

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI**

PRINCIPAL BENCH - COURT NO. 1

Customs Appeal No. 51172 of 2020

[Arising out of the Order-in-Original No. 32/2020/U.G./Principal Commissioner dated 25.08.2020 passed by the Commissioner of Customs (Import), New Customs House, New Delhi]

M/s. Samsung India Electronics Pvt. Ltd
B-1, Sector 81, Phase-II,
Noida, Uttar Pradesh-201305

.....Appellant

VERSUS

Commissioner of Customs,
Air Cargo Complex (Import)
New Customs House,
Near IGI Airport, New Delhi-110 037

.....Respondent

APPEARANCE:

Shri B.L. Narasimhan, Shri Dhruv Matta and Ms. Yashi Srivastava Advocate for the Appellant

Shri Nagendra Yadav, Authorized Representative of the Department

WITH

Customs Appeal No. 51204 of 2020

[Arising out of the Order-in-Original No. 32/2020/U.G./Principal Commissioner dated 25.08.2020 passed by the Commissioner of Customs (Import), New Customs House, New Delhi]

Commissioner of Customs
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VERSUS

M/s Samsung India Electronics Pvt. Ltd
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.....Respondent

APPEARANCE:

Shri Nagendra Yadav, Authorized Representative of the Department

Shri B.L. Narasimhan, Shri Dhruv Matta and Ms. Yashi Srivastava Advocate for the Respondent

CORAM: **HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT**
 HON'BLE MR. P. V. SUBBA RAO, MEMBER (TECHNICAL)

Date of Hearing: 12.03.2024
Date of Decision: 22.07.2024

FINAL ORDER NO. 56037-56038/2024

JUSTICE DILIP GUPTA:

Customs Appeal No. 51172 of 2020 has been filed by M/s Samsung India Electronics Pvt. Ltd.¹ for quashing the order dated 25.08.2020 passed by the Principal Commissioner of Customs ACC (Imports)² by which the claim of the appellant seeking classification of the imported goods namely 'IC-Codecs' under Customs Tariff Item³ 8542 39 00 of the Customs Tariff Act 1975⁴ has been rejected and the goods have been directed to be classified under CTI 8517 62 90. Accordingly, the demand of customs duty and integrated goods and service tax⁵ to the extent of Rs. 1,89,05,965/- on the import and clearance of the goods has been confirmed under section 28 (1) of the Customs Act, 1962⁶. The order also directs payment of interest under section 28AA of the Customs Act. However, the Principal Commissioner also held that the goods are not liable to confiscation under section 111(m) of the Customs Act and also refrained from imposing any penalty under section 112 (a)(ii) of the Customs Act.

2. **Customs Appeal No. 51204 of 2020** has been filed by the department to assail that part of the order dated 25.08.2020 passed by the Principal Commissioner that refrains from confiscating the goods and imposing penalty.

3. The appellant is engaged in the manufacture and sale of mobile phones and tablet computers. In connection with its manufacturing

-
1. the appellant
 2. the Principal Commissioner
 3. CTI
 4. the Tariff Act
 5. IGST
 6. the Customs Act

activities, the appellant imports 'Integrated Circuits-Codecs'⁷ for use in the manufacture of mobile phones and tablets. It is stated that these goods are integrated circuits, which function as Codecs, i.e., compressor/decompressor and comprise of Digital Signal Processor⁸, General Purpose Input/Output⁹ pins and Inter-Integrated Circuit¹⁰ interface. The DSP, GPIO pins and 12C interface are only functional when the goods are mounted on the Printed Circuit Board¹¹ and power is supplied within the PCB. The DSP are the main functionality of the goods which function in data compression or decompression upon inflow of data. The GPIO pins are digital control pins of the goods which enable connection with the master such as CPU or FPGA through the PCB. These masters, in turn, control the operation of the goods and the flow of the data within the DSPs using GPIO pins and 12C interface, respectively. 12C interface is the communication protocol which allows to and fro of data from the communication input.

4. During the relevant period from 05.03.2018 to 07.03.2019, the appellant imported the goods; classified them under CTI 8542 39 00; availed the benefit of concessional rate of duty under Serial No. 24 of Notification dated 01.03.2005¹²; and paid IGST @12% on the import of the goods.

5. The department conducted an audit scrutiny of the imports of the goods. It was understood by the audit team that the goods are a kind of Codec that have the capability of transmission and reception of digital information and would, therefore, be classifiable under CTI 8517 62 90 as

7. the goods
8. DSP
9. GPIO
10. 12C
11. PCB
12. the Exemption Notification

'other communication apparatus' and, accordingly, would be subject to levy of basic customs duty @ 10% and IGST @ 18%.

6. An investigation was, therefore, initiated by the Custom Authorities. The Commissioner of Customs issued a Pre-Notice Consultation letter dated 02.07.2019 wherein the appellant was advised to pay the differential duty of Rs. 1,89,05,965/-. The appellant submitted a reply on 08.07.2019 along with technical write up of the goods.

7. However, a demand cum show cause notice dated 04.03.2020 was issued to the appellant proposing to re-classify the goods under CTI 8517 62 90. The appellant filed a detailed reply to the show cause notice on 04.08.2020 refuting all the allegations made therein.

8. The Principal Commissioner passed the order dated 25.08.2020 rejecting the classification of the goods claimed by the appellant under CTI 8543 39 00 and re-classified the goods under CTI 8517 62 90 of the Tariff Act. The order, therefore, confirms the demand of customs duty and IGST to the extent of Rs. 1,89,05,965/- with interest under section 28AA of the Customs Act. The main reasons contained in the order passed by the Principal Commissioner are as follows:

- (i)** The appellant admits that the goods function as Codecs. The appellant has neither given any explanation that the transmission and reception features are not inbuilt in the goods nor has the appellant provided any evidence that the goods are not Codecs;
- (ii)** Rule 3(a) of General Rules of Interpretation is not applicable as the appellant has not been able to suggest how the pre-requisite conditions under the said rule are fulfilled for the classification of the goods; and

- (iii) Section Note 2(b) to Section XVI is applicable as the goods are used in the manufacture of mobile phones and the same would be classifiable as 'parts of mobile phone' and classifiable under Customs Tariff Heading¹³ 8517.

9. This appeal has been filed to assail the aforesaid order passed by the Principal Commissioner.

10. Shri B.L. Narasimhan, learned counsel for the appellant assisted by Shri Dhruv Matta and Ms. Yashi Shrivastava, made the following submissions:

- (i) The order passed by the Principal Commissioner is a non-speaking order and the burden of proof lies on the department if the department wishes to classify the goods under a different heading;
- (ii) The goods are correctly classifiable under CTI 8542 29 00 and the goods cannot be classified under CTI 8517 62 90 of the Customs Tariff;
- (iii) The benefit under Serial No. 24 of the Notification dated 01.03.2005 is available to the appellant;
- (iv) Even if the goods cannot be classified on the basis of the said submissions of the appellant, they would merit classification under a heading which occurs last in numerical order;
- (v) Even if the goods merit classification under CTH 8517, the demand of duty is revenue neutral;
- (vi) IGST and interest on IGST cannot be demanded under section 28 of Customs Act; and

13. CTH

- (vii)** No interest can be demanded when duty demand is not sustainable.

11. Shri Nagendra Yadav, learned authorised representative appearing for the department, however, supported the impugned order except to the extent it refrained from confiscating the goods and imposing penalty under section 112 (a)(ii) of the Customs Act. The following submissions have been made by the learned authorised representative for the department:

- (i)** Onus was on the appellant to elaborate as to whether the goods falling under CTH 8542 can also acquire the nature of Codecs during the course of post importation operations. However, they have not mentioned or proved that the goods imported by them are not the kind of Codecs and, hence, the same go beyond the purview of CTH 8542;
- (ii)** Since the appellant has neither suggested which are the two headings under which the goods are prima-facie classifiable nor placed on record any plausible explanation regarding the constituents (i.e. more than one material or substance) contained therein, rule 3 (a) of the General Rules of Interpretation would not be applicable; and
- (iii)** Section Note 3 and 4 to Section XVI provides that classification of sub-part will eventually depend upon the machine which performs the principal function. In the instant case, the goods are being put to further use in those apparatus which have a specific principal function of transmission/reception capability as well as communication capability. The goods are one of the components which when assembled and programmed with other components

enable communication capability of mobile phones. Thus, once the main apparatus is classifiable under CTH 8517, the components used therein will be classifiable in that Chapter Heading only in line with the provisions of Note 3 and Note 4 to Section XVI of Customs Tariff Act.

12. The submissions advanced by learned counsel for the appellant and the learned authorised representative appearing for the department have been considered.

13. The issue that arises for consideration in this appeal is as to whether the goods imported by the appellant namely “IC-Codecs” deserve classification under CTI 8542 39 00 as claimed by the appellant or under CTI 8517 62 90 as determined in the impugned order.

14. It would, therefore, be appropriate to refer to the relevant tariff items under CTH 8517 and the same are as follows:

Tariff	Description of goods	Unit	Rate of Duty	
(1)	(2)	(3)	(2)	(4)
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 11	Telephone sets, including telephones for cellular networks or for other wireless networks: Line telephone sets with cordless handsets:			
8517 11 10	Push Button type	u	Free	-
8517 11 90	Other	u	Free	-
8517 12	Telephones for cellular networks or for other wireless networks:			
8517 12 10	Push button type	u	10%	-
8517 12 90	Other	u	10%	-
8517 18	Other	u	Free	-
	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			

8517 61 00	local or wide area network): Base Stations	u	10%	-
8517 62	Machines for the reception, conversion and transmission or regeneration of voice, images or other data, including switching and routing apparatus:			
8517 62 10	PLCC equipment	u	Free	-
8517 62 20	Voice frequency telegraphy	u	Free	-
8517 62 30	Modems (modulators-demodulators	u	Free	-
8517 62 40	High bit rate digital subscriber line system (HDSL)	u	Free	-
8517 62 50	Digital loop carrier system (DLC)	u	Free	-
8517 62 60	Synchronous digital hierarchy system(SDH)	u	Free	-
8517 62 70	Multiplexers, statistical multiplexers	u	Free	-
8517 62 90	Other	u	10%	-

15. It would also be necessary to reproduce the relevant tariff items under CTH 8542 and the same are reproduce below:

Tariff	Description of goods	Unit	Rate of Duty	
(1)	(2)	(3)	(2)	(4)
8542	Electronic Integrated circuits			
8542 31 00	Electronic integrated circuits Processors and controllers, whether or not combined with memories, converters, logic circuits, amplifiers, clock and timing circuits, or other circuits	u	Free	-
8542 32 00	Memories	u	Free	-
8542 33 00	Amplifiers	u	Free	-
8542 39	Other :	u	Free	-
8542 39 00	Other	u	7.5%	-
8542 90 00	Parts	kg.	Free	-

16. The goods are IC-Codecs which are electronic integrated circuits and are also known as microelectronic circuit, microchip or chip. An ‘IC-Codec’ is a semi conductor wafer on which multiple components are fabricated. According to the appellant, the IC Codec imported by it is an array of miniaturized and microscopic components consisting of active components/devices such as transistors and diodes; and passive components/devices such as capacitors and resistors. The goods are imported in the form of rolls and after importation, they undergo further process to make them functional. Thus, it is claimed by the appellant that at the time of importation the goods do not have the capability of transmission or reception of data.

17. The description of goods under CTH 8517, amongst others, is "other apparatus for transmission or reception of voice, images or other data, including apparatus for communication under the wired or wireless network". Customs Tariff sub-heading 8517 62 with double dash is "Machines for reception, conversion and transmission or regeneration of voice, images or other data, including switching and routing apparatus". CTI 8517 62 90 with triple dash is "Other".

18. Rule 1 of the General Rules for the Interpretation of the First Schedule to the Tariff Act provides that classification of goods shall be determined in accordance with the terms of the Chapter Heading and any other relevant Section or Chapter Notes. On a plain reading of the Headings, it is evident that CTH 8517 covers apparatus and machines.

19. The issue, therefore, that arises for consideration is whether the imported goods are "apparatus" or "machines". The terms "apparatus" or "machines" have not been defined in the Tariff Act. It would, therefore, be necessary to make a reference to the dictionary meanings.

20. The Modern Dictionary of Electronics defines "apparatus" as follows:

"Equipment or instruments used for a specific purpose."

21. The Modern Dictionary of Electronics defines "equipment" and "instrument" as:

"Equipment An item having a complete function apart from being a substructure of a system. Sometimes called a set."

"Instrument- A device capable of measuring, recording, and/or controlling."

22. The goods imported are electronic integrated circuits used in the process of manufacture of mobile phones and tablets. The items covered

under CTH 8517 constitute a complete machinery or apparatus in itself. The goods imported would not satisfy any of the description of goods covered under CTH 8517 as the ICs-Codecs cannot be described either as a machine or as an apparatus. The goods in the present case i.e. ICs are merely electronic integrated circuits.

23. The Principal Commissioner held that the goods can be classified under 8517 as "other communication apparatus". It needs to be noted that CTH 8517 covers "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). The goods imported are not in the nature of stand-alone devices for communication in a wired or wireless network i.e. Local Area Network¹⁴ or Wide Area Network¹⁵. LAN and WAN are communication networks which connect devices in a limited or broad area, respectively. In fact, they establish a communication network within a particular geographical area between stand-alone devices.

24. In the present case, the goods are IC chips which are incapable of stand-alone function or connection with any other device. The ICs are only capable of functioning as compressor/decompressor upon connection with external peripherals like power supply and interface. The goods imported only interact with components which are mounted on the PCB. No network like LAN/WAN is established between the impugned goods and other components of PCB. The imported goods are not in the nature of machines or apparatus which are deployed in a network like LAN/WAN.

14. LAN
15. WAN

25. On the other hand, CTH 8542 deals with "electronic integrated circuits" i.e. ICs. They would, therefore, be specifically covered under CTH 8542.

26. The IC-Codecs imported by the appellant are covered under the definition of "monolithic integrated circuit" as defined under Chapter Note 9 (b) to Chapter 85 of the Customs Tariff. The relevant portion is extracted below:

"9. For the purposes of headings 8541 and 8542:

.....

(b) "Electronic integrated circuits" are:

(i) **Monolithic integrated circuits** in which the circuit elements (diodes, transistors, resistors, capacitors, inductances, etc.) are created in the mass (essentially) and **on the surface of a semiconductor or compound semiconductor material** (for example, doped silicon, gallium arsenide, silicon germanium, indium phosphide) **and are inseparably associated**..."

(emphasis supplied)

27. HSN Explanatory Notes to CTH 8542 provides that monolithic ICs may be in the form of un-diced wafers. The IC-Codecs, as imported by the appellant, are in form of rolls i.e., un-diced wafers.

28. It, therefore, clearly follows that the goods imported by the appellant are IC-Codecs and are classifiable under Customs Heading 8542 and more specifically under CTI 8542 39 90.

29. The appellant is, therefore, entitled to the benefit of exemption Notification dated 01.03.2005, which exempts whole of the customs duty leviable on the goods imported into India falling under CTH 8542.

30. The department has not provided any technical literature or material in the impugned order to show that the imported ICs, at the time of import, have any capability of transmission or reception of digital

information. The allegations made in the show cause notice and confirmed in the impugned order are only based on presumptions.

31. Reliance placed by the learned authorised representative of the department on the decision of the Tribunal in **CC (Import), Air Cargo Complex, Mumbai vs. Indelox Services Private Limited**¹⁶ is misplaced. The goods imported were routers which had the capability of transmission of data at the time of import itself. In the present case, the imported goods do not have the capability of transmission of data at the time of import.

32. The Principal Commissioner also committed an error in referring to rule 2(b) of the General Rules of Interpretation. This governs the classification of mixtures and combinations of materials or substances; and of goods consisting of two or more materials or substances. In the present case, rule 2(b) would have no relevance as the product is not a mixture or combination of materials or substances. The product would be classifiable under CTH 8542 by virtue of rule 1 of the General Rules of Interpretation as an IC is appropriately covered therein.

33. In view of the aforesaid discussion, the order dated 25.08.2020 passed by the Principal Commissioner cannot be sustained.

34. The department has also filed an appeal against that part of the order passed by the Commissioner of Customs that holds that the goods are not liable to be confiscated under section 111(m) of the Customs Act and penalty cannot also be imposed upon the appellant under section 112 (a)(ii) of the Customs Act.

35. As the order on merits cannot sustain, the appeal filed by the department deserved to be dismissed.

16. 2017 (357) E.L.T. 946 (Tri-Mumbai)

36. In view of aforesaid, it is not necessary to examine the remaining contentions advanced by the learned counsel for the appellant.

37. **Customs Appeal No. 51172 of 2020** filed by the appellant to assail that part of the order that has classified the goods imported by the appellant under CTI 8517 62 90 instead of CTI 8542 39 00 as claimed by the appellant is, accordingly, allowed.

38. **Customs Appeal No. 51204 of 2020** filed by the department against that part of the order passed by the Principal Commissioner that holds that goods are not liable to confiscation nor penalty can be imposed is dismissed.

(Order Pronounced on **22.07.2024**)

(JUSTICE DILIP GUPTA)
PRESIDENT

(P. V. SUBBA RAO)
MEMBER (TECHNICAL)

Diksha, Shreya