary or subordinate in nature and need not be essential for actual functioning of the product. Here the Bluetooth can be correctly termed as an accessory as it facilitates exchange of data between two devices upto a defined limit of around 10 mtrs.","Admittedly, all Bluetooth compliant devices can function without having Bluetooth Module. In the same judgment accessory has been defined as â??Accessory is supplementary or subordinate in nature and need not be essential for actual functioning of the product. Here the Bluetooth can be correctly termed as an accessory as it facilitates exchange of data between two devices upto a defined limit of around 10 mtrs.",,

3.,"The said partyâ??s submission that Bluetooth Module will attract classification under 85176290 in view of the chapter note 2 (b) to annexed to section XVI of the customs tariff, Wherein it states that â??other parts if suitable for use â??other parts, if suitable for use solely or principally with a particular kind of machine, or with a number of machines of the same heading (including a machine o f heading 8479 or 8543) are to be

classified with the machines of that kind

or in heading 8409, 8431, 8448, 8466,

8473, 8503, 8522, 8529 or 8538 as

appropriate. However, parts which are

equally suitable for use principally with

the goods of heading 8517 and 8525 to

8528 are to be classified in heading

8517â?, are to be classified in heading

8517. As Bluetooth Module does not come

under the gambit of parts and duly

acknowledged by the importer and they

have supported this argument by citing the

judgment of Commissioner of Central

Excise Delhi Versus Insulation Electrical

Private Limited, 2008 (224) ELT 512 (SC).","I find that Bluetooth Module will attract

classification under 85176290 in view of

the chapter note 2 (b) to annexed to

section XVI of the customs tarill, Wherein

it states that â??other parts if suitable for

use â??other parts, if suitable for use

solely or principally with a particular kind

of machine, or with a number of machines

of the same heading (including a machine

of heading 8479 or 8543) are to be

classified with the machines of that kind

or in heading 8409, 8431, 8448, 8466,

8473, 8503, 8522, 8529 or 8538 as

appropriate. However, parts which are

equally suitable for use principally with
the goods of heading 8517 and 8525 to
8528 are to be classified in heading
8517â?, are to be classified in heading
8517. As Bluetooth Module does not come
under the ambit of parts and duly
acknowledged by the importer and they
have supported this argument by citing the
judgment of Commissioner of Central
Excise Delhi Versus Insulation Electrical
Private Limited, 2008 (224) ELT 512 (SC).",,
4.,"In view of the foregoing discussions, it is
apparent that Bluetooth Module cannot be
termed as part of car Infotainment
systems. It can be termed as an apparatus
or machine. As the apparatus/machine do
not specifically fall under any chapter
heading, it will attract can be safely
classification under CTH 8543, which
states that â??Electric Machine and
apparatus having individual functions,
not specified or included elsewhere in the
chapterâ? and CTH 85437099 is more
akin to its classification. Further, as per
note 2(b) of chapter note under section
XVI, wherein it states that â??other parts,
if suitable for use solely or principally
with a particular kind of machine, or with
a number of machine of the same heading
(including a machine of heading 8479 or

8543) are to be classified with the
machine of that kind. Since Bluetooth
Module is principally used in car
infotainment system, as declared by the
Importer, it will merit classification under
CTH 85299090.â??","In view of the foregoing discussions, it is
apparent that Bluetooth Module cannot be
termed as part of car Infotainment
systems. It can be termed as an apparatus
or machine. As the apparatus/machine do
not specifically fall under any chapter
heading, it will attract its classification
under CTH 8543, which states that
â??Electric Machine and apparatus
having individual functions, not specified
or included elsewhere in the chapterâ?
and CTH 85437099 is more akin to its
classification. Further, as per note 2(b) of
chapter note under section XVI, wherein it
states that â??other parts, if suitable for
use solely or principally with a particular
kind of machine, or with a number of
machine of the same heading (including a
machine of heading 8479 or 8543) are to
be classified with the machine of that kind.
Since Bluetooth Module is principally
used in car infotainment system, as
declared by the Importer, it will merit
classification under CTH 85299090.",,