CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI.

PRINCIPAL BENCH,
COURT NO. IV

CUSTOMS APPEAL NO. 50484 OF 2021

[Arising out of the Order-in-Original No. 62/2020-21/C.J./Principal Commissioner dated 23/02/2021 passed by Principal Commissioner of Customs, Air Cargo Complex (Import), New Delhi.]

M/s Samsung India Electronics Pvt. Ltd. **...Appellant**
B-1, Sector 81, Phase – II,
Noida, Uttar Pradesh – 201 305.

Versus

Principal Commissioner of Customs, **...Respondent**
Air Cargo Complex (Import),
New Customs House, Near I.G.I. Airport,
New Delhi – 110 037.

APPEARANCE:

Shri B.L. Narasimhan, Ms. Nupur Maheshwari, Shri Siddharth Indrajit, Advocates and Shri Harshdeep Khurana, Chartered Accountant for the appellant.
Shri Mihir Ranjan, Special Counsel for the Department

CORAM:
HON'BLE DR. MS. RACHNA GUPTA, MEMBER (JUDICIAL)
HON'BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)

FINAL ORDER NO. 51665/2023

DATE OF HEARING : 06.07.2023
DATE OF DECISION : 20.12.2023

P.V. SUBBA RAO

M/s Samsung India Electronics Pvt. Ltd.[1] filed this appeal to assail the order-in-original dated 23.02.2021 passed by the Principal Commissioner of Customs, Air Cargo Complex, New Delhi, whereby he confirmed the demand of differential duty of

[1] appellant

Rs. 62,44,28,858/- on the appellant and imposed penalty of Rs. 6,00,00,000/- under Section 112 (a) (ii) of the Customs Act, 1962[2] for the period 06.02.2018 to 21.12.2019. The appellant imported various parts and sub-parts or accessories of cellular mobile phones, self-assessed and paid duty and cleared them. During post clearance audit, it appeared to the Department that the back covers, front covers and middle covers of the cellular phones, which were classified by the appellant under CTH 85177090 deserve to be classified under CTH 39209999 instead and accordingly the differential duty needs to be paid by the appellant. Audit issued a consultative letter dated 01.02.2020 but the issue could not be resolved through consultations. Thereafter, a show cause notice[3] dated 19.02.2020 was issued by the Principal Commissioner of Customs, Air Cargo Complex, New Delhi proposing to reclassify the front covers, middle covers and back covers of the cellular phones under 39209999 and recover the differential duty along with interest. It was also proposed to confiscate the goods under Section 111 (m) of the Customs Act, 1962 and impose penalty under Section 112 (a) (ii) of the Customs Act, 1962.

2. The three grounds on which the SCN proposed to reclassify the goods are as follows :-

> (i) the goods 'Battery cover, Front cover, Middle cover, Back Cover and Camera Lens' (which are part/sub-part or accessories of cellular mobile phones) are classifiable under CTH 39209999 and attract BCD @ 15% in terms of S. No. 10 of notification No. 57/2017-Cus dated 30.06.2017, as amended ;

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[2] Act
[3] SCN

(ii) Chapter note 10 under chapter 39 of CTA mentions that in heading 3920 and 3921, 'the expression plates, sheets, film, foil and strip applies only to plates, sheets, film, foil and strip (other than those of chapter 54) and to blocks of regular geometrical shape, whether or not printed or otherwise surface worked uncut or cut into regular rectangles but not further worked even if when cut they became articles for ready use,

(iii) As per the policy notified by the Ministry of electronics and information technology (MeITY) by Notification F. No. 33 (5) 2017 – IPHW dated 01.08.2018, the front covers, middle covers and back covers are classifiable under HS Code 39209999.

3. The ground for proposing confiscation of the imported goods is that Section 111 of the Act provides for confiscation of various categories of goods. Clause (m) of this section provides for confiscation of "any goods which do not correspond in respect of value or in any other particular with the entry made under this Act or in the case of baggage with the declaration made under Section 77 in respect thereof, or in the case of goods under transshipment, with the declaration for transshipment refer to in the proviso to sub-section (i) of Section 54". According to the SCN, the appellant had misclassified the goods to evade customs duty which is recoverable from them under Section 28 (1) (a) and the imported goods were liable for confiscation because the appellant had mis-declared their classification.

4. According to the SCN, since the appellant had misclassified the goods which rendered them liable to confiscation the appellant thereby rendered itself to penalty under Section 112 (a) (ii).

5. The appellant contested the proposals to reclassify the goods, recover the differential duty, confiscate the imported goods and impose penalty. Thereafter, the Principal Commissioner passed the impugned order the operative part of which is as follows :-

> "(i) I reject the claim seeking classification of the imported goods namely battery cover, front cover, back cover, under CTH 85177090 and order that the goods, being articles of plastic, be classified under CTH 39209999 in respect of the Bills of Entry filed/presented by M/s Samsung India Electronics Pvt. Ltd. during the period
>
> (ii) I hereby confirm the demand of Customs duty to the tune of Rs. 62,44,28,858/- (Rs. Sixty Two Crore forty Four Lakh Twenty Eight Thousand Eight Hundred and fifty Eight only) on the impugned goods imported by M/s Samsung India Electronics Pvt. Ltd. against the Bills of Entry as mentioned in Annexure – A to D to the SCN under Section 28 (1) of the Customs Act, 1962.
>
> (iii) I drop the demand of Rs. 24,15,22,593/- (Rs. Twenty Four Crore Fifteen Lakhs Twenty Two Thousand five Ninety Three only) in terms of the findings at para 11.10 and 11.11.1 above.
>
> (iv) I hold that interest under Section 28AA of the Customs Act, 1962 is payable in this case by M/s Samsung India Electronics Pvt. Ltd. on the demand as confirmed at (ii) above from the due date till the duty is paid in accordance with law.
>
> (v) I hold that the goods imported and already cleared by M/s Samsung India Electronics Pvt. Ltd. against the Bills of Entry as listed in Annexure – A, C & D to the show cause notice totally valued at Rs. 367,31,62,198/- (Rs. Three Hundred Sixty Seven Crore Thirty One Lakh Sixty Two Thousand One Hundred and Ninety Eight only) are liable for confiscation under Section 111 (m) of the Customs Act, 1962. However, as the goods have already been cleared for home consumption and not available for confiscation, I refrain from imposing redemption fine under the provisions of Section 125 of the Customs Act, 1962.
>
> (vi) I impose a penalty of Rs. 6,00,00,000/- (Rs. Six crore only) upon M/s Samsung India Electronics Pvt. Ltd. under Section 112 (a) (ii) of the Customs Act, 1962".

6. Aggrieved, the appellant filed this appeal. The following submissions were made on behalf of the appellant:-

> (i) They imported front covers, middle covers and back covers of cellular phones which house various components of the phone and also provide for

dissipation of the heat. The details of these types of covers are as follows :-

"**Back Cover"**: This help in providing safety to the battery and internal components. They provide ingress protection, structural support and save internal PCB, sub-components and battery from dust, moisture and other foreign particles. When PCBs or battery is exposed to such particles, it gets damaged resulting in malfunctioning of mobile phone. In some models, they are also layered with zinc, aluminium and other metallic alloys for heat dissipation. It may also have rubber gasket and glass for sealing the camera lens.

Front Cover: This is the basic structure wherein the camera, buttons, infrared sensors, amongst others are embedded.

Middle Cover: It is layered with zinc and provides housing and protection to sub-parts. The layering helps in heat dissipation.

(ii) These phone covers, in general, undergo similar process of manufacturing before import by the Appellant. The processes are as under:

a. **Extrusion**: Two layers of Polymethyl Methacrylate (PMM) and Polycarbonate (PC) are layered using extrusion machine to form a sheet of thickness of 0.64 mm.

b. **Printing**: In this step, various forms of printing take place on the sheet. This includes Logo Silk Print, Offset Print, and Nano Pattern Imprinting.

c. **Physical Vapor Disposition (PVD)** : This step takes place in a high vacuum chamber to form a thin film coating. This is akin to lamination to give desired finish to the back cover.

d. **Second set of Printing**: In this stage, the resultant sheet undergoes two kinds of color silk print and dyne silk print. This is dependent upon specific models.

e. **Hard coating**: In this step, the sheet is layered, levelled and UV dried.

f. **Thermoforming**: Thereafter, the resultant sheets undergo thermoforming process, wherein by a process of vacuum and air pressure, the sheet is pulled over a solid mold to obtain desired shape. This gives grooves and ground edges to the uncut phone cover to enable such a cover to be clipped to the specific phone for which it is made so that the phone is protected from dust and moisture.

g. **CNC Milling**: In this step, specific cuts, speaker grills, and other compartments, are milled in the cover, thereby giving it final shape.

(iii) These three covers have been correctly classified under CTH 85177090 as these are parts of mobile phones and not merely articles of plastic. Hence, there was no misclassification at all as held in the impugned order.

CTH 3920 covers "other plates, sheets, film, foil and strip of plastics, not cellular and not re-imposed, laminated, supported a similarly by with other materials". Chapter note 10 to Chapter 39 reads as follows :-

> "10. In headings 3920 and 3921, the expression "plates, sheets, film foil and strips" applies only to plates, sheets, film, foil and strip (other than those of Chapter 54) and to blocks of regular geometric shape, whether or not printed or otherwise surface-worked, uncut or cut into rectangles (including squares) but not further worked (even if when so cut they become articles ready for use)."

(iv) It is evident from this chapter note that for any goods fall under 3920 must be plastic sheets or plates etc. of regular geometric shades should not be reinforced or laminated with other materials. In this case the middle cover is laminated with zinc and hence clearly gets excluded from CTH 3920. The use of these metals not only enhanced the strength of the plastic, but also helps in dissipations of the heat.

(v) Further, for the goods to fall under 3920 they should not be further worked. The phone covers in their case have ground edges, thermo framed with grooms, drilled and CNC milled and, therefore, they do not qualify as goods "not further worked". These submissions were made before the Commissioner, but were ignored.

(vi) The phone covers were correctly classifiable under CTH 85177090 in view of section note (ii) to Section XVI which provides for classification of the parts of the goods falling under chapter 85. Part is defined as one without which a machine is not operational or does not suitably discharge its function. Thus the parts can were firm either for electronic function or a mechanical one. In this case, the front covers, middle covers and back covers of cellular phones performed mechanical function as well as provide for heat dissipations. The covers also protect the parts from dust, moisture etc. The correctly merit classification under which reads as follows :-

Chapter 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**

	- Telephone sets, including telephones for cellular networks or for other wireless networks :
8517 11	--
8517 11 10	--
8517 11 90	--
8517 12	--
8517 12 10	--
8517 12 90	--
8517 18	--
8517 18 10	--
8517 18 90	--
8517 61 00	--
8517 62	--
8517 62 10	--
8517 62 20	--
8517 62 30	--
8517 62 40	--
8517 62 50	--
8517 62 60	--
8517 62 70	--
8517 62 90	--
8517 69	--
8517 69 10	--
8517 69 20	--
8517 69 30	--
8517 69 40	--
8517 69 50	--
8517 69 60	--
8517 69 70	--
8517 69 90	--
8517 70	- Parts
8517 70 10	-- Populated, loaded or stuffed printed circuit boards
8517 70 90	-- Others

(vii) Reliance is also placed on WCO Harmony System Company Session May 2022 which classified cover glass for the manufacture of a mobile phone, touch screen under 8517.70. Although WCS classification is not binding but it has highly persuasive value and may be considered.

(viii) Since, the Department has proposed to reclassified the goods the burden is on it to prove that the goods not fall under CTH 8517 and fall under CTH 39209999 and this burden has not been discharged by the Department.

7. The appellant has been importing these products for a long time and has been classifying them under 85177090 and the Department has been accepting this classification. In the case of **Bhagwati Products**, the Principal Commissioner of Customs, Chennai accepted the classification of similar products under

85177090. The only difference between the case of Bhagwati Products they were described as front housing, back housing, etc. and in this case the appellant called them front cover, back cover etc., but they are essentially the same. This order of Principal Commissioner of Customs, Chennai in Bhagwati Products numbered in order-in-original No. 24/2020-AIR dated 13.01.2020 has been accepted by the Department as confirmed by the Assistant Commissioner of Customs letter dated 25.07.2023.Therefore, in the appellant's case the Department should not be permitted to take a different stand. For this reason also, the demand is not sustainable and needs to be set aside. After the hearing, the learned Counsel for the appellant made some additional written submissions as follows :-

> Notification No. 57/2017-CUS dated 30.06.2017 and the Meity notification dated 14.09.2017 cannot form the basis of classification of the goods. Classification has to be only based on the customs tariff readwith the general interpretative rules. Reliance is placed on **Commissioner of Central Excise, Bombay versus Oswal Petro Chemicals Ltd.**[4] which was affirmed by the Supreme Court[5].

8. On behalf of the Department, learned Special Counsel made the following submissions:-

(i) The phone covers are correctly classifiable under CTH 39209999 as held by the Principal Commissioner in the impugned order. They are made of plastic and the sub-components are embedded at proper places in the front cover and back cover. The purpose of the back cover is to reduce the amount of dust on battery terminals and it is also made of plastic. The middle cover fixes the inner components and protects the battery from moisture and dust and it is also made of plastic, therefore, the impugned order was

[4] **2000 (126) E.L.T. 1232 (Tri.)**
[5] **2007 (127) E.L.T. 857 (S.C.)**

correct in holding that they are classifiable under CTH 39209999. These three covers do not contribute to the functionality of the mobile per-se and, therefore, do not deserve to be classified as parts of the mobile phones and should be classified under Chapter 39. He placed reliance on the following case laws :-

Ipea Paramount Pvt. Ltd. versus Commissioner of C. Ex., New Delhi[6]

Commissioner versus Ilpea Paramount Pvt. Ltd.[7]

P.R. Packagings Pvt. Ltd. versus Commissioner of C. Ex., New Delhi – II[8]

Hariram Govindram versus Collector of Central Excise, Bombay[9]

Karnataka Power Corporation Ltd. versus Commr. of Cus., Chennai[10]

General Mills India Ltd. versus Commr. of Cus. (Import), JNCH, Nhava Sheva[11]

Atul Kaushik versus Commissioner of Customs (Export), New Delhi[12]

Towa Ribbons Pvt. Ltd. versus Collector of Customs[13]

Speedway Rubber Co. versus Commissioner of Central Excise, Chandigarh[14]

(ii) Each part of a machine does not merit being classified along with the machine or as its part under Chapter 85. As has been held in the above cases some parts or machine can also be classified under Chapter 39.

(iii) On the question of whether the specific entry should prevail over the general entry, since the impugned goods do not merit classification under 8517 at all and, therefore, the question of general or specific entry does not arise.

(iv) The products in this case and in of Bhagwati Products Ltd, in which the Principal Commissioner of Customs, Chennai held

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[6] **2002 (143) E.L.T. 632 (Tri. – Del.)**
[7] **2008 (228) E.L.T. A136 (S.C.)**
[8] **2002 (139) E.L.T. 495 (Tri. – Del.)**
[9] **1997 (94) E.L.T. 574 (Tribunal)**
[10] **2016 (337) E.L.T. 104 (Tri. – Chennai)**
[11] **2019 (368) E.L.T. 705 (Tri. – Mumbai)**
[12] **2015 (330) E.L.T. 417 (Tri. – Del.)**
[13] **1993 (66) E.L.T. 320 (Tri. – Del.)**
[14] **2002 (143) E.L.T. 8 (S.C.)**

that the front housing and part housing of a mobile phone deserve to be classified under CTH 85177090 are different. In this case, the appellant itself has declared them as front cover, middle cover and back cover not as housing and, therefore, the ratio does not apply.

(v) As far as the Notification No. 52/2017-CUS dated 30.06.2017, and the Meity Notification dated 01.08.2018 is concerned, these were relied upon only as supporting evidence and the goods, in question, have always been seen by the Government as filing under Chapter 39 and not as filing under chapter 85.

(vi) The Department is not estopped from raising the classification in a subsequent import even if the classification was wrongly accepted during the prior imports. He relies on the follows case laws :-

General Mills India Ltd. versus Commissioner of Customs (Import) JNCH, Nhava Sheva[15]

Fitrite Packers versus Commissioner of Central Excise, Mumbai – IV[16]

Assistant Commissioner of Central Excise Tiruchirapally versus Indian Hume Pipe Co. Ltd.[17]

(vii) The Department has duly discharged its responsibility in changing the classification and in confirming demands differential duty along with interest. The appellant mis-declared the classification of the goods and, therefore, they are liable for confiscation under Section 111 (m). Consequently, the penalty under Section 112 (a) has been correctly imposed upon the appellant.

(viii) The appeal may be dismissed.

9. We have gone through the records of the case and considered the submissions from both sides.

Findings

[15] **2019 (368) E.L.T. 705 (Tri. – Mumbai)**
[16] **2006 (203) E.L.T. 452 (tri. – Mum.)**
[17] **2009 (238) E.L.T. 230 (Mad.)**

10. We have perused the records of the case and considered the submissions made by both sides. The following inter-related issues arise for determination:

a) Are the front cover, middle cover and back cover of cellular mobile phones imported by the appellant classifiable under CTH 85177090 (as claimed by the appellant) or under CTH 39209999(as held in the impugned order)?

b) Can an exemption notification issued by the Government under Section 25 of the Customs Act determine the classification of the goods?

c) Can a scheme notified by the MeiTY determine the classification of the goods?

d) Is the differential duty recoverable from the appellant?

e) Is interest recoverable from the appellant?

f) Were the imported goods liable to confiscation under Section 111(m) (although they were not actually confiscated) because the classification of the imported goods in the Bill of Entry is, according to the Revenue, incorrect? Consequently, was the penalty under Section 112 imposed correctly?

11. Before examining the question of classification, we examine the above questions (b) to (f) above. For this purpose, it is necessary to examine the nature of the Customs duty and the legal provisions to determine and charge it, the role of classification and who can decide the classification. The charging

section, i.e., the section which empowers the Government to levy and collect duties of customs is Section 12 which reads as follows:

> **Section 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.

12. Thus, the taxable event, i.e., that event which triggers levy of customs duty is the act of importation (bringing into India from a place outside India) or exportation (taking to a place outside India from India) of goods. The levy is on the goods and not on any person and that levy will apply even if the goods belong to the Government.

Assessment

13. Customs duty is levied at such rates as are specified in the Schedules to the Customs Tariff Act, 1975. These rates can be based on quantity (specific rate of duty) or value (ad valorem rate of duty) and on most goods latter is the case. Based on the classification of the goods in the Schedule to the Customs Tariff Act, their value, exemption notifications, etc., the duty of customs has to be assessed.

14. Assessment is defined in Section 2(2) as follows:

> **Section 2. Definitions** -

In this Act, unless the context otherwise requires,

…..

(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 therefore 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 ;

15. Thus, classification of the goods under the Customs Tariff is a part of assessment. The next question is who can do this assessment. Section 17, reads as follows:

Section 17. Assessment of duty. -

(1) An importer entering any imported goods under Section 46, or an exporter entering any export goods under Section 50, shall, save as otherwise provided in Section 85, self-assess the duty, if any, leviable on such goods.

(2) The proper officer may verify the entries made under Section 46 or Section 50 and the self-assessment of goods referred to in sub-section (1) and for this purpose, examine or test any imported goods or export goods or such part thereof as may be necessary.

Provided that the selection of cases for verification shall primarily be on the basis of risk evaluation through appropriate selection criteria.

(3) For the purposes of verification under sub-section (2), the proper officer may require the importer, exporter or any other person to produce any document or information, whereby the duty leviable on the imported goods or export goods, as the case may be, can be ascertained and thereupon, the importer, exporter or such other person shall produce such document or furnish such information.

(4) Where it is found on verification, examination or testing of the goods or otherwise that the self- assessment is not done correctly, the proper officer may, without prejudice to any other action which may be taken under this Act, re-assess the duty leviable on such goods.

(5) Where any re-assessment done under sub-section (4) is contrary to the self-assessment done by the importer or exporter and in cases other than those where the importer or exporter, as the case may be, confirms his acceptance of the said re- assessment in writing, the proper officer shall pass a speaking order on the re-assessment, within fifteen days from the date of re-assessment of the bill of entry or the shipping bill, as the case may be.

Explanation. - For the removal of doubts, it is hereby declared that in cases where an importer has entered any imported goods under Section 46 or an exporter has entered any export goods under Section 50 before the date on which the Finance Bill, 2011 receives the assent of the President, such imported goods or export goods shall continue to be governed by the provisions of Section 17 as it stood immediately before the date on which such assent is received.

16. Thus, as per Section 17 the importer or exporter has to self-assess duty and the proper officer can re-assess the duty. Both the self-assessment by the importer (or, as the case may be, the exporter) and the re-assessment by the proper officer fall under the definition of assessment as per Section 2(2). If the proper officer re-assesses the goods, unless the importer accepts the re-assessment in writing, he has to give a speaking order. **Thus, the importer (or exporter) and the proper officer are competent to classify the goods and assess the duty payable on them.**

17. After the duty is assessed on the imported goods and the duty is paid, the proper officer clears the goods for home consumption under Section 46. Once this action is completed, they cease to be imported goods, they cease to be dutiable goods and the importer ceases to be the importer. Sections 2(14), 2(25) and 2(26) which explain this legal position read as follows.

> **2. Definitions**
>
> (14) "**dutiable goods**" means any goods which are chargeable to duty and **on which duty has not been paid;**
>
> (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. This process of self-assessment by the importer and re-assessment by the proper officer comes to an end once an order permitting the clearance of goods for home consumption is issued under Section 46. Thereafter, the goods cease to be imported goods or dutiable goods and no duty can be assessed. The only exception is when the goods are cleared for home consumption on provisional assessment in which case the assessment concludes after the assessment is finalized and an order is passed by the officer. Provisional assessment is not relevant to this appeal.

19. Assessment concludes the determination of the liability of the importer to pay duty and is similar to a decree under the Civil Procedure Code, 1908[18]. Section 2 (2) of CPC defines decree as "It means the formal expression of an adjudication which conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit." Assessment differs from decree inasmuch as the determination of what is due as Revenue by the importer is not made by a Court of law but is determined through a quasi-judicial process by the 'proper officer' who re-assesses the duty or is self-determined by the importer. Just like a decree in Civil suits, there is a provision for appeal against assessment. It is appealable by both sides to the Commissioner (Appeals) under section 128 and also to further higher judicial fora. The Commissioner (Appeals) does not assess but either affirms, modifies or annuls the assessment order. In

[18]**CPC**

this process, the Commissioner (Appeals) may also decide the issue of classification of the goods.

20. The Risk Management System[19] of the Customs Electronic Data Interchange[20]system clears many consignments of imported goods based on self-assessment by the importer without the proper officer ever getting an opportunity to examine the self-assessment and reassess the goods and this is one such case. In such cases, the Bills of Entry are subject to Post Clearance Audit[21] which happened in this case also. A question which arises is if a Bill of Entry which is only self-assessed by the importer without any re-assessment can it also be appealed against to the Commissioner (Appeals) under Section 128. The larger bench of the Supreme Court held in **ITC Ltd versus Commissioner of Central Excise Kolkata IV**[22] in the affirmative. The relevant portion of this judgment is as follows:

> **42. It was contended that no appeal lies against the order of self-assessment. The provisions of Section 128 deal with appeals to the Commissioner (Appeals).** Any person aggrieved by any decision or order may appeal to the Commissioner (Appeals) within 60 days. There is a provision for condonation of delay for another 30 days. The provisions of Section 128 are extracted hereunder:
>
> **"128. Appeals to [Commissioner (Appeals)].** — (1) Any person aggrieved by any decision or order passed under this Act by an officer of customs lower in rank than a [Principal Commissioner of Customs or Commissioner of Customs] may appeal to the [Commissioner (Appeals)] [within sixty days] from the date of the communication to him of such decision or order :
>
> [Provided that the Commissioner (Appeals) may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of sixty days, allow it to be presented within a further period of thirty days.]

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[19] **RMS**
[20] **EDI**
[21] **PCA**
[22] **2019 (368) E.L.T. 216 (S.C.)**

> [(1A) The Commissioner (Appeals) may, if sufficient cause is shown, at any stage of hearing of an appeal, grant time, from time to time, to the parties or any of them and adjourn the hearing of the appeal for reasons to be recorded in writing :
>
> Provided that no such adjournment shall be granted more than three times to a party during hearing of the appeal.]
>
> (2) Every appeal under this section shall be in such form and shall be verified in such manner as may be specified by rules made in this behalf."
>
> **43. As the order of self-assessment is nonetheless an assessment order passed under the Act, obviously it would be appealable by any person aggrieved thereby. The expression 'Any person' is of wider amplitude. The revenue, as well as assessee, can also prefer an appeal aggrieved by an order of assessment. It is not only the order of re-assessment which is appealable but the provisions of Section 128 make appealable any decision or order under the Act including that of self-assessment. The order of self-assessment is an order of assessment as per Section 2(2), as such, it is appealable in case any person is aggrieved by it.** There is a specific provision made in Section 17 to pass a reasoned/speaking order in the situation in case on verification, self-assessment is not found to be satisfactory, an order of re-assessment has to be passed under Section 17(4). Section 128 has not provided for an appeal against a speaking order but against "any order" which is of wide amplitude. The reasoning employed by the High Court is that since there is no *lis*, no speaking order is passed, as such an appeal would not lie, is not sustainable in law, is contrary to what has been held by this Court in *Escorts* (supra).

Demands under Section 28

21. While both the importer and Revenue can appeal to the Commissioner (Appeals) under Section 128 against an assessment (including self-assessment) of a Bill of Entry, the proper officer has another option of issuing a Show Cause Notice under Section 28 to demand and recover duties not levied, not paid, short levied or short paid or erroneously refunded. The nature of this power of 'the proper officer' was held by the larger bench of Supreme Court as the power to review the earlier assessment in **Canon India Pvt. Ltd. versus Commissioner of Customs**[23]

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[23] **2021 (376) E.L.T. 3 (S.C.)**

The relevant text of this judgment reads as follows:

> 12. **The nature of the power to recover the duty, not paid or short paid after the goods have been assessed and cleared for import, is broadly a power to review the earlier decision of assessment. Such a power is not inherent in any authority**. Indeed, it has been conferred by Section 28 and other related provisions. The power has been so conferred specifically on "the proper officer" which must necessarily mean the proper officer who, in the first instance, assessed and cleared the goods i.e. the Deputy Commissioner Appraisal Group. Indeed, this must be so because no fiscal statute has been shown to us where the power to re-open assessment or recover duties which have escaped assessment has been conferred on an officer other than the officer of the rank of the officer who initially took the decision to assess the goods.
>
> **(emphasis supplied)**

22. While Section 128 does not place any restriction, other than the limitation of time, for filing an appeal against assessment, issue of SCN under Section 28 is restricted by WHEN, WHO and WHY. The notice has to be issued within the normal period of limitation (or the extended period of limitation) by 'the proper officer' and only to recover duties not paid, short paid, not levied, short levied or erroneously refunded.

23. To sum up, the power to assess duty lies with the importer and the proper officer. Classification, valuation and applying an exemption notification, are all part of the process of this assessment. Hence, the power to decide the classification lies with the importer during self-assessment, with the proper officer during re-assessment and while issuing an SCN under Section 28 and while adjudicating, with the Adjudicating Authority and with

any appellate authority in the judicial hierarchy who deals with the appeals. Classification cannot be decided by anybody else (such as a MeITY in this case) for two reasons. First, they do not have the authority to assess under Section 17 nor have any appellate powers to modify the assessment. Second, their orders, letters, notifications, etc. are executive actions performed at the discretion of the government and are not quasi-judicial or appealable decisions. Therefore, any HSN code indicated against any goods in any policy of MeITY or any other Ministry cannot determine the classification of the goods under the Customs Tariff. Of the three grounds on which the classification is proposed to be changed in the SCN, the policy of MeITY as a ground cannot, therefore, be sustained.

Exemption notifications

24. Section 25 gives the Central Government the power to issue exemption notifications exempting goods either fully or partly, conditionally or unconditionally from duty. Issuing these notifications –which are in the nature of subordinate legislation- is a quasi-legislative function of the Government. Section 25 reads as follows.

> **Section 25. Power to grant exemption from duty. –**
>
> (1) If the Central Government is satisfied that it is necessary in the public interest so to do, it may, by notification in the Official Gazette, exempt generally

> either absolutely or subject to such conditions (to be fulfilled before or after clearance) as may be specified in the notification goods of any specified description from the whole or any part of duty of customs leviable thereon.
>
> *******
>
> (4) Every notification issued under sub-section (1) or sub-section (2A) shall, unless otherwise provided, come into force on the date of its issue by the Central Government for publication in the Official Gazette.
>
> *******

25. The Central Government can issue exemption notifications under Section 25 if it is satisfied that it is in necessary in public interest to do so. They are not meant to determine the classification of the goods in any assessment nor are they appellable but are meant to grant exemption from duty or modify or withdraw an exemption previously granted. However, the notifications can be conditional. For instance, in this case, the notification no. 57/2017- Cus dated 30.6.2017 (S.No.10) referred to and relied upon in the SCN to propose classification of the goods in dispute reads as follows.

> In exercise of the powers conferred by sub-section (1) of Section 25 of the Customs Act, 1962 (52 of 1962), the Central Government, on being satisfied that it is necessary in the public interest so to do, **hereby exempts the goods of the description as specified in column (3) of the Table below, as the case may be, and falling within the Chapter, heading, sub-heading or tariff item of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) as are specified in the corresponding entry in column (2) of the said Table, when imported into India, from so much of the duty of customs leviable thereon under the said First Schedule as is in excess of the amount calculated at the standard rate as specified in the corresponding entry in column (4)** of the said Table subject to any of the conditions, as specified in the Annexure to this notification, the condition number of which is mentioned in the corresponding entry in column (5) of the said Table.
>
> TABLE

S. No.	Chapter	Description of goods	Stan-dard	Condition No.

	or **Heading or Sub-heading or tariff item**		**rate**	
(1)	(2)	(3)	(4)	(5)
10.	3920 99 99	All goods other than the following parts or sub-parts or accessories of cellular mobile phones, namely: (i) Battery cover (ii) Front cover (iii) Front cover (with Zinc Casting) (iv) Middle cover (v) Back Cover (vi) Main Lens (vii) Camera Lens	10%	-

26. As can be seen, only such goods which match the description in column 3 and which also fall under the Tariff heading at column no. 2 are exempted. If the goods do not match the description in column 3 and/or the tariff heading does not match column 2, the goods will not be exempted. Clearly, the notification does not say that the goods of the description in column 3 shall be classified in the heading in column 2. Evidently, goods of the description in column 3 may fall in the heading in column 2 in which case, the exemption applies or the goods may not fall under the heading in column 2 in which case, the exemption does not apply.

27. During assessment, the goods must be first classified and thereafter it must be examined if the notification applies or not and not the other way round. Issue or withdrawal or modification of a notification cannot determine the classification. The proposal in the SCN to re-classify the goods relying on a notification is not correct. The reasoning in the SCN is that since the front cover,

middle cover and back cover will be exempted under the notification if they fall under CTH 39209999, it means all front cover, back cover and middle covers fall under 39209999. This logic cannot be accepted because the issue of exemption notification is a quasi-legislative function of the Government (and is not appealable) and is not a quasi-judicial function of assessment, including classification, which is appealable. A plain reading of the exemption notification also does not show that it intends to decide the classification of the goods under any heading. It only says that if the goods which match the description also fall under the tariff heading they will be exempt.

28. **Goods must be classified under the Schedule to the Customs Tariff Act, 1975. For this purpose, the Rules of Interpretation have been provided of which Rule 1 reads as follows:**

> 1. The titles of Sections, Chapters and sub-chapters are provided for ease of reference only; for legal purposes, classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes and, provided such headings or Notes do not otherwise require, according to the following provisions.

This Rule is followed by Rules of Interpretation 2 to 6 none of which provide for classification either based on any exemption notification or on the basis of any heading mentioned in any policy of any Ministry of the Government. Therefore, the goods cannot be reclassified based on the exemption notification issued under Section 25 or on the basis of any policy of the Ministry. Notifications or policies can be issued, modified or

withdrawn but the classification of the goods under the tariff will remain the same. Only if the tariff itself is amended can the classification change.

Confiscation of goods under Section 111(m) and consequent penalty under Section 112

29. The impugned order held that the imported goods were liable for confiscation under Section 111(m) and consequently, imposed penalty on the appellant under Section 112. Section 111(m) and Section 112 read as follows:

> **Section 111. Confiscation of improperly imported goods, etc. –**
>
> The following goods brought from a place outside India shall be liable to confiscation: -
>
> (m) **any goods which do not correspond in respect of value or in any other particular with the entry made under this Act** or in the case of baggage with the declaration made under Section 77in respect thereof, or in the case of goods under trans-shipment, with the declaration for trans-shipment referred to in the proviso to sub-section (1) of Section 54;
>
> **SECTION 112. Penalty for improper importation of goods, etc.-**
>
> Any person, -
>
> (a) who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under Section 111, or abets the doing or omission of such an act, or
>
> .....
> shall be liable, -
>
> (i) in the case of goods in respect of which any prohibition is in force under this Act or any other law for the time being in force, to a penalty not exceeding the value of the goods or five thousand rupees, whichever is the greater;
>
> (ii) in the case of dutiable goods, other than prohibited goods, subject to the provisions of Section 114A, to a penalty not exceeding ten per cent. of the duty sought to be evaded or five thousand rupees, whichever is higher.

30. According to the learned counsel for the appellant, even if the classification of the goods is decided against the appellant, it cannot be said that the goods were liable for confiscation under Section 111(m) because the appellant self-assessed the goods classifying them under the Customs tariff heading, which, according to it, was correct. Since the goods were not liable to confiscation, no penalty could have been imposed under Section 112. According to the learned special counsel for the Revenue, classification of goods by the appellant importer is part of the entry made under Section 46 of the Customs Act, i.e., the Bill of Entry and since the goods did not match this part of the Bill of Entry, the imported goods were squarely covered by and were liable to confiscation under Section 111(m).Since the goods were liable to confiscation, penalty can be imposed and was correctly imposed under Section 112.

31. We have already recorded that classification of the goods, their valuation and applying exemption notifications are all part of assessment of duty. This has to be done firstly by the importer (self-assessment) and can then be done by the officer (re-assessment) under Section 17. The remedy against wrong self-assessment is the re-assessment by the officer [or an appeal to Commissioner (Appeals)] and the remedy against the re-assessment is an appeal to the Commissioner (Appeals) which option is available to both sides or a notice under Section 28 (which is available only to the Revenue and only to recover duties

not levied, not paid, short levied, short paid or erroneously refunded). However, there is no separate document or procedure through which the importer can self-assess the duty on the imported goods. All the elements necessary for assessing the duty are filled in the Bill of Entry itself which is the entry of the goods made under Section 46. **Thus, the Bill of Entry has factual elements such as the nature of the goods, quality, quantity, weight, transaction value, country of origin, etc. which all need to be correctly declared and elements which are in the nature of the opinion of the importer such as classification of the goods, exemption notifications which apply, etc. While the facts are verifiable as correct or incorrect, opinions can differ. The importer may find that the goods are classifiable under one CTH while the officer re-assessing the goods may classify them under a different CTH. If appealed against, different views can be taken at different levels of judicial hierarchy from Commissioner (Appeals) all the way up to the Supreme Court.** Similar will be the case with the availability of the benefit of exemption notifications.

32. Insofar as the value is concerned, it could be partly factual and partly based on the opinions. The transaction value of the goods, whether there was any other consideration for sale and if the buyer and seller were related are matters of fact and the importer is bound to truthfully declare these and assess duty accordingly. However, the proper officer is empowered to reject

the transaction value under Rule 12 of the Customs Valuation Rules and re-determine the value of the imported goods based on the value of the contemporaneous imports of identical goods, similar goods, etc., following Valuation Rules 4 to 9. It needs to be pointed out that the power to reject the transaction value under Rule 12 vests in the proper officer and not in the importer. The importer will also not have access to the values of contemporaneous imports of identical or similar goods by others. Therefore, the only way an importer can self-assess the duty on the imported goods is based on his own transaction value and any additional consideration which he may be paying.

33. It is impossible for the importer to predict if the proper officer would re-classify the goods and if the proper officer would, after rejecting the transaction value, re-determine the value based on contemporaneous imports or through other methods or what value the officer will fix. Nothing in the law requires an importer to anticipate what classification the proper officer will find proper for the goods and classify the goods or anticipate if the proper officer will reject the transaction value and anticipate what value he will determine and assess duty accordingly.

34. If Section 111(m) is read to mean that goods can be confiscated if the classification of the goods and the exemption notifications claimed by the importer self-assessing the duty under Section 17 and indicated in the Bill of Entry do not match the classification of the goods or the exemption notifications

which the proper officer may apply during re-assessment or later, it would result in absurd results. The importer cannot predict the mind of the proper officer and self-assess duty so as to conform to it. Insofar as the valuation is concerned, the importer is required to truthfully declare the transaction value, any additional consideration and relationship with the overseas seller. He is not required to predict if the proper officer will reject the transaction value under Rule 12 and if so, what value he will determine. *Lex non cogitimpossibilia*–the law does not compel one to impossible things. If the classification and exemption notifications in the Bill of Entry do not match the views which the proper officer may during re-assessment or by audit party, etc. later, may take or in any other proceedings, goods cannot be confiscated under Section 111(m). The case of the Revenue in this appeal is that the classification of the goods by the importer was not correct. Even if the classification is not correct, it does not render them liable to confiscation under Section 111(m). Similarly, there could be cases where, according to the Revenue, the exemption notification claimed during self assessment will not be available to the imported goods. The importer self-assessing the goods must apply his mind when classifying the goods. Classification of the goods by the importer, even if it is not in conformity with the re-assessment by the proper officer or even if it is held to be not correct in any appellate proceedings does not render the goods liable to confiscation under Section 111(m).

35. Consequently, no penalty can be imposed under Section 112 on the appellant for the alleged wrong classification. The appellant cannot be penalized for holding a different view than the proper officer.

Classification of the goods

36. We now examine the question of classification of the goods, viz., front cover, mid cover and back cover of mobile phones. Of the three grounds on which these goods were re-classified in the impugned order, we have already found two grounds cannot determine the classification; these are the exemption notification issued by the Central Government and the policy notified by the MeITY. We proceed to decide the classification based on the Customs Tariff. The Rules of Interpretation of this tariff, in a nutshell are as follows:

> Rule 1. The titles of Sections, Chapters and sub-chapters are provided for ease of reference only; for legal purposes, **classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes** and, provided such headings or Notes do not otherwise require, according to the following provisions:
>
> **Rules 2 (a) which deals with incomplete or unassessmbled** or disassembled articles and **2 (b) which deals with mixtures** of substances are not relevant to this case.
>
> Rule 3. When by application of rule 2(b) or for any other reason, goods are, prima facie, **classifiable under two or more headings, classification shall be effected as follows**:
>
> (a) The heading which provides the **most specific description shall be preferred to headings providing a more general description**. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods.
>
> (b) Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to (a), shall be classified as if

they consisted of the material or component which gives them their essential character, in so far as this criterion is applicable.

(c) When goods cannot be classified by reference to (a) or (b), they **shall be classified under the heading which occurs last in numerical order among those which equally merit consideration**.

Rule 4. Goods which cannot be classified in accordance with the above rules shall be classified under the heading appropriate to the goods to which they are most akin.

Rule 5. In addition to the foregoing provisions, the following rules shall apply in respect of the goods referred to therein:

(a) Camera cases, musical instrument cases, gun cases, drawing instrument cases, necklace cases and similar containers, specially shaped or fitted to contain a specific article or set of articles, suitable for long-term use and presented with the articles for which they are intended, shall be classified with such articles when of a kind normally sold therewith. This rule does not, however, apply to containers which give the whole its essential character;

(b) Subject to the provisions of (a) above, packing materials and packing containers presented with the goods therein shall be classified with the goods if they are of a kind normally used for packing such goods. However, this provisions does not apply when such packing materials or packing containers are clearly suitable for repetitive use.

6. For legal purposes, the classification of goods in the sub-headings of a heading shall be determined according to the terms of those sub headings and any related sub headings Notes and, mutatis mutandis, to the above rules, on the understanding that only sub headings at the same level are comparable. For the purposes of this rule the relative Section and Chapter Notes also apply, unless the context otherwise requires.

The two competing entries in the Tariff are CTH 85177090 (as claimed by the appellant) and CTH 39209999(as held in the impugned order). The relevant chapter notes are as follows:

Chapter 39

2. This Chapter does not cover:

….

(s) articles of Section XVI (machines and mechanical or electrical appliances);

10. In headings 3920 and 3921, the expression “plates, sheets, film foil and strip” applies only to plates, sheets, film, foil and strip (other than those of

Chapter 54) and to blocks of regular geometric shape, whether or not printed or otherwise surface-worked, uncut or cut into rectangles (including squares) but not further worked (even if when so cut they become articles ready for use).

37. Goods should be classified under the tariff should be as per the headings and sub-headings and relevant section notes and chapter notes. Chapter note 2 (s) to chapter 39 clearly excludes goods falling under Section XVI under which chapter 85 also falls and therefore, if the goods are classifiable under chapter 85 as claimed by the appellant, they cannot fall under chapter 39 as held in the impugned order. On the other hand, Chapter note 10 includes within the ambit of heading 3920 plates, sheets, film foil and strips and blocks of regular geometric shape, whether or not printed or otherwise surface-worked, uncut or cut into rectangles (including squares) but not further worked (**even if when so cut they become articles ready for use**).

38. Reading these two notes together, goods falling under 3920 will continue to be classifiable under this heading even if they become articles ready for use and therefore, they cannot fall under chapter 85 (section XVI). Therefore, they do not get excluded by virtue of note 2(s) from Chapter 39. This leads us to the next question whether the front cover, mid cover and back cover fall under 3920. According to the Revenue, they do because they are made of plastic and are cut into geometric shapes and are printed or surface-worked but not worked further. According to the appellant, these articles were further worked

and therefore, they do not fall under 3920. They are manufactured by **extrusion** (two layers of Polymethyl Methacrylate (PMM) and Polycarbonate (PC) are layered to form a sheet of thickness of 0.64 mm), **printed,** a layer is **Physical Vapor Deposited** (to give the desired finish to the back cover), again **printed, hard coated, thermoformed** into the desired shape and then milled through CNC to cut at the right places to insert the components of the mobile phone as required. These processes, including the lamination and CNC milling, according to the appellant clearly take the goods out of the ambit of note 10 of Chapter 39. Further, according to the appellant, the middle cover is laminated with zinc to dissipate heat and the laminations add strength to the plastic. Since these do not fall under section note 10, they fall under chapter 85 and therefore, by virtue of note 2(s) are clearly excluded from Chapter 39.

39. Learned special counsel for the Revenue did not dispute the process of manufacture of the front cover, mid-cover and back cover described by the learned counsel for the appellant. He submitted that they are made of plastic and the sub-components are embedded at proper places in the front cover and back cover. The purpose of the back cover is to reduce the amount of dust on battery terminals and it is also made of plastic. The middle cover fixes the inner components and protects the battery from moisture and dust and it is also made of plastic, therefore, the impugned order was correct in holding that they are classifiable under CTH 39209999. According to him, these three covers do

not contribute to the functionality of the mobile per-se and, therefore, do not deserve to be classified as parts of the mobile phones and should be classified under Chapter 39. According to him, every part of a machine does not merit being classified along with the machine or as its part under Chapter 85 and some parts of machine can also be classified under Chapter 39. He relies on **Ipea Paramount Pvt. Ltd., P.R. Packagings Pvt. Ltd., Hariram Govindram, Karnataka Powers Corporation Ltd., General Mills India Ltd., Atul Kaushik, Towa Ribbons Pvt. Ltd.** and **Speedway Rubber Co.** in support of this submission.

40. On the question of whether the specific entry should prevail over the general entry, learned special counsel submitted that since the impugned goods do not merit classification under 8517 at all, therefore, the question of general or specific entry does not arise. Regarding the case of **Bhagwati Products Ltd**, relied upon by the appellant, he submitted that the goods in question in that case were front housing and back housing which were parts of a mobile phone and deserved to be classified under CTH 85177090. In this case, the appellant itself has declared them as front cover, middle cover and back cover not as housing and, therefore, the ratio does not apply.

41. After considering the submissions on both sides on the question of classification, we find that the front cover, middle cover and back cover of mobile phones are undisputedly, made of

plastic and are parts of mobile phones and are not articles of general use. The case of the Revenue is that even if they become articles ready for use, if they are manufactured from plates, sheets, film foil or strips, whether or not they are printed or otherwise surface-worked, uncut or cut into rectangles (including squares) but not further worked they should be classified under CTH 3920 in view of Chapter note 2(s) to Chapter 39. Since the front cover, middle cover and back cover of mobile phones are made of sheets of plastic, printed and surface worked and not further worked, they should be classified under 3920. The case of the appellant is that the manufacture of these goods involves extrusion, printing, physical vapor deposition, second set of printing, hard coating, thermoforming and CNC milling and therefore, further work has clearly been done on the plastic sheets after cutting and therefore, they do not fall under Chapter note 2(s) to Chapter 39. The manufacturing process described by the appellant is not disputed by the Revenue and therefore, considering this manufacturing process, we proceed to decide if the front cover, middle cover and back cover fall under 3920 by virtue of Chapter note 2(s).

42. We find that CTH 3920 covers "other plates, sheets, film, foil and strip of plastics, not cellular and not re-imposed, laminated, supported a similarly by with other materials". The first step of manufacture - extrusion, involves pressing together two sheets of plastic- Polymethyl Methacrylate (PMM) and Polycarbonate (PC) into a single sheet of plastic. What emerges

after this process is still a sheet of plastic. The second and fourth steps are printing which also make no difference and Chapter note 2(s) would still apply. The third step vapor deposition, is a process of depositing a thin layer of material to give the covers the glossy finish. According to the appellant, this is similar to lamination. Lamination takes the goods out of the scope of CTH 3920 because it covers only such goods which are "….not re-imposed, laminated, supported similarly by with other materials". According to the appellant, the middle cover also has a layer of zinc to help dissipate the heat. The fifth step of thermoforming changes the shape of the article from a plain sheet of plastic to one with the required shape and dimensions including the edges. Thermoforming is a common industrial process which involves heating of a plain plastic sheet and moulding it into articles – such as inner panels of a refrigerators, panels in a car or disposable food trays. In our considered view, this is a process beyond mere cutting and surface working and this process also takes it out of the purview of chapter note 2(s) to Chapter 39. The sixth and the last process is CNC milling to cut holes in these covers to install various components. CNC or Computerised numerically controlled machines, as is well known, are modern, automated versions of lathe machines which are used to cutting, grinding, etc. to work on a piece of material to convert it into desired articles. In our considered view, CNC milling also goes beyond mere cutting and surface processing of the sheet. To sum up, the processes of vapour deposition, being lamination, takes

the front cover, back cover and middle cover out of the purview of CTH 3920 and the processes of thermoforming and CNC milling being processes beyond cutting and surface working, take them out of the scope of chapter note 2(s) to Chapter 39.

43. Thus, applying the first Rule of Interpretation, the front cover, middle cover and back cover cannot be classified under CTH 3920- the vapor deposition (lamination) takes it out of the description of CTH 3920 and thermoforming and CNC milling, being processes beyond printing and surface working take them out of the scope of chapter note 2(s) . We also find that a specific entry (parts of mobile phones) prevails over a general entry (articles of plastic) as per Rule 3(a) of Interpretation and the later entry (Chapter 85) in the tariff prevails over the earlier entry (Chapter 39) as per Rule 3(c). However, it is well settled legal principle that the Interpretative Rules must be applied sequentially. Once Rule 1 decides the classification, it is not necessary to go through the other Rules of Interpretation such as Rule 3(a) and 3(c).

44. The case laws relied upon by the Revenue do not carry its case any further as they were on different questions of law and facts. **Ipea** decision was in the peculiar circumstances of the case. The CBEC had issued a circular which was in favour of the assessee and it was binding on the Revenue. Therefore, the classification was decided in favour of the assessee by the

Tribunal and this decision was upheld by the Supreme Court. Relevant portion of the Tribunal's order is as follows:

> 5. …..The learned Advocate has placed heavy reliance on Board's Circular No. 6/86-CX 4, dated 25-9-1986, and in our view rightly, wherein the Board has considered the classification of the parts and accessories of refrigerating and air-conditioning machinery and appliances. It has been clarified therein that the parts and accessories of refrigerators for the treatment of materials by a process involving a change of temperature, as mentioned in Annexure "A" to the Circulars, are to be classified under Heading 84.15, 84.18 or 84.19 of the Tariff. It is not the case of the Revenue that the impugned goods find mention in the said Annexure "A". In the Circular, a very large number of parts and accessories of refrigerators etc. have been mentioned in "Annexure B" but these are to be classified in their respective Headings of the Tariff and not under Heading 84.15, 84.18 or 84.19 of the Tariff. It was observed by the Tribunal in the case of *P.R. Packaging Pvt. Ltd.* that "A perusal of "Annexure B" reveals that the parts mentioned therein are also suitable for use principally with refrigerators and even then these are not to be classified with Refrigerators under Heading 84.18. It goes to show that all parts of refrigerating machines are not automatically to be classified under Chapter 84." The Revenue has also not contended nor brought any evidence on record that the impugned goods are for the treatment of materials by a process involving a change of temperature. Accordingly, we hold that the impugned goods are classifiable under respective Headings in Chapters 39 and 40 of the Central Excise Tariff. We, thus allow the Appeal.

45. Similarly, the decision in the case of **RR Packaging** was based on Trade Notice No. 67/86 dated 30-9-1986 issued by the Bombay Collectorate which was in favour of the assessee and was binding on the officers. The question in **Hariram Govindram** was related to classification of the covers of the outer covers of the cassettes. Relying on Board's order dated 29-7-1994 issued under Section 37B of the then Central Excises and Salt Act, 1944, the classification was decided in favour of the assessee.

46. In **Karnataka Power Corporation,** the dispute was whether imported parts of Hydro Electric Generator i.e., 'Epoxy insulated single turn half coils with accessories and Epoxy insulated single turn half coils wave stator windings etc.' were classifiable under 8503 or under 8544. Applying Section note 2 (b) to Section XVI, it was held that the goods were suitable solely or principally for the generator and hence classified along with them under 8503. This case is on a different issue- whether the parts are to be classified as parts of mobile phones or as articles of plastic under Chapter 39.

47. In **General Mills India,** the dispute was regarding the classification of granola bars and the classification was decided in favour of the importer. In **Atul Kaushik** the question was about addition of certain elements in the valuation.

48. In **Towa Ribbons,** the question was about classification of typewriter ribbons and if the surface working of the strips of plastic including coating the surface will take them out of the purview of note 10 to Chapter 39 and the Tribunal held that surface working does not take the goods out of the ambit of note 10 to Chapter 39 and they continue to fall under 39.20 as asserted by the Revenue.

49. In **Speedway,** the question before the Supreme Court was the classification of procured treads manufactured by the appellant. Finding that the note 9 of Chapter 40 made a

distinction between 'surface working' and 'further working', and that specific entry should prevail over general entry, it was held that the impugned goods in that case would be classified under sub-heading 4008.21 and not under sub-heading 4016.99 as claimed by the Department.

50. **For all these reasons, we find that rejection of the appellant's classification of the front cover, middle cover and back cover of mobile phones under CTH 85177090 in the impugned order and their re-classification under CTH 39209999 cannot be sustained and needs to be set aside**.

51. To sum up:

a) Classification of the goods is a part of assessment and the importer, the proper officer and appellate authorities alone are competent to decide it.

b) The policy of the MeiTY, which is in the nature of an executive policy decision of that Ministry cannot determine the classification of goods under the Customs Act firstly because the authority making the policy is not empowered under Section 17 and secondly because the policy is not a quasi-judicial, appealable decision but is a policy decision while classification of goods is a part of assessment and is a quasi judicial and appealable function.

c) The exemption notification issued by the Government under Section 25 exempts goods and does not determine the

classification. If the description of the goods and also the CTH match with the notification, its benefit is available and not otherwise. Therefore, an exemption notification cannot determine the classification but it must be applied after classifying the goods.

d) Based on the Customs tariff and the nature of the goods, we determine the classification of the goods in favour of the appellant and against the Revenue.

e) The importer assessee has no obligation under the law to anticipate under which heading the proper officer may classify the goods and match self-assessment with it.

f) Classification of the goods in the Bill of Entry by the importer is essentially a part of the self-assessment under Section 17 which, even if found incorrect, does not attract confiscation of the goods under Section 111(m) or the consequential penalty under Section 112.

g) The appeal is allowed and the impugned order is set aside with consequential benefit to the appellant.

(Order pronounced in Court on 20/12/2023.)

(DR. RACHNA GUPTA)
MEMBER (JUDICIAL)

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

PK