

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

COURT-2

Customs Appeal No. 255 of 2012

[Arising out of the Order-in-Appeal No.187/2011 dated 24.11.2011 passed by the Commissioner of Customs (Appeals), Bangalore.]

M/s. Enterprise Software Solutions Lab **....Appellant**
No.24, 23rd Main,
Marenahalli,
J.P. Nagar II Phase,
Bangalore – 560 078.

Vs.

The Commissioner of Customs **....Respondent**
C.R. Building, Queens
Road, Bangalore – 560
001.

Appearance:

Mr. B. Venugopal, Advocate **....For Appellant**

Mr. K. Vishwanath,
Superintendent (AR) **.... For Respondent**

CORAM:

HON’BLE MR. P. A. AUGUSTIAN, MEMBER (JUDICIAL)
HON’BLE MRS R. BHAGYA DEVI, MEMBER (TECHNICAL)

Date of Hearing: 23/08/2023 Date of Decision: 22/12/2023

FINAL ORDER No. 21438 of 2023

Per R. BHAGYA DEVI:

The appellant M/s. Enterprise Software Solutions Lab Ltd., Bangalore, had imported T4 Fingerprint Time & Attendance System and K200 Proximity Time & Attendance System under Customs Tariff Heading 8471 4190. The assessing authority classified them under 8543 and aggrieved by this order the appellant filed an appeal before commissioner appeals who classified them under 8471. The revenue filed a appeal before this Tribunal and the Tribunal vide Final Order dated 11.8.2010 had remanded the matter to re-examine the issue with the following observations:
“10. The issue to be decided in this appeal is whether the device imported by the appellant

is more properly classified under tariff item No. 8435 7099(correct CTH 8543) as electrical instruments not specified elsewhere as sought in the appeal of the revenue or under CSH 8471 4190 of the Customs tariff as ADPM, as claimed by the respondents. The goods in issue work in conjunction with a server and process data in digital format. The device has the facility to scan the fingerprint of any person seeking access to an area which the user desires to restrict. The finger print of person seeking entry to the premises is scanned and digitised⁸ compared with data of such finger prints already stored in the memory of the device. If the current image is found in the database, the person is allowed access and his attendance is marked. There is also an additional check of the identity of the person by comparing the Personal Identification Number (PIN) required to be entered with such PINs stored in the memory of the device. The data of authorized persons received are transferred to a separate server which maintains particulars of the staff such as salary and leave important for the employer.

10.1 There is no dispute that the subject goods are correctly under 8435 7309 (8543) if excluded from CH8471. Appeal seeks classification of the goods as electrical machinery not elsewhere specified.

2. We find that the capability to be freely programmed in accordance with the needs of the buyer appears to include the writing of a new or modified program by programmer or the purchase and use of software containing an existing program. The object is to introduce or alter the instructions that tell the computer what to do with the data. According to revenue a machine is freely programmable, if the user is able to modify the existing program. We find that this facility could be availed if several fixed programs are available in the machine and the user can switch to the desired program; i.e., he can choose between a number of fixed programs. Argument of the Counsel for the respondents appears to be that the device is freely programmable in this sense.

3. We observe that the original authority noted that the item is freely programmable as per the submissions of the assessee. He found that the goods did not satisfy the conditions to classify it as ADPM and the entry under CH 8437 more specifically covered the goods. He found the equipment to be not a computer as the device worked in conjunction with a server which only processed the data inputted.

4. The impugned order finds the device to be 'freely programmable' without discussing any evidence. It is only before us that both the parties have canvassed their rival claims on classification of the device under CSH 8471 4190 based on this decisive attribute of the device. Both the lower authorities have not examined this important aspect. In the circumstances we remand the matter to the Commissioner (Appeals) to examine this issue and decide the dispute after hearing the parties. He will not be hindered in the exercise by our views on the issue appearing in the order. The appeal is thus allowed by way of remand.”

2. Based on this, in the *de novo* proceedings, the Commissioner (Appeals) has held that:

“4.3 The Hon’ble CESTAT while remanding the issue has stated that the “impugned order finds the device to be freely programmable without discussing any evidence” and have remanded the matter to examine this issue. In this regard, it would be pertinent to state that the appellants have not produced any evidence to prove the freely programmable nature of the impugned goods, except for stating on a letterhead of the manufacturer that all

the impugned goods use Linux as their operating system. This by itself does not prove that the impugned goods are freely programmable since Linux operating system is used mostly for its stability. Also, these devices being designed for specific usage do not require to be freely programmable. The data regarding time and attendance, contained in these devices are sensitive in nature and could be tampered with, if they are capable of being freely programmed in accordance with the requirements of the user. However, it appears that the impugned goods could be customized by the manufacturers according to the requirement of the user and **are not freely programmable by the user themselves to suit their requirements.**”

3. The learned counsel for the appellant submits that this is the second round of litigation before Tribunal. He further submits that the Learned Commissioner (Appeals) has completely misread the remand directions wherein the Tribunal had directed whether the impugned machine is capable of being freely programmed in accordance with the requirements of the user and proceeds to examine the issue once again afresh based on the technical and functional nature of the impugned machine. He submits that the *de novo* order has traversed beyond the remand directions of the Tribunal. He submits that machines are capable of being freely programmed according to the requirement of the user and it satisfied all attributes of Automatic Data Processing Machines and is rightly classifiable under CTH 8471. He submits that the limited issue in the remand proceedings is to examine whether the impugned machine is capable of being freely programmed as per the requirement of the user Note 5(A) (ii) of Chapter 84. He further submits that considering the configuration of the machines, the impugned goods cannot be classified as ‘electrical apparatus or instrument’ as the heading covers only electrical appliances and apparatus with individual functions. Act, 1962. To substantiate his contentions, he relied on the following case laws:

- STJ Electronics Pvt. Ltd. vs. CC, New Delhi: 2016 (337) ELT 140 (Tri.-Del.)
- Jaya Diagnostic & Research Centre Ltd. vs. CC, Hyderabad: 2020 (374) ELT 273 (Tri.-Hyd.)

4. The learned Authorised Representative for the Revenue reiterated the findings of the lower authorities and relied on the following judgments to claim classification of the impugned goods under CTH 8543 7099:

- CC, Bangalore vs. N.I. Systems (India) P. Ltd.: 2010 (256) E.L.T. 173 (SC).
- CC, Bangalore vs. Shakya Technologies Ltd.: 2019 (370) ELT 703 (Tri.-Bang.)
- Commissioner of Customs, Bangalore vs. Scatia: 2019 (370) ELT 703 (Tri.-Bang.)

5. Heard both sides and perused the records. The short issue to be decided is whether the impugned imported goods are classifiable under CTH 8543 7099 or under CTH 8471 4190. The claim of the appellant that the authorities have gone beyond the remand directions is baseless in as much as from the orders it is seen that the authorities have limited themselves to the directions in deciding the classification. The Tribunal while remanding the case also observed that “He will not be hindered in the exercise by our views on the issue appearing in the order”. Therefore the authorities have only restricted themselves in analysing the impugned item as per its features to arrive at the correct classification.

5.1 The Original Authority on examination of the imported goods have found that they are

nothing but Fingerprint Time and Attendance System which reads finger prints of the user and hence it is a biometric reader; similarly, the Proximity Time and Attendance Systems reads the data from the proximity cards/smart card of the user when it is flashed near the device and hence it is a proximity card reader. Hence, rejects the classification claimed by the appellants under CTH 8471 4190 as Automatic Data Processing Machines and classifies the impugned goods under CTH 8543 7099.

6. Now the question arises as to whether the item is classifiable under Chapter 8543 7099 as claimed by the Revenue or under Chapter 8471 4190 as claimed by the appellant. Both the relevant Chapter Tariff Headings reproduced herein below: **Chapter 8543:**

Heading No.	Description of Article	Unit	Rate of duty	
			Standard	Preferential Areas
85.43	Electrical machines and apparatus having individual functions, not specified or included elsewhere in Chapter 85.			
8543 70 99	---Other	u	7.5%	-

Chapter 8471:

Heading No.	Description of Article	Unit	Rate of duty	
			Standard	Preferential Areas
8471	Automatic data processing machines and units thereof; magnetic or optical readers, machines for transcribing data on to data media in coded form and machines for processing such data, not elsewhere specified or included			
8471 41 90	---Other	u	Free	-

6.1 As per the Chapter Notes of Chapter 84, an item to be classified under 8471 should satisfy the following conditions

“6.(A) For the purposes of heading 8471, the expression

—automatic data processing machine¹ means machine capable of :

- (i) storing the processing programme or programmes and at least the data immediately necessary for the execution of the programme;
- (ii) being freely programmed in accordance with the requirements of the user;
- (iii) performing arithmetical computations specified by the user; and
- (iv) executing, without human intervention, a processing programme which requires them to modify their execution, by logical decision during the processing run.

The Commissioner (A) has clearly observed in the impugned order that (as reproduced in paragraph 2 above) they are not freely programmable and hence, they get excluded from Chapter 8471.

7. From the catalogue, it is noticed that:

“The Item ‘Fingerprint Time & Attendance System’

T4 is a standalone finger print T & A system, low price with good performance, specially designed in the purpose of popularizing the fingerprint products. The system has got inbuilt processing capabilities and works independently without connecting to computer or server for data processing operations.

Product Features:

- i. This device is standalone device it can register/manage user finger fingerprint/RFID card.
- ii. It can verify user’s finger print/RFID card and store respective Attendance Log Data into its internal memory.
- iii. Also if required this device can be connected to computer using RS232/TCP/IP network for downloading same attendance Log data.
- iv. It has capability to change internal logic/parameters using Telnet/FTP options.
- v. This device can be used for various other applications such as canteen management, production count management as per users requirements. Development and programming tools are available.

7.1 As seen from the above and as noted by the Original Authority, the device captures the data from the employee’s card or the data of the particular employee who key in the PIN into the device. The device does not do anything except for collecting the data at the time of entry or exit and this data is transmitted to a central server for further processing like marking the attendance, preparation of payroll or for other purposes. These facts are not indispute. Based on

the General Rules of Interpretation and the Chapter Notes, the item needs to be classified in the heading akin to it or where the specific description is provided. In this case, the data collection device imported by the appellant is nothing but a card reader working in conjunction with the server. Thus, this device functions as proximity readers/badge readers, which are specifically classified under Chapter Heading No.8543 and therelevant Chapter Note 5(E) reads as:

Chapter Note 5(E) to Chapter 84 reads:

“Chapter Note 5(E) to Chapter 84 “Machines performing a specific function other than data processing and incorporation or working in conjunction with an automatic data processing machine are to be classified in the headings appropriate to their respective functions or, falling thatin residual headings”.

8. Since the specific function of the imported item is to mark attendance or to take note of the persons of the employees for the purpose of attendance or payroll or leave, they cannot be classified under Chapter 84 as it excludes from this Chapter as perthe Chapter Note 5(E) discussed above.

9. In the case of **Commissioner of Customs, Bangalore vs. Scatia** (supra) a similar product viz., fingerprint scanner was classified under Chapter Heading 8543 7099 as per the observations made by the Tribunal at para 5.1, wherein it has held that:

“**5.1** The Department contended that CTH 8543 70

99 is more applicable due to the fact that the item imported basically operates on electrical/electrictechnology. We find that the Head 8543 coverselectrical machines and apparatus having individualfunctions not specified or included elsewhere in the chapter. Therefore, the classification of the Finger Print Reader would be more appropriate under this heading. We also accept the Department’s contention that when the item is *prima facie* classifiable under two headings in terms of Rule 3(c) of General Rules of Interpretation of Import Tariff, the goods should be classified under the heading which occurs last in numerical orders among those which equally merits consideration. We accept this contention. Going by merits as well as by the Rules of Interpretation, we hold that the impugned product merits classification under CTH 8543 70 99 as contended by the Department.”

10. Similarly in the same set facts in the case of **CC vs. ShakyaTechnologies Ltd.** (supra), this Tribunal at para 5.1 has held that:

“**5.1** The Department contended that CTH 8543 70

99 is more applicable due to the fact that the item imported basically operates on electrical/electrictechnology. We find that the Head 8543 covers electrical machines and apparatus having individualfunctions not specified or included elsewhere in the chapter. Therefore, the classification of the Finger Print Reader would be more appropriate under this heading. We also accept the Department’s contention that when the item is *prima facie* classifiable under two headings in terms of Rule 3(c) of General Rules of Interpretation of Import Tariff, the goods should be classified under the heading which occurs last in numerical orders among those which equally merits consideration. We accept this contention. Going by merits as well as by the Rules of Interpretation, we hold that the impugned product merits classification under CTH 8543 70 99 as contended by the Department.”

11. This Tribunal, recently, in the case of **Commissioner of Customs, Bangalore vs. M/s. Kronos Systems India Pvt. Ltd. vide Final Order No.21155 of 2023 dated 20.10.2023**,in an identical issue held the product to be rightly classifiable under Chapter 8543.

12. Hence, based on the above discussions and by following the decisions of this Bench, we find that the product is rightly classifiable under Chapter 8543.

13. In view of the above, the impugned order is upheld and the appeal is dismissed.
(Order pronounced in open court on 22/12/2023.)

(P. A. AUGUSTIAN)MEMBER (JUDICIAL)

(R. BHAGYA DEVIMEMBER (TECHNICAL)