
(2025) 01 CESTAT CK 1578

In the Customs, Excise And Service Tax Appellate, New Delhi

Case No : Customs Appeal No.51041, 51137 of 2020

**Principal Commissioner of Customs (Imports) @APPELLANT @Hash M/s
Secure Meters Ltd. @RESPONDENT**

Date of Decision : 28-01-2025

Acts Referred:

Customs Act, 1962 — Section 2(2), 2(25), 2(26), 12, 17, 28, 28AA, 28(4), 111(m),
112, 114A, 114AA, 128, 142

Citation : (2025) 01 CESTAT CK 1578

Hon'ble Judges : Binu Tamta, Member (J); P. V. Subba Rao, Member (T)

Bench : Division Bench

Advocate : V. Lakshmikumaran, Rubel Bareja, Anisha Arya, Anurag Kapoor, Mihir Ranjan

Final Decision : Allowed/Dismissed

Judgement

P.V. Subba Rao, J

1. These two cross appeals have been filed by M/s Secure Meters Ltd., importer and the Revenue assailing the order-in-original dated 28.5.2020, impugned order passed by the Principal Commissioner whereby he decided the proposals made in the Show Cause Notice dated 18.12.2018, SCN issued by the Directorate General of Revenue Intelligence, DRI.

2. In the impugned order, the Principal Commissioner rejected the importer's claim that the communication modules imported by it were classifiable under Customs Tariff Item, CTI 8517 70 90 as parts of communication hubs and held that they were classifiable under CTI 9028 90 10/ CTI 9028 90 90 as parts of electricity meters / gas meters. Consequently, he held that the importer was ineligible for exemption Notification No. 24/2005-Cus. dated 01.03.2005 (till 30.6.2017) and Notification No. 57/2017-Cus. (S. No. 5) (from 01.07.2017). He confirmed demand of differential Customs duty of Rs. 45,83,88,872/- under section 28 of the Customs Act, 1962, Customs Act invoking extended period of limitation along with interest under section 28AA of the Customs Act. He imposed an amount equal to the duty as penalty under section 114A of the Customs Act

but refrained from imposing penalties under sections 112 and 114AA of the Customs Act.

3. The importer is aggrieved by the demand of duty with interest and penalty under section 114A. Revenue is aggrieved that the Commissioner refrained from imposing penalty under section 114AA. Hence, these two cross appeals.

4. We have heard Shri V. Lakshmikumaran, learned counsel for the appellant and Shri Mihir Ranjan, learned Special Counsel for the Revenue and perused the records.

5. The importer manufactures smart electricity and gas meters which not only measure the consumption of electricity or gas but also communicate the readings wirelessly to the service provider. The service provider can also communicate with the meter and obtain additional information if required. This communication takes place through communication hubs which are electronic communication devices which fit into the meter. The communication hubs have in them communication modules and network interface cards which are instrumental in the communication. The meter takes the readings, the communication hub receives the readings and transmits them wirelessly to the service provider and also receives instructions from the service provider and provides any additional information sought.

6. The importer imported communication modules/network interface cards which are an essential part of these communication hubs. In dispute is their classification under the Customs Tariff. It is not in dispute that the communication hub is an electronic device by itself but when fitted into the electricity or gas meter, it becomes part of the smart meter. It is also not in dispute that the communication module/network interface card is a part of the communication hub.

7. According to the importer, the communication module/ network interface cards which were imported were parts of the communication hubs and hence should be classified as such. According to the Revenue, communication module is apart of the communication hub which, in turn, is a part of the smart meter and hence, being parts of parts (or child parts) of the meter they are parts of the meter and should be classified as such. The consequences of the two classifications is the eligibility of the exemption notifications. Hence, the differential duty under dispute.

Submissions of the importer

8. Shri V. Lakshmikumaran, learned counsel for the importer assisted by Ms. Rubel Bareja, Ms. Anisha Arya and Shri Anurag Kapoor made the following submissions:

(i) The communication modules/interface cards are correctly classifiable under CTI 8517 70 90 as they are parts of the communication hubs falling under CTH 8517.

(ii) Communication hub receives data from the attached metering unit or through rotary motion of the crankshaft for Gas meter electrically, which is then transmitted to the utility company, the consumer or any other remotely connected device.

(iii) Since communication hubs are apparatus for reception and transmission of data, these are appropriately classable under CTI 8517 62 90 by virtue of Note 2(a) to Section XVI of the Customs Tariff. Section Note 2(b) would apply only if note 2(a) would not apply. Reliance is listed on the following decisions:

(a) Secure Meters versus Commissioner of Customs, New Delhi, 2015 (319) E.L.T. 565 (S.C.)

(b) Collector of Central Excise versus Delton Cables Ltd., 2005 (181) E.L.T. 373 (S.C.)

(c) Modern Communications and Broadcasting Systems P. Ltd. Versus Commissioner of Customs, Ahmedabad, 2019 (366) E.L.T. 1061 (Tri. – Ahmd.)

(d) Vodafone Idea Limited versus Principal Commissioner of Customs in Customs Appeal No. 51167 of 2020 vide Final Order No. 55948 of 2024 affirmed by the Supreme Court in Civil Appeal No. 14419 of 2024

(e) Reliance Jio Infocomm Ltd. Versus Commissioner of Customs (Air Cargo) in Customs Appeal No. 51734 of 2019 vide Final Order No. 40074 of 2022 affirmed by the Supreme Court, 2024 (387) E.L.T. 646 (S.C.)

(f) Commissioner of Central Excise, Aurangabad versus Videocon Industries Ltd., 2023 (384) E.L.T. 628 (S.C.)

(iv) The department does not dispute the classification of communication hubs under CTH 8517 and the appellant had exported them classifying under this CTH by shipping bills no. 7311655 dated 2.1.2015 and 8704458 dated 30.3.2015.

(v) The commissioner has incorrectly placed reliance on Note 3 and Note 4 to section XVI to determine the classification of communication modules/interface cards. These notes apply to composite machines, whereas the importer had imported only individual components.

(vi) Goods cannot be classified based on their end uses. They should be classified in the form in which they are imported.

(vii) A substantial part of the demand is barred by limitation and extended period of limitation could not have been invoked. The importer has been importing them since 2017. In response to a query from the department, the importer had sent a letter 30 August 2018, (copy enclosed as annexure 28 to the appeal paper book) based on which the department accepted the classification of communication modules/network cards. The importer has thereafter always been classifying them accordingly. Therefore, it is not correct to say that the importer had evaded paying custom duty through fraud or collusion or wilful statement.

(viii) Consequently, the demand of duty invoking extended period of limitation cannot be sustained.

(ix) The communication modules/network cards imported by the importer were not liable for confiscation under section 111(m) and no penalty is imposable under section 114A/114AA/112 of the Customs Act.

(x) The importer's appeal maybe allowed and Revenue's appeal may be dismissed.

Submissions of the Revenue

9. Shri Mihir Ranjan, learned special counsel for the Revenue made the following submissions:

(i) The importer was importing communication modules for smart energy meters. The officers of DRI, Bangalore received intelligence that the importer was mis-classifying them under CTI 8517 70 90 to avail the benefit of Notification No. 24/2005-Cus. dated 01.03.2005 (Sl. No. 13) and under Notification No. 57/2017-Cus. dated 30.06.2017 (Sl. No. 5) to evade duty. Both notifications apply only to goods falling under CTH 8517 whereas the appellant's goods were classifiable under CTI 9028 9010 (in case of electricity meters) and CTI 9028 9099 (in case of gas meters).

(ii) After investigation, DRI found that the importer has been classifying LCD Modules of the meters as part of electricity meters or gas meters, but had mis-classified communication modules and their parts under CTH 8517.

(iii) Accordingly, a show cause notice was issued proposing the recovery of differential duty invoking extended period of limitation under section 28 (4) of the Customs Act, 1962 along with interest under section 28AA. It was also proposed to impose penalties under section 112 or 114A and section 114AA on Shri Sridhar Radhakrishnan, Vice President (Operations) and Shri Rajesh Golechha, Manager Indirect Taxation of the importer.

(iv) In the impugned order, the Principal Commissioner confirmed the classification and demand of duty and interest as proposed and also imposed penalty under section 114A but did not impose penalties under section 112 and section 114AA.

(v) The communication hub is a part of the electricity meter and the communication module, in turn, is its part. Therefore, communication module is also a part of the electricity meter. As per notes 3 and 4 to section XVI of the Customs Tariff and Chapter Note 3 of Chapter 90, these parts have to be classified along with the machine which performs the principal function, viz., the smart meter. The Principal Commissioner correctly classified the goods and confirmed the demand of duty and imposed penalty.

(vi) The Principal Commissioner, however, erred in not imposing penalty under section 114AA on the company and in not imposing penalties on Shri Sridhar

Radhakrishnan, Vice President (Operations) and Shri Rajesh Golechha, Manager Indirect Taxation under section 112 and section 114AA. It is clear that both were involved in systematic and deliberate attempts to mis-declare and misclassify the imported communication modules with the intention of evading duty.

(vii) In view of the above, the importer's appeal may be dismissed and the department's appeal may be allowed.

Findings

10. We have considered the submissions advanced by the learned counsel for the importer and the learned special counsel for the Revenue and examined the relevant legal provisions and records of the case.

11. There are three components of a taxing statute, viz., the subject of the tax, person liable to pay the tax and the rate at which the tax is levied, Principles of Statutory Interpretation (15th edition), Justice G P Singh page 614 citing State of West Bengal vs Kesoram Industries Ltd, AIR 2005 SC 1646. There are three stages in the imposition of a tax, viz., (1) declaration of liability in respect of persons or property; (2) assessment of tax that quantifies the sum which the person liable has to pay; and (3) methods of recovery if the person does not voluntarily pay, Ibid, citing Harshad Mehta vs Custodian, AIR 1998 SC2291, p.2298.

12. Insofar as the Customs duty is concerned, the liability to pay or 'the charge of duty of customs' arises from section 12, the adjudication which quantifies how much duty is to be paid comes primarily from assessment under section 17 and if some tax escapes assessment, through the Show Cause Notice issued under section 28 and its adjudication. Assessment can also be modified through an appeal to Commissioner (Appeals) under section 128 or through appeals to higher judicial fora. If the assessed duties are not paid, recovery proceedings are provided for in section 142.

13. Neither the assessment nor other adjudicatory nor appeal proceedings creates any charge but they only determine how much is the charge in the case. As his Lordship Justice Sanjiv Khanna (the present Chief Justice of India) held in Freezair India (P) Ltd. vs Commissioner of Central Excise, Delhi-I, 2014 (304) E.L.T. 360 (Del.):

Tax statutes can be divided into three parts. The first part relates/creates a charge, tax becomes payable. The second part relates to adjudication or computation and is procedural in nature. Adjudicatory machinery qualifies the amount of duty payable as per the charging section but the assessment does not create the charge. The charge is created by the statute, i.e., charging section. The third part relates to recovery of the tax or duty.

(emphasis supplied)

14. The demand of duty under section 28 is a modification of the assessment if

some tax escaped assessment. Therefore, it is necessary to examine the charging section and the provisions related to assessment.

15. Section 12 of the Customs Act – the charging section-reads as follows:

12. Dutiable goods.

(1) Except as otherwise provided in this Act, or any other law for the time being in force, duties of customs shall be levied at such rates as may be specified under the Customs Tariff Act, 1975 (51 of 1975), or any other law for the time being in force, on goods imported into, or exported from, India.

(2) The provisions of sub-section (1) shall apply in respect of all goods belonging to Government as they apply in respect of goods not belonging to Government.

16. As far as import is concerned, Section 12 levies duties of customs on the goods imported into India, i.e., those which are brought from a place outside India into India. The charge is not on goods said to have been imported in the documents nor is it on goods intended to be imported into India nor is it on the form which the goods may take after their import. For example, if goods are declared as 'X' in the documents but 'Y' is actually imported, the duty will be levied and prohibitions and restrictions are applied on 'Y'. If 10 MT of a good is declared in the documents but actually 12 MT is imported, duty is to be levied on 12 MT. Similarly, if some goods are imported into India and after their import, they are transformed into something else, duty has to be charged on the goods imported and it cannot be charged on what the goods have transformed into.

17. Once they are cleared for home consumption, the goods cease to be imported goods and the person who imported them also ceases to be the importer and therefore, there cannot be any further assessment of duty (under section 17). Sections 2(25) and 2(26) of the Customs Act clarify this position and they read as follows:

Section 2: Definitions:

(25) 'imported goods' means any goods brought into India from a place outside India but does not include goods which have been cleared for home consumption;

(26) 'importer', in relation to any goods at any time between their importation and the time when they are cleared for home consumption, includes any owner, beneficial owner or any person holding himself out to be the importer;

18. Thus, sections 2(25) and 2(26) are in perfect consonance with section 12 which levies duties only on the goods imported into India. Once the proper officer clears the goods for home consumption, they cease to be imported goods and there cannot be any assessment of duty on the goods. As a corollary, the assessment also cannot be based on what may happen to the goods after they are cleared for home consumption because they cannot be assessed in that form.

19. Of course, on some goods there are end-use based exemptions which are

available subject to the installation or use of goods in a particular manner after their import. Even in such cases, the charge is only on the goods which are imported. The conditions of installation or specific use after their import are only conditions of the exemption notification which, if fulfilled, will entitle the goods to exemption and not otherwise. The conditions of the exemption notification do not alter the charge of duty. "Exemption" from tax comes later to levy for "exemption" can only operate when there is a valid levy; if there was no levy at all, there would be nothing to exempt, Principles of Statutory Interpretation (15th edition), Justice G P Singh citing Peekay Re-rolling Mills (Pvt.) Ltd. vs Assistant Commissioner (2007) 4 SCC 30 (para 45). Since the charge of duty of customs is only on the goods imported, duty should be assessed on the goods imported, i.e., in the form in which they are imported. If one claims the benefit of an end-use based exemption notification, the conditions therein with respect to installation, use, etc. of the imported goods have to be met; otherwise, the goods will not be entitled to the exemption.

20. The dispute in these two cross appeals is about the classification of the imported goods. Classification of goods under the Customs Tariff is a part of the assessment under the Customs Act. Section 2(2) of the Customs Act defines 'assessment' as follows:

(2) 'assessment' means determination of the dutiability of any goods and the amount of duty, tax, cess or any other sum so payable, if any, under this Act or under the Customs Tariff Act, 1975 (51 of 1975) (hereinafter referred to as the Customs Tariff Act) or under any other law for the time being in force, with reference to—

(a) the tariff classification of such goods as determined in accordance with the provisions of the Customs Tariff Act;

(b) the value of such goods as determined in accordance with the provisions of this Act and the Customs Tariff Act;

(c) exemption or concession of duty, tax, cess or any other sum, consequent upon any notification issued therefor under this Act or under the Customs Tariff Act or under any other law for the time being in force;

(d) the quantity, weight, volume, measurement or other specifics where such duty, tax, cess or any other sum is leviable on the basis of the quantity, weight, volume, measurement or other specifics of such goods;

(e) the origin of such goods determined in accordance with the provisions of the Customs Tariff Act or the rules made thereunder, if the amount of duty, tax, cess or any other sum is affected by the origin of such goods;

(f) any other specific factor which affects the duty, tax, cess or any other sum payable on such goods, and includes provisional assessment, self-assessment, re-assessment and any assessment in which the duty assessed is nil;

21. Assessment is the determination of the duty leviable on the goods imported with reference to their classification, value, exemption, quantity, weight, volume, etc. Since assessment of duty is on the goods imported into India, they must be assessed as they are imported because, once they are cleared for home consumption, they cease to be imported goods and no duty can be assessed on them in that form. Similarly, the value of the goods also cannot include any post importation costs (such as installation costs of plant and machinery).

22. A stream of water remains a stream until it merges with the river and then becomes the river and when the river reaches the sea, it becomes the sea. Similarly, goods classifiable under a particular CTI when imported or cleared from a factory (in case of central excise) may, thereafter, take a different form and may no longer have independent existence but become part of some other goods. An illustration will make this legal position clear. A car, for instance, has several parts, components and accessories when it is cleared from the factory but is cleared as a car and must be classified as such. The car manufacturer imports or procures domestically several parts. For example, he will have to procure four or five tyres without which the car is not complete. In the Bills of Entry the car tyres would have to be classified as car tyres (articles of rubber under Chapter 40); similarly, a domestic manufacturer of tyres would also classify them as car tyres - articles of rubber and pay central excise duty accordingly. Once they are fitted in the car and the car is cleared from the factory of the car manufacturer, although the tyres are clearly visible and they can be even physically separated from the car, they will not be independent goods but will be part of the car. They cannot be classified separately.

23. Similarly, rubber mats, carpets, upholstery, entertainment system, etc. in the car cannot be classified separately and individually because they become parts of the car. However, when these very parts are separately imported and cleared, they will have their own identity and they must be classified as such.

24. If a car is imported, its tyres, though distinctly visible and physically separable, do not get classified separately. However, if the tyres are imported separately, although their only obvious use in cars, they have to be classified as car tyres because the charge of duty of customs under section 12 of the Customs Act is on the goods imported into India and as per section 2(25) once they are cleared for home consumption, they will cease to be imported goods. There is no charge on what the goods may become after they are imported. Goods must be assessed as they are imported.

25. The goods whose classification is in dispute in this case are imported communication modules. There is no dispute that their only function and purpose is as a part of communication hubs which, in turn, become part of the smart meters manufactured by the importer. Thus, communication modules have their own identity as parts of communication hubs but if they are fitted in and become part of communication hubs, they will not be classifiable separately but will become part and parcel of the communication hubs and they should be classified

as such. Further, if the communication hubs are fitted in the smart meters, the communication hubs become part of the smart meters and will not be classifiable separately. The entire structure will be a smart meter and it must be classified as such and communication module will be its child part. Smart meters are composite machines of which one part records the consumption of electricity or gas and the other part (communication hub) communicates the readings. Undisputedly, the primary function of the smart meter is measuring the consumption and the communication is a secondary function which gives it additional functionality. The smart meters (including the communication hubs in them), therefore, are classifiable as smart meters.

26. However, if communication hubs are imported or exported separately, they cannot be classified as smart meters and they should be classified as communication hubs. According to the learned counsel for the importer, the importer itself had exported communication hubs classifying them as such under CTH 8517 and the department accepted the classification and allowed exports. Once the communication hubs are fitted into the smart meters, the composite machine will be the smart meter because measuring the consumption of electricity or gas is its primary function.

27. According to the Revenue, the communication modules which were imported, being parts of the communication hub, which is a part of the smart meter, should be classified as parts of the smart meters. According to the importer, since they were imported as communication modules which are parts of communication hubs, they should be classified as parts of the communication hubs.

28. We find that classification of goods is a part of assessment and assessment is the determination of the amount of duty payable as per the charging section and other provisions. As discussed above, the charge of duty of customs under section 12 is only on the goods imported into India and there is no charge on what the goods may become after their import.

29. Once cleared for home consumption, the goods cease to be imported goods and hence there also cannot be any assessment of duty or their classification for assessment.

30. In these two appeals, the dispute is about classification of the goods, which process, being a part of assessment, should be done in the form in which the goods are imported. After they are cleared for home consumption, the goods may take any other form as a part of any other goods or otherwise but that is immaterial because the goods were not imported in that form; classification has to be in the form in which the goods are imported.

31. We now proceed to examine the competing tariff entries claimed by both sides. The relevant tariff entries and the section notes and Chapter Notes are as follows:

Chapter 85

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.

8517 62 : Machines for the reception, conversion and transmission or regeneration of voice, images or other data, including switching and routing apparatus.

8517 62 90 : Other

8517 70 : Parts

8517 70 10 : Populated, loaded or stuffed printed circuit boards

8517 70 90 : Other

Chapter 90

9028 : Gas, liquid or electricity supply or Production meters, including calibrating meters therefor

9028 10 00 : Gas meters

9028 20 00 : Liquid meters

9028 30 : Electricity meters

9028 30 10 : For alternating current

9028 30 90 : Other

9028 90 10 : For electricity meters

9028 90 90 : Other

Section notes to section XVI (under which Chapter 85 falls)

Section XVI : Machinery and mechanical appliances; electrical equipment; parts thereof; sound recorders and reproducers, television image and sound recorders and reproducers; and parts and accessories of such articles.

Note 1: This section does not cover :

(a) :

(m) : articles of Chapter 90

Note 2 : Subject to Note 1 to this section, Note 1 to Chapter 84 and to Note 1 to Chapter 85, parts of machines (not being parts of the articles of heading 8484, 8544, 8545, 8546 or 8547) are to be classified according to the following rules:

(a) parts which are goods included in any of the headings of Chapter 84 or 85 (other than headings 8409, 8431, 8448, 8466, 8473, 8487, 8503, 8522, 8529,

8538 and 8548) are in all cases to be classified in their respective headings;

(b) 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 headings 8517 and 8525 to 8528 are to be classified in heading 8517;

(c) all other parts are to be classified in heading 8409, 8431, 8448, 8466, 8473, 8503, 8522, 8529 or 8538 as appropriate or, failing that, in heading 8487 or 8548.

Note 3 : Unless the context otherwise requires, composite machines consisting of two or more machines fitted together to form a whole and other machines designed for the purpose of performing two or more complementary or alternative functions are to be classified as if consisting only of that component or as being that machine which performs the principal function.

Chapter notes to Chapter 90

Chapter 90 : Optical, photographic, cinematographic, measuring, checking, precision, medical or surgical instruments and apparatus; parts and accessories thereof

Note 2 : Subject to Note 1, parts and accessories for machines, apparatus, instruments or articles of this Chapter are to be classified according to the following rules :

(a) parts and accessories which are goods included in any of the headings of this Chapter or of Chapter 84, 85 or 91 (other than heading 8487, 8548 or 9033) are in all cases to be classified in their respective headings;

(b) other parts and accessories, if suitable for use solely or principally with a particular kind of machine, instrument or apparatus, or with a number of machines, instruments or apparatus of the same heading (including a machine, instrument or apparatus of heading 9010, 9013 or 9031) are to be classified with the machines, instruments or apparatus of that kind;

(c) all other parts and accessories are to be classified in heading 9033.

Note 3 : The provisions of Notes 3 and 4 to section XVI apply also to this Chapter.

32. According to the learned counsel for the importer, since the communication modules were imported as such and not as a part of either the communication hubs or as a part of the smart meters, they should be classified as such. According to the learned counsel for the importer, the communication hubs are machines for reception, conversion and transmission of data and hence they deserve to be classified under sub heading 8517 62 and the communication modules being parts of the communication hubs, should be classified under CTI

8517 62 90.

33. Learned counsel for the importer relies on section note 2(a) to Section XVI (under which chapter 85 falls) of the Customs Tariff and asserts that once the parts are goods included in the tariff, they should be classified as such. Only other parts (i.e., those which are not goods in the schedule) should be classified along with the machines as per Section Note 2(b).

34. According to the learned Special Counsel for the Revenue as per Chapter note 2(b) to Chapter 90 parts and accessories, if suitable for use solely or principally with a particular kind of machine, instrument or apparatus must be classified along with the machines, instruments or apparatus. Communication modules being child parts of the smart meters and having been designed specifically for use in them, deserve to be classified along with the meters under CTI 9028 90 90. He also relies on Chapter note 3 to Chapter 90 which makes Section note 3 to Section XVI (under which Chapter 85 falls) also applicable to Chapter 90. Section note 3 to Section XVI states that "unless the context otherwise requires, composite machines consisting of two or more machines fitted together to form a whole and other machines designed for the purpose of performing two or more complementary or alternative functions are to be classified as if consisting of only of that component or as being that machine which performs the principal function." Since the function of the communication modules is only as a part of the smart meters, according to the learned special counsel for the Revenue, they should be classified under CTI 9028 90 90.

35. The submissions of the learned counsel for the importer deserve to be accepted. Chapter note 2(b) lays down classification of 'other parts and accessories..'. The question is "other than" what and the answer to that lies in reading Chapter note 2 as a whole. It states that 'Subject to Note 1 above, parts and accessories are to be classified according to the following rules:

(a) parts and accessories which are goods included in any of the headings of this Chapter or of Chapter 84,85 or 91(other than heading 8487, 8458 or 9033) are in all cases to be classified in their respective headings;

(b) other parts and accessories, if suitable for use solely or principally with a particular kind of machine, instrument or apparatus, are to be classified with the machines, instrument or apparatus of that kind;

(c) all other parts and accessories are to be classified in heading 9033.

36. Evidently, note (2) deals with three kinds of parts and accessories- the first are parts and accessories which are goods covered in any of the headings and they should be classified as such as per note 2(a). Other parts, if suitable with a particular machine or apparatus must be classified with it as per note 2(b). If there are parts which do not fall under either of the above must be classified under 9033 as per note 2(c). The expression 'other parts and accessories' in note 2(b) shows that it refers to those which are not covered by the previous part of

the note, i.e., note 2(a). If the parts and accessories are goods which fall under any heading under Chapter 85, they are covered by note 2(a) and therefore, note 2(b) cannot apply because such parts are not 'other parts'.

37. Section note 3 to Section XVI, as made applicable to Chapter 90, is also not relevant to the case because it deals with composite machines. If the communication hub is installed in the smart meter, this note would apply. But what are imported in this case are merely communication modules and not composite machines. These are parts of communication hubs and they are goods which fall under CTI 8517 70 90.

38. For all these reasons, the classification of communication modules under CTI 9028 90 10/CTI 9028 90 90 in the impugned order is not correct and deserves to be set aside. Consequently, the demand of duty and interest and imposition of penalty under section 114A in the impugned order also need to be set aside.

39. Learned counsel for the importer also contested the demand on the ground of limitation. It is his assertion that that importer has been importing the goods since the year 2017 classifying them under the same CTI. When they were first imported, in 2017, there was a query from the assessing officer and after considering the submissions made and holding a personal hearing, the officer agreed with the classification of the goods under CTI proposed by the importer. These facts were brought to the notice of the Senior Intelligence officer of DRI who investigated the matter and copies of correspondence and the Bills of entry cleared from April 2017 to December 2017 were provided. A copy of this letter has been enclosed in pages 1172 and 1173 of the Paper book. Despite all these facts, it has been alleged in the SCN that the importer had 'wilfully and deliberately suppressed facts from the Customs to evade payment of duty' and that it had misclassified the goods with an intention to mislead the department and availing undue customs duty benefits. Learned counsel submitted that there was no basis to make any of the allegations when all facts were known to the department.

40. Learned special counsel for the department supported the impugned order on the question of invoking extended period of limitation.

41. Although we have decided the classification on merits in favour of the importer, we also find the demand invoking extended period of limitation under section 28(4) could have been raised only if the non-payment or short payment of duty is due to collusion or any wilful mis-statement or suppression of facts. Similarly, penalty equal to the amount of duty under section 114A can be imposed only if the non-payment or short payment of duty is due to collusion or any wilful mis-statement or suppression of facts.

42. The dispute in this case is of classification which is a part of the self-assessment by the importer under section 17. Self-assessment is subject to re-assessment by the proper officer. The importer classifies goods as per his understanding and the proper officer is free to re-assess the duty including by

changing the classification, if necessary. If either the importer or the Revenue is aggrieved by the assessment they can appeal to the Commissioner (Appeals). Either party aggrieved by the classification or other aspect of assessment by the Commissioner (Appeals) can appeal to this Tribunal. Appeal against the order of this Tribunal lies with Supreme Court.

43. The importer is required under section 17 to self-assess duty which, he would naturally do, according to his understanding. The importer is nowhere required to anticipate how the proper officer may think and what classification he may find correct. It is impossible for anyone to predict what view someone else may take. To say that the importer had resorted to 'wilful and deliberate suppression of facts' because he classified goods as he thought fit and failed to anticipate what view the department may take later is simply outrageous and cannot be sustained.

44. In this case, it is clear that not only had the assessing officer – who is the proper officer under section 17 – initially doubted the classification but after examining the submissions of the importer, accepted its classification and that the appellant had been clearing goods under that classification. What changed everything is that DRI started an investigation and took a view different from the importer as well as the assessing officer about the classification. It is impossible for the importer to anticipate if DRI would one day check its classification of goods and if so, what classification it would find correct and then file Bills of Entry conforming to the future anticipated views of DRI.

45. The allegations in the SCN that the importer had suppressed facts is completely baseless. The Commissioner has, in the impugned order recorded that the importer had recorded that "these glaring facts of intentional non-payment of actual duty leviable on the impugned goods, contravention of the provisions of self-assessment and the act of manipulating the classification of the goods in order to fall under the category of goods covered under the above notifications was sufficient to have a reasonable belief that there was short levy or duty on the impugned goods."

46. In other words, according to the Commissioner, the importer was guilty of not anticipating that DRI would one day investigate and come up with a new classification of the goods and file Bills of Entry conforming to such future anticipated views of DRI.

47. We cannot accept the logic of the Commissioner. Just as it would have been humanly impossible for the Commissioner to anticipate if the importer would appeal against his order and if so, what order this Tribunal would pass, it was equally humanly impossible for the importer to anticipate if DRI would one day take up an investigation and if so, if it would dispute the classification and if so, what classification DRI would find correct. The Commissioner completely misunderstood the concept of self-assessment. It only means that the importer has to assess the duty as per its understanding and it has no obligation

whatsoever to anticipate what classification the assessing officer would find correct and further, even if the assessing officer finds the classification correct if DRI would one day come up with a different view and file bills of entry conforming to the anticipated future view of DRI. We have also found the views of the DRI in the SCN and its affirmation in the impugned order on the question of classification incorrect.

48. To sum up:

- a) the charge of duty of customs under section 12 is only on the goods imported into India and not on what the goods may become after their import;
- b) since the charge is on the goods imported, duty must be assessed on the goods in the form they are imported;
- c) once they are cleared for home consumption, the goods cease to be imported goods and there cannot be any assessment of duty on them;
- d) classification of goods is a part of assessment and hence it can also be only of the goods as they are imported;
- e) assessment of duty or its modification under section 28 or in appeal, etc. can only be of the goods as they are imported;
- f) since the communication modules were imported, they should be classified as such;
- g) the correct classification of the communication modules is CTI 8517 70 90;
- h) the demand of duty in the impugned order consequent upon the classification of communication modules under CTI 9028 90 10/CTI 9028 90 90 cannot be sustained ;
- i) the importer has an obligation to self-assess duty but has no obligation under law to anticipate what view regarding classification of goods may be taken by the proper officer or may be taken by DRI or some other investigating agency at any time in future and file Bills of Entry conforming to such anticipated views of the proper officer or DRI or some other investigating agency;
- j) the department was fully aware of the communication modules being imported by the importer and its reasoning for classifying the goods under a particular CTI and has been accepting it;
- k) the allegations of 'mis-declaring and mis-classifying with an intent to evade against the importer are completely unfounded;
- l) Since the demand of duty needs to be set aside, all penalties also need to be set aside.

49. In view of the above, Revenue's appeal is dismissed and the importer's appeal is allowed with consequential relief to the importer.

(Order pronounced in open court on 28/01/2025.)