

**CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI
PRINCIPAL BENCH, COURT NO. 4**

CUSTOMS APPEAL NO. 50983 OF 2020

[Arising out of Order-in-Original No. 06/2020/MKS/Pr. Comm./ICD-Import/TKD dated February 12, 2020 passed by the Principal Commissioner of Customs (Import) Inland Container Depot, Tughlakabad, New Delhi]

M/S SENNHEISER ELECTRONICS INDIA PVT LTD

C/o Geodis Overseas Pvt. Ltd,
104 A, B, C, First Floor, Time Tower,
MG Road, Sector-28, Gurgaon,
Haryana-121002

Appellant

Vs.

**PRINCIPAL COMMISSIONER, CUSTOMS
(IMPORT)INLAND CONTAINER DEPOT,
TUGHLAKABAD-NEW DELHI**

Respondent

AND

CUSTOMS APPEAL NO. 51056 OF 2020

[Arising out of Order-in-Original No. VIII(HQ)10/IMP/ADJ/Sennheiser/64/19/6373 dated June 01, 2020 passed by the Pr. Commissioner of Customs ACC (Import) New Customs House, Near IGI Airport, New Delhi]

M/S SENNHEISER ELECTRONICS INDIA PVT LTD

C/o Geodis Overseas Pvt. Ltd.
104 A, B, C, First Floor, Time Tower,
MG Road, Sector-28, Gurgaon,
Haryana-121002

Appellant

Vs.

**PRINCIPAL COMMISSIONER, CUSTOMS ACC
(IMPORTS)NEW CUSTOMS HOUSE, NEAR IGI
AIRPORT-NEW DELHI**

Respondent

Appearance:

Present for the Appellant : Ms. Priyanka Rathi, Shri Ashwini Chandrasekaran and Ms. Shubhangi Gupta, Advocates

Present for the Respondent: Shri Manish Kumar Chawda, Authorised Representative

CORAM:

HON'BLE DR. RACHNA GUPTA, MEMBER (JUDICIAL)

HON'BLE MR. P. V. SUBBA RAO, MEMBER (TECHNICAL)

FINAL ORDER NOS. 50928-50929 /2023

Date of Hearing : 06/07/2023

Date of Decision: 19/07/2023

P V SUBBA RAO:

1. M/s Sennheiser Electronics India Pvt Ltd ¹ filed these two appeals to assail the Orders-in-Original dated 12.02.2020 and 01.06.2020 passed by the Principal Commissioner of Customs (Import) New Delhi. The appellant imported earphones of two models, namely, CX 275s and CX180. Model CX 275s earphones have microphones while CX180 earphones do not. The appellant classified these two goods under customs tariff heading 8518 30 00 which attracted basic customs duty of 15 %. The appellant claimed the benefit of exemption Notification No. 57/2017-Cus dated 30.06.2017 as amended by Notification No. 22/2018-Cus dated 02.02.2018 (S. No. 18). This exemption notification exempted all goods falling under customs tariff heading 8518 except "the following parts of cellular mobile phones, namely, microphone, wired headset, receiver" in excess of 10%.

2. In other words, goods covered by this exemption notification were leviable to basic customs duty of only 10 %. The appellant claimed the benefit of this exemption notification in its self-assessment of duty.

1 The appellant

3. During the post audit clearance conducted by the Department, it was felt that the appellant was not entitled to the benefit of this exemption notification because the earphones were "wired headset" and were parts of cellular mobile phones and hence were excluded from S. No. 18 of the Exemption Notification. It was felt that the appellant had to pay duty at the tariff rate of 15%. Show cause notices were issued to the appellant proposing recovery of the differential duty along with interest and imposition of the penalty. In the order dated 12.02.2020 the Principal Commissioner party dropped the demand insofar as it pertained to earphones CX 180 (which do not have microphone) but confirmed the demand on earphones CX 275s (which have microphones) holding that CX 275s is a wired headset and hence is not eligible for the benefit of the exemption notification. He also refrained from imposing any penalty. In the order dated 01.06.2020 also the demand was partly dropped but penalty of Rs. 4,53,744/- was imposed under section 112 of the Customs Act. The details of these two cases are as below:

Appeal No.	OIO	SCN	Relevant Period	Demand proposed	Demand confirmed along with interest	Demand dropped	Penalty imposed
C/50983/2020 -CU-DB	06/2020-MKS/Pr. Comm/IC D- Import/T KD/dated February 12,2020	09/Commr./T BA3/2019 dated September 13, 2019	June 2018 to December 2018	1,05,08,909/-	28,16,946/-	76,91,963/-	Not penalty imposed
C/51056/2020 -CU-DB	VIII(HQ) 01/Imp/Adj/Senn heiser/64 /19 dated June 01, 2020	VIII(NCH)AUD IT/CIRCLE- 1/CL- 19/SEIPL/2018/7387 dated August 07, 2019.	February 2018 to March 2019	1,74,55,202/-	45,37,438/-	1,29,17,764/-	4,53,744/- under S. 112 of the Act.

4. On behalf of the appellant the following submissions have been made:

- (i) The goods in question are not parts of cellular mobile phones. According to the Black's law dictionary, part means "an integral portion, something essential belonging to a larger whole; that which together with another or others makes it a whole, a portion, share or purport." It has been held by various courts that term part means something which is integral and essential to a larger whole. Earphones CX 275s are not parts but are standalone products and have been imported and sold independently. They are not designed specifically for any smart phone. Although they are compatible with smart phones, they can also be used with other gadgets such as laptops, i-pods, desktop computer, MP players, gaming equipment, i-pad etc., so long as they have a compatible audio port for the jack. Functionality of the earphones does not depend on the mobile phones nor are the cellular mobile phones dependent on the earphones for their functions. Therefore, earphones cannot be considered as parts of the cellular mobile phones. Reliance is placed on the following case laws:

- (a) **CCE, Delhi vs. Insulation Electrical (P) Ltd.** ².

2 2008 (224) ELT 512 (SC)

(b) Chemplast sanmar Ltd. Vs. CC (Import), Chennai³.

(ii) Earphones qualify as accessories to cellular mobile phones because they are not a part but they enhance the enjoyment of mobile phones. Anything which is not a part but which adds value and utility to the device is an accessory. Reliance is placed on the following case laws:

(a) State of Punjab vs. Nokia India Pvt Ltd. ⁴

(b) Nicco Corporation Ltd. Vs. Commissioner of C. Ex., Calcutta⁵

(c) Commissioner of Cus, New Delhi vs. C-Net Communication (I) Pvt Ltd.⁶

(d) Mehra Bros. vs. The Joint Commercial Officer, Madras, ⁷

(e) Pragiti Silicon v. CCE,⁸

(f) Annapurna Carbon Industries co. Vs. State of Andhra Pradesh, ⁹

(iii) Accessories have been separately excluded in S. Nos. 10 and 12 of the same exemption notification which exclude some parts or sub-parts or accessories of cellular phones. Earphones have not been excluded under either of these entries.

(iv) In view of above, both appeals may be allowed and the impugned orders may be set aside.

3 2018 (364) ELT 345, CESTAT
4 2015 (315) ELT 162 (SC)
5 2006 (203) ELT 362 (SC)
6 2007 (216) ELT 337 (SC)
7 (1991) 1 SCC 514
8 (2007) 9 SCC 470
9 (1976) 2 SCC 273

5. On behalf of the Department the following submissions were made.

- (i) Any exemption notification must be strictly construed and any benefit of doubt must be given to the Revenue and not to the assessee. In entry at S. No. 18 of the exemption notification, wired headset has specifically been excluded and earphone model CX 725s is earphone with an in-built microphone and thus it qualifies as wired headset. The term part of cellular mobile phone is used in the exemption notification in a very general sense and, therefore, any further technical interpretation to distinguish between parts and accessories is neither required nor relevant.
- (ii) In subsequent bills of entry, the appellant added the word "other than parts of mobile phone" in the description of earphones model CX 275s. This description is not consistent with the supplier's invoices. It is, therefore, prayed that the appeals may be rejected and the impugned order may be upheld.

6. We have gone through the records of the case and considered the submissions made on both sides.

7. The short point to be decided as to whether the earphones CX 275s imported by the appellant are a "part of cellular mobile

phones” and “wired headset” and thereby get excluded from the benefit of the exemption Notification No. 57/2017-Cus dated 30.06.2017 as amended by Notification No. 22/2018-Cus at S. No. 18 or not. It is undisputed that earphones CX 275s have two speakers for the ears and an inbuilt microphone. It is also not in dispute that CX 275s can be used with the cell phone. There is nothing on record to show that it cannot be used with any other device. It is common knowledge that earphones with microphone can be used with laptop, i-pad, desktop, i-pod, mobile phone etc., and they perform the same function of providing audio output through the speakers and receiving audio input through the microphone from device they are attached to. The utility of the earphones is limited by the compatibility of the jack with the port on the device. So long as the jack is compatible, the same earphone can be used with tablet, cell phone, gaming devices etc. Therefore, earphone utility of the earphone is not confined to cellular mobile phone.

8. On the other hand mobile phones are often used without earphones. Thus, the earphones are neither a part of nor are they essential to use a mobile phone. They only add additional utility. Therefore, the earphone will qualify as an accessory which can be used with cellular mobile phone as well as other electronic devices. When used with the cellular mobile phone, it will be an accessory to mobile phone but will not be its part. Therefore, the submission of the learned counsel for the appellant that earphones are not parts of cellular mobile phones must be accepted. Entry at S. No. 18

exempts all goods falling under CTH 8518 other than some parts of the cellular mobile phone. It is true that wired headset as commonly used is not a part of a cellular mobile phone. The same exemption notification has used the expression "parts or sub-parts or accessories to cellular mobile phone" in entry nos. 10 and 12 and parts of cellular mobile phone in entry no. 18. The two expressions should be considered as distinct and different. We, therefore, are unable to accept the submission made on behalf of the Revenue that the word "parts" in entry no. 18 is used in a general sense and should be treated as including the earphones. What is evident from the entry no. 18 is that only such microphones, wired headsets and receivers as are parts of cellular mobile phones get excluded from the exemption notification and all other goods falling under CTH 8518 are exempted. Earphones CX 275s imported by the appellant, while being earphones, are clearly not parts of any mobile phone.

9. Reliance has been placed by the Department on the judgment of Supreme Court in case of **Commissioner of Customs (import) Mumbai vs. Dilip Kumar and Company**¹⁰ to argue that the exemption notification should be interpreted strictly and ambiguity in the exemption notification must be interpreted in favour of the Revenue. In this case, we find no ambiguity in the expression used in the Notification. Only some parts were excluded from the exemption and the accessories were not excluded from the exemption. It also needs to be noted that the earphones CX 275s can be used with variety of devices including cellular mobile phones

10 2018 (361) ELT 577 (SC)

and it, therefore, cannot be considered as part in any of the devices including cellular mobile phone.

10. We also find that in **Dilip Kumar and Company**, the Supreme Court did not completely rule out the possibility of liberal interpretation of an exemption notification but affirmed its previous decisions in **Parle Exports**¹¹ and **Hari Chand**¹² that strict and liberal interpretations of the notification should be applied at different stages. To see if the subject is covered by the notification or not, strict interpretation should be applied and once this ambiguity or doubt is resolved, the Court may construe the notification by giving full play bestowing wider and liberal construction. Relevant paragraphs of this judgment are as follows:

“ **45.** In *Parle Exports* case (supra), a Bench of two-Judges of this Court considered the question whether non-alcoholic beverage base like Gold spot base, Limca base and Thumps Up base, were exempted from payment of duty under the Central Government notification of March, 1975. While considering the issue, this Court pointed out the strict interpretation to be followed in interpretation of a notification for exemption. These observations are made in para 17 of the judgment, which read as follows:

“How then should the Courts proceed? The expressions in the Schedule and in the notification for exemption should be understood by the language employed therein bearing in mind the context in which the expressions occur. The words used in the provision, imposing taxes or granting exemption should be understood in the same way in which these are understood in ordinary parlance in the area in which the law is in force or by the people who ordinarily deal with them. It is, however, necessary to bear in mind certain principles. The notification in this case was issued under Rule 8 of the Central Excise Rules and should be read along with the Act. The notification must be read as a whole in the context of the other relevant provisions. When a notification is issued in accordance with power conferred by the statute, it has statutory force and validity and, therefore, the exemption

11 **Collector v. Parle Exports (P) Ltd. — 1988 (38) E.L.T. 741 (S.C.)**
12 **Commissioner v. Hari Chand Shri Gopal — 2010 (260) E.L.T. 3 (S.C.)**

under the notification is as if it were contained in the Act itself. See in this connection the observations of this Court in *Orient Weaving Mills (P) Ltd. v. Union of India*, 1962 Supp 3 SCR 481 = AIR 1963 SC 98. See also *Kailash Nath v. State of U.P.*, AIR 1957 SC 790. The principle is well-settled that when two views of a notification are possible, it should be construed in favour of the subject as notification is part of a fiscal enactment. But in this connection, it is well to remember the observations of the Judicial Committee in *Coroline M. Armytage v. Frederick Wilkinson*, (1878) 3 AC 355, that it is only, however, in the event of there being a real difficulty in ascertaining the meaning of a particular enactment that the question of strictness or of liberality of construction arises. The Judicial Committee reiterated in the said decision at page 369 of the report that in a taxing Act provisions enacting an exception to the general rule of taxation are to be construed strictly against those who invoke its benefit. While interpreting an exemption clause, liberal interpretation should be imparted to the language thereof, provided no violence is done to the language employed. It must, however, be borne in mind that absurd results of construction should be avoided."

In the above passage, no doubt this Court observed that "when two views of a notification are possible, it should be construed in favour of the subject as notification is part of fiscal document". This observation may appear to support the view that ambiguity in a notification for exemption must be interpreted to benefit the subject/assessee. A careful reading of the entire para, as extracted hereinabove would, however, suggest that an exception to the general rule of tax has to be construed strictly against those who invoke for their benefit. This was explained in a subsequent decision in *Wood Papers Ltd.* case (supra). In para 6, it was observed as follows :

"... In *Collector of Central Excise v. Parle Exports (P) Ltd.*, (1989) 1 SCC 345, this Court while accepting that exemption clause should be construed liberally applied rigorous test for determining if expensive items like Gold Spot base or Limca base of Thums Up base were covered in the expression food products and food preparations used in Item No. 68 of First Schedule of Central Excises and Salt Act and held 'that it should not be in consonance with spirit and the reason of law to give exemption for non-alcoholic beverage basis under the notification in question'. Rationale or ratio is same. **Do not extend or widen the ambit at stage of applicability. But once that hurdle is crossed construe it liberally. Since the respondent did not fall in the first clause of the notification there was no question of giving the clause a liberal construction and hold that production of goods by respondent mentioned in the notification were entitled to benefit.**"

46. The above decision, which is also a decision of two-Judge Bench of this Court, for the first time took

a view that liberal and strict construction of exemption provisions are to be invoked at different stages of interpreting it. The question whether a subject falls in the notification or in the exemption clause, has to be strictly construed. When once the ambiguity or doubt is resolved by interpreting the applicability of exemption clause strictly, the Court may construe the notification by giving full play bestowing wider and liberal construction. The ratio of *Parle Exports* case (supra) deduced as follows :

“Do not extend or widen the ambit at stage of applicability. But once that hurdle is crossed, construe it liberally”.

47. We do not find any strong and compelling reasons to differ, taking a *contra* view, from this. We respectfully record our concurrence to this view which has been subsequently, elaborated by the Constitution Bench in *Hari Chand* case (supra).

(emphasis supplied)

11. In this case, clearly, all goods falling under CTH 8518 are exempted by S. No. 18 of the notification excluding some ‘parts of the cellular mobile phones’ including ‘headsets’. Clearly, S. No. 18 does not exclude all earphones but only headsets which are parts of cellular mobile phones. The earphones in dispute CX 275s are not parts of any mobile phone but are accessories which can be used with a variety of electronic gadgets including cellular mobile phones. Even for this reason, the benefit of the exemption notification cannot be denied to earphones CX 275s imported by the appellant.

12. The demand of duty in the impugned orders cannot, therefore, be sustained and need to be set aside. Consequently, the penalty imposed in one of the order dated June 1, 2020 also need to be set aside.

13. In view of above, we find that impugned orders cannot be sustained and needs to be set aside and we do so.

14. Both appeals are allowed and impugned orders are set aside with consequential relief to the appellant.

[Order pronounced on **19/07/2023**]

(DR. RACHNA GUPTA)
MEMBER (JUDICIAL)

(P V SUBBA RAO)
MEMBER (TECHNICAL)