

**IN THE CUSTOMS, EXCISE AND SERVICE TAX
APPELLATE TRIBUNAL
WEST ZONAL BENCH, AHMEDABAD**

Appeal No. C/287/2010-DB

**Arising out of OIA-37/2010/CUS/COMMR-A-/AHD, Dated:
22.03.2010**

Passed by Commissioner of Customs Ahmedabad

Date of Hearing: 11.03.2019

Date of Decision: 27.03.2019

**M/s MODERN COMMUNICATION AND BROADCAST
SYSTEMS PVT LTD**

Vs

**COMMISSIONER OF CUSTOMS
AHMEDABAD**

Appellant Rep by: Mr H Ganguly, Adv.

Respondent Rep by: Mr T K Sikdar, AR

CORAM: Ramesh Nair, Member (J)

Raju, Member (T)

Cus - This appeal has been filed by assessee against demand of Customs duty by changing classification of product declared by importer under Chapter Heading 852520 to heading 8528 of Customs Tariff Act, 1975 - The product has been described as digital set top box - It is not disputed that the set top box has function of receiving signals and sending the same to other devices for use - The lower authorities have relied on original opinion of SAC but discarded the clarification on the ground that it was given only on the strength of data sheet - It is not proper to discard the clarification merely for that reason - Data sheet of equipment is a vital piece of evidence in itself - The matter was remanded directing lower authorities to

examine the evidence that assessee produce - The assessee has produced Test Certificate of Electronics and Quality Development Centre - This has been discarded without any reasons - This test reports essentially echo's the revised clarification opinion of SAC - Thus, the issue regarding presence of transmission facility in imported product has not disputed even in the original proceeding - The rejection of second opinion of the SAC on the ground that it was based solely on the data sheet is misplaced - Moreover, set top box, inherently functions by receiving signals from satellite and transmission of same to other devices for display or use - The clarification report of SAC is further supported by test report of Electronics and Quality Development Centre - Even the report of Ministry of Communication and Information Technology support the fact that the set top box has reception and transmission apparatus - No merit found in impugned order and the same is set aside: CESTAT

Appeal allowed

Case law cited:

Multi Screen Media Pvt. Ltd. - 2015-TIOL-169-SC-CUS...Para 4

FINAL ORDER NO. A/10597/2019

Per: Raju:

This appeal has been filed by M/s. Modern Communication And Brodcasting Systems P Ltd against demand of Customs duty by changing the classification of the product declared by importer under Chapter Heading 852520 to heading 8528 of the Customs Tariff Act, 1975.

2. Ld. Counsel for the appellant pointed out that earlier the matter was remanded by Tribunal for examination of fresh evidence produced. The appellants were required to

produce evidence from VJTI and DOE and matter was remanded for that purpose. However in remand proceedings no such evidence was produced.

3. Ld. Counsel pointed out that the SCN is based on the opinion of SAC. He argued that the revised opinion of SAC has not been properly considered in the first set of proceeding and even in the impugned order. The appellant also produced the certificate of Electronics and quality development centre established by Government of Gujarat which reads as follows.

To Whom It May Concern

TEST CERTIFICATE

This is to certify that product detailed below and provided by M/s. MCBS was tested & physically Verified with Technical Specification Sheet for modulated RF output.

From the data sheet it is clear that the said equipment is a digital satellite receiver with a built in modulator, which provides modulated RF output from 47MHz to 860 MHz. The basic function of modulator is to carry out transmission function. Thus, DDK 5000 is a Satellite Receiver with transmission function.

<i>Nomenclature: Digital set top Box</i>	<i>Make:Besat</i>
<i>Model:DDK 5000</i>	<i>Serial No. 030806762</i>
<i>Date of Testing: 02/06/2010</i>	<i>Issue Date: 04/06/2010</i>

4. He also relied on the decision of the Hon'ble Apex Court on *Multi Screen Media Pvt. Ltd.-2015 (322) ELT 421 (S.C)* = **2015-TIOL-169-SC-CUS**.

5. Ld. AR relies on the impugned order.

6. We have gone through the rival submissions. We find that the product has been described as digital set top box. We find that the first order in original was passed on the issue relying on the decision of the Commissioner conference held at Chennai on 21st & 22nd January, 2000 which clarified as follows:

"The satellite receiver being a reception apparatus for television is correctly classifiable under CTH 8528.12. The satellite receiver receives the satellite TV signals beamed towards the earth in a process known as down linking. The down linked signals are collected by the dish and sent to the LNB down converter. Satellite receiver receives the amplified down converted frequency signals from the LNB down converter and arranges channels for each wave, thus acting as a channel selector or tuner. It also contains a unit for the reception of remote control signals to channels. This unit is connected to the television set by a cable at the aerial position. The receiver may or may not be combined with a decoder in a single unit. Therefore, it is clearly a reception apparatus for television having no transmission function and is, therefore, approximately classifiable under CTH 8528.12."

While doing so the opinion of SAC (Space Application Centre) was discarded. The revised opinion has been discarded on the ground that it is based on data sheet which was provided by the importer, the said order does not dispute that the device does not have reception as well as transmission functions. The impugned order essentially is repetition of arguments in earlier proceedings. The main reason is that the appellants have failed to produce any fresh evidence, as stated by them before Tribunal when the matter was remanded.

7. Now we are back to the situation we were when the matter was earlier remanded. However meanwhile the

Hon'ble Apex Court had an occasion to examine the issue in the case of *Multi Screen Media Pvt. Ltd.- 2015 (322) ELT 421 (S.C) = 2015-TIOL-169-SC-CUS*. In the said case following has been observed.

"The issue involved in the present appeal pertains to the correct classification that is to be given to the goods of the respondent-assessee herein which are known as 'business satellite receivers'. The two relevant and competent entries in this behalf are 85.25 and 85.28. Whereas the case of the assessee is that the goods in question are to be classified in Chapter Heading entry 8525.20, the Revenue contends that the appropriate entry would be 8528.10. Both these entries are reproduced below :-

85.25			85.28		
<i>Transmission apparatus for radiotelephony, radio-telegraphy, radiobroadcasting or television whether or not incorporating reception apparatus or sound recording or reproducing apparatus, television cameras, still image video cameras and other video camera recorders.</i>			<i>Reception apparatus for television, whether or not incorporating radiobroadcast receivers or sound or video recording or reproducing apparatus, video monitors and video projectors reception apparatus for television, whether or not incorporating radiobroadcast receivers nor sound or video recording or reproducing apparatus.</i>		
8525.10	Transmission apparatus	25%	8528.12	colour	35%
8525.20	Transmission apparatus	25%	8528.13	Black and White or	35%

	<i>Incorporating reception Apparatus</i>			<i>other monochrome video Monitors</i>	
<i>8525.30</i>	<i>Television Cameras</i>	<i>35%</i>	<i>8528.21</i>	<i>Colour</i>	<i>35%</i>
<i>8525.40</i>	<i>Still image video camers and other video camera recorders</i>	<i>35%</i>	<i>8528.22</i>	<i>Black and white or other monochrome</i>	<i>35%</i>
			<i>8528.30</i>	<i>Video projector</i>	<i>35%</i>

2. It is not in dispute that the 'business satellite receivers' of the respondent has the transmitting as well as reception functions. It is for this reason that the assessee's contention is the goods fall within the description 'transmission apparatus incorporating reception apparatus'. Mr. Adhyaru, learned senior counsel appearing for the Revenue on the other hand contends that it is the essential character or per-dominant character of the apparatus which needs to be looked into and in the present case the per-dominant character of the satellite receiver is to receive the signals and then transmit. He has taken us through the product manual of the respondent from which he has tried to demonstrate that primary function of the goods in question is to receive the signals.

3. We are not in agreement with the aforesaid submission of the learned counsel for the Revenue. A reading of Entry 85.28, under which the Revenue wants the product to be included, would show that it pertains to only those apparatus which have the function of receiving the signals only and that they are reception apparatus. The moment particular apparatus has transmission function

as well that would be excluded from Chapter Heading 85.28. On the other hand Chapter Heading 85.25 deals with transmission apparatus. Here under entry 8525.20 what is clarified that even if the apparatus which are transmitting signals have the additional functions of reception of signals as well, such goods will still be classified 8525.20. We are therefore of the opinion that the Tribunal has rightly classified the goods of the respondent under 8525.20.

4. The Commissioner, who had taken the contrary view, went by Rule 2(b), that is the classification of combination substance, and on that basis he held that since the goods were classifiable under two or more headings, classification shall be effected as per the said Rule. This itself is incorrect having regard to the fact that entry 85.28 deals only with reception apparatus with no function as transmission apparatus."

The facts need to be examined in light of above decision. It is not disputed that the set top box has the function of receiving signals and sending the same to other devices for use. The lower authorities have relied on the original opinion of the SAC but discarded the clarification on the ground that it was given only on the strength of data sheet. We find that it is not proper to discard the clarification merely for that reason. Data sheet of equipment is a vital piece of evidence in itself. The matter was remanded directing lower authorities to examine the evidence that appellants produce. The appellants has produced Test Certificate of Electronics and Quality Development Centre, Government of Gujarat (reproduced in para 3 above). This has been discarded without any reasons. This test reports essentially echo's the revised clarification opinion of SAC.

8. Thus, the issue regarding presence of transmission facility in the imported product has not disputed even in the original proceeding. The rejection of second opinion of

the SAC on the ground that it was based solely on the data sheet is misplaced. The data sheet of the product contains all the necessary information. Moreover, set top box, inherently functions by receiving signals from satellite and transmission of the same to other devices for display or use. The clarification report of SAC is further supported by the test report of Electronics and Quality Development Centre, Government of Gujarat. Even the report of the Ministry of Communication and Information Technology dated 24.11.2004 support the fact that the set top box has reception and transmission apparatus in following words.

"The items imported by M/s. Modern Communication and Broadcast Systems Pvt. Ltd. Gandhinagar are Integrated Receiver Decoder, also known as Set Top Box for satellite applications and comprise of the following:

i) Tuner or Front end which receives QPSK modulated L band signals (950-2150 MHz) from LNBF (Low noise block down converter) and converts into I.F frequency and demodulates into MPEG-2 transport streams (Digital signal).

ii) The Decoder in IRD carries out the function of decoding the MPEG-2 digital transport streams and provides video/audio analogue signals for use in TV sets. This function is carried out by MPEG-2 decoder chip in the IRD."

In view of above we do not find any merit in impugned order and the same is set aside. The appeal is allowed.

(Pronounced in the open court on 27.03.2019)