

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
1st Floor, WTC Building, FKCCI Complex, K. G. Road,
BANGLORE-560009

REGIONAL BENCH COURT-2

CUSTOMS Appeal No 2680 of 2012

[Arising out of Order-in-Appeal No.167/2012 dated 26.06.2012
Passed by the Commissioner of Customs (Appeals), Cochin-9.]

COMMISSIONER OF CUSTOMS

Willingdon Island,
Cochin,
Kerala – 682 009.

.....Appellant

Versus

**M/S. NEXT EDUCATION INDIA
PVT. LTD.**

43/2537, C & F, Mosque Lane,
SRM Road,
Kochi – 682018.

.....Respondent

Appearance:

Mr. K.A. Jathin, AR for Appellant

Mr. M. Balagopal, Advocate for Respondent

CORAM:

Hon'ble Mr. P. A. Augustian, Member (Judicial)

Hon'ble Mrs. R. Bhagya Devi, Member (Technical)

FINAL ORDER No. 20105 of 2024

Date of Hearing: 21.09.2023

Date of Decision:22.02.2024

Per P. A. AUGUSTIAN:

The issue in the present appeal is regarding classification of imported goods. The Respondent herein had imported "Student interactive respond system" and classified the same under CTH 8471 60 29. However respondent classified the

goods under CTH 8543 70 99. Aggrieved by said classification, an appeal was filed before the Commissioner (Appeals). The Commissioner (Appeals) vide impugned order dated 26.06.2012 held that the classification made by the Appellant herein is related to electrical machines or Apparatus which will operate to give desired out come when plugged into and electrical sources and considering the decision of the Tribunal in the matter of M/s D Link India Ltd (2009 (237) E.L.T 608 (Mumbai) and considering the classification of same goods through other Customs houses under B/E No. 3439166 dated 07.05.2011 at Chennai and B/E No. 4146369 dated at Hyderabad. Ld Commissioner (Appeals) classified the goods under CTH 8471 60 29. Aggrieved by the said order, Department filed the present appeal.

2. When the Appeal came up for hearing, Ld AR submits that the goods consisting wireless key pad (vote pad) and IR receivers. Both these components constituting the student response system work on the principles of wireless transmission technology. Even though the impugned goods are connectable to CPU of an Automatic Data Processing (ADP) machine, they stand excluded from the heading 8471 by virtue of Chapter Note 5(D) of Chapter 84 of the Customs Tariff Chapter Note 5(E) to the Chapter 84, stipulates that machines incorporating or working in conjunction with an ADP machine and performing a specific function other than data processing are to be classified in the heading appropriate to

their respective function or falling that in residual heading. Hence the impugned goods are classified under heading 8543 of the Customs Tariff. Ld AR also drew our attention to the Chapter Note 5(E) to the Chapter 84 to substantiate the above contention. As per the above, heading 8543 electronic machines and apparatus having individual function, not specified or included elsewhere in the Chapter (including 16 codeless infra-red devices for the remote control of television receiver, video recorder or other electrical equipment). Hence Lower authority properly classified the goods under CTH 8543 70 99.

3. Ld. Counsel appearing on behalf of the Respondent submits that the classification of the product under CTH 8543 70 99 covered electronic machines and apparatus having individual function not specified or included elsewhere in the Chapter 85. The Ld Counsel drew our attention to the Chapter Note 5(E) of the Chapter 84 and submits that it is not applicable in Respondent's case as the said chapter note covers those apparatus which can transmit or receive image, voice or other data from one system (ADPM) to another. For example: wired or wireless LAN, Wi-Fi systems, Bluetooth etc. In the present case, the impugned goods are used for the primary feeding of data into an ADPM.

4. Ld Counsel for the Respondent further submits that the declared classification under CTH 8471 is the correct classification due to following reasons:

- (i) CTH 8543 covers the only electrical machines and apparatus having individual functions, not specified or included elsewhere in the said Chapter 85.
- (ii) This heading covers goods such as amplifiers, video special effect equipments, metal detectors etc. which are in no way connected to the computer. Classifying the impugned goods along with this family of products would result in great injustice.
- (iii) Explanatory notes of CTH 8543 covers cordless infrared devices for the remote control of TV receivers, video recorders and other electrical equipments and therefore the impugned product will also fall into this heading. Student response system is entirely different from the TV and video remote control. These remote controls function individually and they need not be connected to an ADP to work.
- (iv) As per the second para of explanatory notes of the CTH 8543, this heading specifically states that "electrical appliances and apparatus of this heading must have individual functions." It further states that "most of the appliances of this heading consist of an assembly of electrical goods or parts (valves, transformers, capacitors, chokes, resistors etc).
- (v) Therefore, it can be seen that the goods classified under the CTH 8543 are of a different genre. The goods in question being goods solely to be used along with an ADP are entirely out of the scope of this section.

5. Ld Counsel for the respondent also submits that in the matter of M/s Xerox India (2010 (260) E.L.T 161(S.C.)), the issue was considered and the Hon'ble Supreme Court held that :

"13) It is not in dispute that the Multi-Functional Machines in question, Xerox Regal 5799 has about 85% of the its total parts and components along with manufacturing cost allocated to printing, as does 74% of the Xerox XD155df model. This clearly shows that the printing function emerges as the principal function and gives the Multi-Functional Machines its essential character. Having such a nature, it also clearly meets the three-fold requirement of chapter note 5(B), as it is to be used principally in ADPM, it is connectable to the Central Processing Unit, and it is able to accept data in a form (codes or signals) which can be used by the system. Further, there would be no application of chapter note 5(E) as correctly pointed out by the learned counsel for the appellants, as the Multi-Functional Machines are presented independently. Moreover, since predominant components are relating to printing function, chapter note 5(D) also becomes relevant which includes printers under heading 84.71. We are also satisfied with the contention of the appellants that based on the nature of the functions they perform, the Multi- Functional Machines would serve as input and output devices of an ADPM (computer) and thus serve as unit of an ADPM, which on a reading of chapter note 5(C), clearly classifies them as falling under heading 84.71.60 of the Act".

6. Heard both sides. We have gone through the submission made by both, the respondent had classified the goods under CTH 8471 60 29 under sub heading input or output unit whether or not containing storage unit in the same domestic data processing unit or other machines by processing such data not elsewhere specified or included. However Appellant herein had classified the goods under CTH 8543 87 99 which covers

electronic machines and apparatus having individual function specified or included elsewhere in the Chapter Note 85. Reliance is placed by the Appellant on Chapter Note 4 of Section XVI of the Customs Tariff Act, 1944 however as per the second para of explanatory notes of the CTH 8543, this heading specifically states that "electrical appliances and apparatus of this heading must have individual functions." It further states that "most of the appliances of this heading consist of an assembly of electrical goods or parts (valves, transformers, capacitors, chokes, resistors etc). The impugned goods do not satisfy any of the above criteria and therefore classification under CTH 8543 as an item with individual function is ruled out.

7. As rightly observed by the Commissioner in the impugned order the equipments are teaching accessories which enable students in a class to respond to queries and these equipments are used along with the ADP machine. Considering the above and the fact that similar items being cleared under CTH 8471 at Hyderabad and Chennai organizations as seen from the Bill of Entry placed before us, there is no merit in the Department Appeal and the same is rejected.

(Order pronounced in Open Court on 22.02.2024.)

(P. A. Augustian)
Member (Judicial)

(R. Bhagya Devi)
Member (Technical)