

2020 (12) TMI 870 - CESTAT NEW DELHI**M/S. INGRAM MICRO INDIAN PVT. LTD. VERSUS DEPUTY COMMISSIONER OF CUSTOMS, NEW DELHI**

Custom Appeal No. 50865 of 2020

Order No. - FINAL ORDER NO. 51640/2020

Dated: - 17-12-2020**Classification of imported goods - Executive IP Phone with 7" colour touch screen, 100 programmable keys, POE and 10/100/100 LAN and PC connections- FON 670i (VoIP Telephone) - whether classified under CTH 8517 18 10 (as claimed by the Appellant) or under CTH 8517 69 90 (as contended by the Department)?**

HELD THAT:- The appellant imported an Executive Level IP Phone of model FON 670i. It is, therefore, an IP Phone. The description of the goods under consideration will not fall in either of the two Sub-Headings 8517 11 or 8517 12. Being an IP telephone it would fall under Sub-Heading 8517 18 (third double dash) under which the description of the goods is 'others'. It is a push button type telephone and, therefore, would fall under Tariff Item No. 8517 18 10.

Rule 1 of the General Rules also provides that the titles of Section, Chapters and Sub-Chapters are provided for ease of reference - In COMMISSIONER OF CENTRAL EXCISE, NAGPUR VERSUS SIMPLEX MILLS CO. LTD. [[2005 \(3\) TMI 117 - SUPREME COURT](#)], the Supreme Court held that rule 1 gives primacy to the Section and Chapter Notes along with the terms of the Headings and so this rule should be applied first. It is only when a clear picture is not emerging that the subsequent rules have to be applied.

The second entry at single dash level starts with the words "other apparatus". This clearly indicates that only those goods which are not covered by the first single dash entry will be covered under the second single dash entry. Thus, as the product under consideration is covered by the first single dash entry, it is not necessary to examine the second single dash entry.

Learned counsel for the appellant, in the alternative, submitted that even if the product under consideration is prima facie classifiable under two or more Headings, the classification would be effected in the manner prescribed in (a) or (b) or (c) of rule 3 of the General Rules and so the Heading which provides the most specific description shall be preferred to Headings providing a more general description. In such a situation also the product under consideration would fall under the Tariff Item Heading 8517 - This submission of learned counsel of the appellant deserves to be accepted. The product under consideration is an Executive IP Phone. It would satisfy the specific description of Tariff Item Heading 8517.

In MOORCO (INDIA) LTD. VERSUS COLLECTOR OF CUSTOMS, MADRAS [[1994 \(9\) TMI 68 - SUPREME COURT](#)], the Supreme Court held that the First Schedule appended to the Customs Act lays down the General Principles for the interpretation and classification of goods for import tariff and that the applicability of rule 3 arises when the goods consisting of more than one material fall in two or more headings. The Supreme Court observed that each of the classes are mutually exclusive.

The Commissioner (Appeals) has relied upon rule 3(c) to hold that since Tariff Item Number 8517 69 90 falls last in the numerical order among those which equally merit consideration, the product under consideration would be classifiable under CTH 8517 69 90 and not CTH 8517 18 10 - Commissioner (Appeals) clearly committed in error in straight away jumping to rule 3 (c) without first exhausting rule 3(a) and rule 3 (b) - Commissioner (Appeals) also committed an error in holding that the goods in question are for video calling. As noticed above, the facility of video codec support is available only in model 675i, whereas the imported goods model is 670i, which does not have any feature of video support. The Order Information contained in the product literature, also describes model 675i as an "Executive Video IP Phone", while model 670i is described as an "Executive IP Phone". This clearly shows that the facility of video calling is not available in the model imported by the Appellant.

The product under consideration, which is an Executive IP Phone (Model No. FON670i), is classifiable under CTH 8517 18 10 and not under CTH 8517 69 90 - Appeal allowed - decided in favor of appellant.

Judgment / Order

MR. JUSTICE DILIP GUPTA, PRESIDENT AND MR. PANJANI KUMAR, MEMBER (TECHNICAL)

Shri Amit Kumar, Advocate for the Appellant

Shri Sunil Kumar, Authorized Representative for the Department

ORDER

This appeal seeks the quashing of the order dated March 17, 2020 passed by the Commissioner of Customs (Appeals) [the Commissioner (Appeals)]. The order rejects the appeal filed by the appellant to assail the order dated November 19, 2019 passed by the Deputy Commissioner of Customs, New Delhi. The appellant had filed a Bill of Entry dated February 21, 2019 for clearance of goods declared as "Executive IP Phone with 7" colour touch screen, 100 programmable keys, POE and 10/100/100 LAN and PC connections- FON 670i (VoIP Telephone) [the goods] under Customs Tariff Heading [CTH] 8517 18 10 and claimed the benefit of Customs Notification 024/2005 dated March 1, 2005 [Notification dated March 1, 2005] for payment of 0% basic customs duty. The custom authorities, however, by order dated November 19, 2019, classified the goods imported by the appellant under CTH 8517 69 90 and ordered for re-assessment of the goods.

2. The issue, therefore, that is involved in this appeal is regarding classification of the goods under CTH 8517 18 10 (as claimed by the Appellant) or under CTH 8517 69 90 (as contended by the Department).

3. The appellant had imported one consignment of the goods from a manufacturer in Taiwan under a Commercial Invoice dated February 12, 2019. In the said invoice of the manufacturer, the goods were declared classifiable under H.S. Code 8517.18.0020. Goods were imported at the IGI Airport, New Delhi and a Bill of Entry dated February 21, 2019 was filed by the appellant, classifying the goods under CTH 8517 18 10. The goods were examined under the first check, after which a query dated February 23, 2019 was raised by the Assessing Group requiring the appellant to justify the CTH under which the appellant had classified the goods. The appellant submitted letters dated February 25, 2019, March 1, 2019 and March 15, 2019 justifying the classification.

4. The Deputy Commissioner, however did not accept the explanation offered by the appellant and held that the goods would be classifiable under CTH 8517 69 90. The relevant portion of the order of the Deputy Commissioner is reproduced below:

"3. DISCUSSIONS AND FINDINGS

3.1 *****

The issue before me is to determine whether the goods declared as '(IP Phone) executive IP Phone with 7" colour touch screen, 100 Programmable keys-FON-670i' are classifiable under tariff item 85171810 with notification benefit 024/2005 sl. no.13G as claimed by the importer or under tariff item 85176990.

3.2 *****

This is a executive phone with programmable appearance keys and the features we need at the our fingertips. With an optional HD video camera and HDMI out port to compliment these features, this phone is a power house. Combined with the powerful features of the FortiVoice PBX, the FortiFone delivers

- a) Call forwarding
- b) Voicemail notification
- c) One-touch transfers
- d) Do not disturb
- e) Conference calling
- f) Speed dial
- g) PoE (Power over Ethernet) support

h) Auto-discovery for easy setup

3.3 I find that the declared CTH 85171810 covers push button phones which are different from VoIP Phones in the following terms:-

- When comparing VoIP v/s. Push Button type phones, it's important to note that the sound can travel in different ways. Push Button type phones are regular phones and the systems communicate with the help of analog signals. These signals travel through a twisted pair of cables with continuously changing frequency and altitude which is decoded at the receiving end. On the other hand, IP phones communicate voice over Internet protocol. The data travels in digital form through wired or wireless networks.
- VoIP (IP Phones) has the caller ID, which is not provided by a regular phone.
- The communications in IP Phones are digitally encrypted unlike the complex circuitry of regular push button type phones.
- Push button type phones systems receive their power from the telephone exchange whereas VoIP phones require external power supply.

3.4 Further, Customs Notification No. 57/2017 dated 30.06.2017 amended as 02/2019 dated 29.01.2019 vide sl. no. 20 classified the VoIP phones under CTH 85176990 without benefit of this notification.

ORDER

4. In view of discussion & findings hereinabove, I order re-assessment of goods imported under B/E no. 2146635 dated 21.02.2019 under, CTH 85176990 in terms of provisions contained in subsection (4) of Section 17 of the Customs Act, 1962.”

[emphasis supplied]

5. Feeling aggrieved by the aforesaid order passed by the Deputy Commissioner, the appellant filed an appeal before the Commissioner (Appeals). The Commissioner (Appeals) also did not accept the submissions made on behalf of the appellant and rejected the appeal. The relevant portion of the order passed by the Commissioner (Appeals) is reproduced below:

“5.2 *****

The IP Phone works on voice over Internet protocol. The product catalogue also indicates that the product has various network features like power over Ethernet, network access control etc. and also works over Web management portal. Thus the product is an apparatus for transmission and reception of data also besides working as apparatus for transmission and reception for voice. Thus the impugned goods are classifiable under “Other apparatus, for 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).” **which is a separate single ‘-’ heading under CTH 8517.**

5.3 It is also noted that the phone has HD video camera compatibility and the ability to connect to the PC, and thus is usable for video calling and transfer of data as Voice over Internet Protocol is a category of hardware and software that enables people to use the Internet as the transmission medium for telephone calls by sending voice data in packets using IP rather than by traditional circuit transmission of the PSTN. These facts simply place the phone in second single ‘-’ head under CTH 8517.

5.4 Further when we refer to the General Rules for the Interpretation of the first schedule to the Custom Tariff Act, 1975, it is noted that 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:

Accordingly the heading 85176990 which occurs later in numerically order vis a vis contesting heading 85171890 is required to be adopted.

5.6 Thus in view of the findings above, I find that item ‘(IP Phone) executive IP Phone with 7th cc touch screen, 100 Programmable keys-FON-670i’ imported by the appellant is rightly covered under tariff

heading no. 85176990 as held by the Adjudicating Authority in impugned order.”

[emphasis supplied]

6. This appeal has been filed to assail the aforesaid order dated March 17, 2020 passed by the Commissioner (Appeals).

7. Shri Amit Kumar, learned Counsel appearing for the appellant made the following submissions:

- (i) Goods are classifiable under CTH 8517 18 10 as per the scheme of classification under Heading 8517 and by application of the General Rules for the Interpretation of the First Schedule to the Customs Tariff Act, 1975 relating to Import Tariff [the General Rules] ;
- (ii) It is evident from a reading of the entry of Heading 8517 that all types of telephone sets are covered by the first entry at single dash “-” level. The goods imported undisputedly being an IP Phone are therefore, covered by CTH 8517 18 10, which falls under the first entry at single dash “-” level;
- (iii) The second entry at single dash “-” level starts with the words “Other apparatus”. Use of the words ‘Other apparatus’ indicates that only those goods which are not covered by the first entry at the single dash “-” level are covered under the second entry at single dash “-” level. Reliance has been placed on the judgement of Supreme Court in **Collector of Central Excise vs. Delton Cables Ltd.** [2005 (181) E.L.T. 373 (S.C.)] ;
- (iv) The Commissioner (Appeals) decided classification of the goods by straightaway resorting to rule 3(c) of the General Rules, which is impermissible as it is settled law that they have to be considered sequentially. The goods in question are, therefore, clearly classifiable under CTH 8517 18 10;
- (v) The findings of the Commissioner (Appeals) are factually incorrect; and
- (vi) Similar goods have been held to be classifiable under CTH 8517 18 10 by the Commissioner (Appeals) at Chennai.

8. Shri Sunil Kumar learned Authorized Representative of the Department made the following submissions:

- (i) The first sub-heading (i.e. first single dash ‘-’) of CTH 8517 covers ‘Telephone sets, including telephones for cellular networks or for other wireless networks’. It would be incorrect to contend that all kinds of telephones are covered under the said sub-heading only and that the next sub heading (i.e. second single dash ‘-’) does not cover telephones. In support of this contention reliance has been placed on the HSN Explanatory Notes;
- (ii) In the scheme of classification, the second subheading of 8517 also covers telephones, which because of their functionality, have not been covered under first sub-heading. HSN Explanatory Notes are not only of persuasive value, but are also entitled to a great consideration in classifying the goods;
- (iii) The appellant has placed heavy reliance upon two orders of Commissioner (Appeals-I) at Chennai. It would not be correct to say that matter has attained finality because the goods were reassessed and cleared as per direction of the Commissioner (Appeals-I). Even after clearance of goods, the issue of classification remains open to challenge and the relied upon orders may have been challenged;
- (iv) Both audio and video IP Phone functions on the principle of Internet Protocol (IP) telephony and hence share common functionality. The only difference is that video IP phone, in addition to transmission/reception of digital voice signal, transmits/receives digital video signal also;
- (v) The goods are Internet Protocol (IP) Phone that works on the principle of Voice over Internet Protocol (VoIP) telephony, also commonly referred to as IP telephony or Internet telephony. In a VoIP call, voice (an analog signal) is converted into a digital signal at source, travels over the Internet, and digital signal is again converted to voice at the destination. VoIP calls can be directly made from a computer, a special VoIP phone like the impugned goods, or a traditional phone connected to a special adaptor;
- (vi) Keeping the functionality of VoIP phone in consideration and in view of coverage of similar communication apparatus under Paragraph (G) of HSN Explanatory Notes, classification of impugned goods as ‘Other apparatus for 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) under CTI 85176990 is justifiable. It is settled that functional utility is r important than name used in trade or common parlance, and hence the former needs also to be considered wi...

determining classification of an item. Reliance has been placed on the judgement of Supreme Court in **O.K.Play (India) Ltd vs. Commissioner of Customs Excise, Delhi-III, Gurgaon** [2005 (180) E.L.T. 300 (S.C.)] . It is for this reason that the Commissioner (Appeals) applied rule 3(c) of the General Rules and accorded preference to CTI 8517 69 90 over CTI 8517 18 90; and

(vii) The contention of the appellant that the Exemption Notification grants exemption to goods and the same cannot be relied upon for the classification of goods is not correct.

9. The contentions advanced by learned counsel for the appellant and the learned Authorized Representative of the Department have been considered.

10. The classification of the goods under CTH 8517 18 10, as contended by the appellant, or under CTH 8517 69 90, as contended by the Department, is the issue in this appeal.

11. It would, therefore, be necessary to first refer to the scheme of classification as contained in Chapter 85 of the Customs Tariff. Heading 8517, contained in Chapter 85, is reproduced below:-

Tariff Item	Description of goods	Unit	Rate of Duty	
			standard	Preferential Areas
(1)	(2)	(3)	(4)	(5)
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	- Line telephone sets with cordless handsets			
8517 11 10	- Push button type	u	Free	-
8517 11 90	- Other	u	Free	-
8517 12	- Telephones for cellular networks or for other wireless networks:			

8517 12 10	- - -	Push button type	u	20%	-
8517 12 90	- - -	Other	u	20%	-
8517 18	- -	Other:			
8517 18 10	- - -	Push button type	u	Free	-
8517 18 90	- - -	Other	u	Free	-
	-	Other apparatus for 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) :			
8517 61 00	- - -	Base stations	u	10%	-
8517 62	- -	Machines for the reception, conversion and transmission or regeneration of voice, images or other data, including switching and routing apparatus:			
8517 62 10	- - -	PLCC equipment	u	Free	-
8517 62 20	- - -	Voice frequency telegraphy	u	Free	-
8517 62 30	- - -	(modulators-demodulators)	u	Free	-

8517 62 40	- - -	High bit rate digital subscriber line system (HDSL)	u	Free	-
8517 62 50	- - -	Digital loop carrier system (DLC)	u	Free	-
8517 62 60	- - -	Synchronous digital hierarchy system (SDH)	u	Free	-
8517 62 70	- - -	Multiplexers, statistical multiplexers	u	Free	-
8517 62 90	- - -	Other	u	20%	-
8517 69	- - -	Other :			
8517 69 10	- - -	ISDN System	u	Free	-
8517 69 20	- - -	ISDN terminal adaptor . . .	u	Free	-
8517 69 30	- - -	Routers	u	Free	-
8517	-	X 25 Pads	u	Free	-

69	-				
40	-				
8517	-	Subscriber end equipment .	u	Free	-
69	-				
50	-				
8517	-	Set top boxes for gaining access to internet	u	Free	-
69	-				
60	-				
8517	-	Attachments for telephones .	u	Free	-
69	-				
70	-				
8517	-	Other	u	10%	-
69	-				
90	-				
8517	-	Parts :			
70	-				
8517	-	Populated, loaded or stuffed printed circuit boards	u	Free	-
70	-				
10	-				
8517	-	Other	Kg	15%	-
70	-				
90	-				

(emphasis supplied)

12. Before proceeding to analyse this Heading, it would also be necessary to refer to section 2 of the Tariff Act. It provides that the rates at which the duties of customs shall be levied under the Customs Act 1962 are specified in the First and Second Schedules. The General Rules with the General Explanatory Notes also need to be examined. They are reproduced below:-

“THE FIRST SCHEDULE- IMPORT TARIFF GENERAL RULES FOR THE INTERPRETATION OF THIS SCHEDULE

Classification of goods in this Schedule shall be governed by the following principles:

1. The titles of Sections, Chapters and sub-chapters are provided for ease of reference only; for legal purpose 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:

2. (a) Any reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, as presented, the incomplete or unfinished article has the essential character of the complete or finished article. It shall also be taken to include a reference to that article complete or finished (or falling to be classified as complete or finished by virtue of this rule), presented unassembled or disassembled. (b) Any reference in a heading to a material or substance shall be taken to include a reference to mixtures or combinations of that material or substance with other materials or substances. Any reference to goods of a given material or substance shall be taken to include a reference to goods consisting wholly or partly of such material or substance. The classification of goods consisting of more than one material or substance shall be according to the principles of rule 3.

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.

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.

THE GENERAL EXPLANATORY NOTES TO IMPORT TARIFF

1. Where in column (2) of this Schedule, the description of an article or group of articles under a heading is preceded by "-", the said article or group of articles shall be taken to be a sub-classification of the article or group of articles covered by the said heading. Where, however, the description of an article or group of articles is preceded by "--", the said article or group of articles shall be taken to be a subclassification of the immediately preceding description of the article or group of articles which has "-". Where the description of an article or group of articles is preceded by "---" or "----", the said articles or group of articles shall be taken to be a sub-classification of the immediately preceding description of the article or group of articles which has "-" or "--".

2. The abbreviation "0%" in any column of this Schedule in relation to the rate of duty indicates that duty on the goods to which the entry relates shall be charged on the basis of the value of the goods as defined in section 14 of the Customs Act, 1962 (52 of 1962), the duty being equal to such percentage of the value as is indicated in that column.

3. In any entry, if no rate of duty is shown in column (5), the rate shown under column (4) shall be applicable."

13. The product under consideration is an Executive Level IP Phone-FON-670i. The various brands of FortiFone IP Telephones, as mentioned in the literature contained in the Appeal, are FON175, 375, 475, 570, 670i/675i, C71, D71, H25, H35, and FortiFone soft client. The literature contained in the Appeal memo relating to FON-670i/675i is as follows:

FON-670i/675i

Introducing the FON-670i/675i, a great combination of business-class features and vivid touchscreen. An executive phone with programmable appearance keys and the features you need at your fingertips. With an optional HD video camera and HDMI out port to compliment these features, this new FortiFone is a power house.

14. The Specifications are also contained in the literature. These mention the telephone features of various brands. The relevant features relating to display and voice activity detection are reproduced below :

SPECIFICATIONS

	FON175	FON-375	FON475	FON570	FON-670i/675i	FON-C71	FON-D71	FONH25	FONH35	FortiFone Softclient
Telephone Features										
Display	2.4" color display	2.8"+ 2.4 color display	4.3" color display	7"color touch screen	7"color touch screen	3.1"248 *120 pixel graphic display	2.4"240 *320 pixel graphic display		3.5 color display	
		XXXXX	XXXXX	XXXXX	XXXXX	XXXXX	XXXXX			
		XXXXX	XXXXX	XXXXX	XXXXX	XXXXX	XXXXX			
		XXXXX	XXXXX	XXXXX	XXXXX	XXXXX	XXXXX			
Audio Features										
		XXXXX	XXXXX	XXXXX	XXXXX	XXXXX	XXXXX			
H.263, H.264 video codec support						FON-675i only				
Voice activity detection (VAD)										
		XXXXX	XXXXX	XXXXX	XXXXX	XXXXX	XXXXX			
		XXXXX	XXXXX	XXXXX	XXXXX	XXXXX	XXXXX			

15. The Order Information is also contained in the literature. What is important to the notice is that there is no video facility provided in FON-670i, though video facility is provided in FON750i. The relevant portion of the Order Information is reproduced below:

ORDER INFORMATION

PRODUCT	SKU	DESCRIPTION
Desktop phones		
FortiFone FON-670i	FON-670i	Executive IP phone with 7-inch color touchscreen, 100 programmable keys, PoE and 10/100/1000 LAN and PC connections

FortiFone FON-675i	FON- 675i	Executive video IP phone with 7-inch color touchscreen, 100 programmable keys, PoE and 10/100/1000 LAN and PC connections
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16. It would, therefore, be seen from the aforesaid that Model No. FON 670i imported by the appellant is an executive IP Phone with 7-inch color touchscreen. It works on Voice over Internet Protocol . [VoIP] It does not have a video camera facility as it only FON-675i Executive IP Phone that has this facility. It is these features of Model No. FON-670i that have to be kept in mind for classification of this Executive IP Phone.

17. It needs to be noted that the manufacturer has classified the goods in the invoice under H.S. Code 8517.18.

18. The relevant portion of Heading 8517 to the Explanatory Notes of Harmonized System of Nomenclature [HSN] is reproduced below:

Harmonized Commodity Description and Coding System Explanatory Notes

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 84.43, 85.25, 85.27 or 85.28(+).

- Telephone sets, including telephones for cellular networks or for other wireless networks:

8517.11 -- Line telephone sets with cordless handsets

8517.12 -- Telephones for cellular networks or for other wireless networks

8517.18 -- Other

Other apparatus for 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):

8517.61 -- Base stations

8517.62 -- Machines for the reception, conversion and transmission or regeneration of voice, images or other data, including switching and routing apparatus

8517.69 -- Other

8517.70 - Parts

This heading covers apparatus for the transmission or reception of speech or other sounds, images or other data between two points by variation of an electric current or optical wave flowing in a wired network or by electromagnetic waves in a wireless network. The signal may be analogue or digital. The networks, which may be interconnected, include telephony, telegraphy, radio-telephony, radio-telegraphy, local and wide area networks.

(1) TELEPHONE SETS, INCLUDING TELEPHONES FOR CELLULAR NETWORKS OR FOR OTHER WIRELESS NETWORKS

This group includes:

(A) Line telephone sets.

Line telephone sets are communication apparatus that convert voice into signals for transmission to another device. Upon receipt of a signal, a line telephone set will convert the signal back to voice. They consist of:

- (1) The transmitter,
- (2) The receiver,
- (3) The anti-sidetone circuit,
- (4) The ringer,
- (5) The switching device or "switchhook",

(6) The dialing selector,

When separately presented, microphones and receivers (whether or not combined as hand-sets), and loudspeakers are classified in heading 85.18 while bells and buzzers are classified in heading 85.31.

Telephone sets may incorporate or have fitted: a memory for storing and recalling telephone numbers; a visual display for showing the number dialed, incoming caller's number, date and time, and duration of call; an extra loudspeaker and microphone to enable communication without using the handset; devices for automatically answering calls, transmitting a recorded message, recording incoming messages and playing back the recorded message on command; devices for holding a connection on line while communicating with a person on another telephone. Telephone sets incorporating these devices may also have keys or push-buttons which enable their operation, including a switching key which enables the telephone to be operated without removing the hand-set from the cradle. Many of these devices utilize a microprocessor or digital integrated circuits for operation.

The heading covers all kinds of telephone sets including:

(i) Cordless telephone sets.

(ii) Telephones sets.

(B) Telephones for cellular networks or for other wireless networks.

This group covers telephones for use on any wireless network. Such telephones receive and emit radio waves which are received and retransmitted, e.g., by base stations or satellites.

These include, inter alia:

(1) Cellular phones or mobile phones.

(2) Satellite phones.

19. Reverting back to the classification under the Customs Tariff, it is seen that perusal of Heading 8517 indicates that it contains three entries at single dash '-' level and they are:

(a) Telephone sets, including telephones for cellular networks or for other wireless networks;

(b) Other apparatus for transmission or reception of voice, images or other data, including apparatus for communication in a wired or a wireless network (such as a local or wide area network); and

(c) Parts.

20. The First single dash covers telephone sets, while the second single dash starts with the words "other apparatus". The third single dash relates to "Parts."

21. Only those goods which are not covered by the first single dash entry are covered under the second dash entry, as has been held by the Supreme Court in Delton Cables. It would, therefore, be necessary to first examine whether this particular IP Phone would be covered by the first single dash entry and only if it is found that it is not covered by this entry that it has to be examined whether it would be covered by the second single dash entry.

22. The description of goods under the first single dash of Tariff Item 8517 is telephone sets, including telephones for cellular networks or for other wireless networks. The description of goods under the Sub-Heading 8517 11 (first double dash) are line telephone sets with cordless sets, while under Sub-Heading 8517 12 (second double dash) are telephones for cellular networks or for other wireless networks.

23. The appellant imported, as noticed above, an Executive Level IP Phone of model FON 670i. It is, therefore, an IP Phone. The description of the goods under consideration will not fall in either of the two Sub-Headings 8517 11 or 8517 12. Being an IP telephone it would fall under Sub-Heading 8517 18 (third double dash) under which the description of the goods is 'others'. It is a push button type telephone and, therefore, would fall under Tariff Item No. 8517 18 10.

24. Rule 1 of the General Rules also provides that the titles of Section, Chapters and Sub-Chapters are provided for ease of reference. In Commissioner of Central Excise, Nagpur vs. Simplex Mills Co. Ltd. [2005 (181) E.L.T. 345 (S. the Supreme Court held that rule 1 gives primacy to the Section and Chapter Notes along with the terms of .

Headings and so this rule should be applied first. It is only when a clear picture is not emerging that the subsequent rules have to be applied. The observations of the Supreme Court are as follows:

"11. The rules for the interpretation of the Schedule to the Central Excise Tariff Act, 1985 have been framed pursuant to the powers under Section 2 of that Act. According to Rule 1 titles of Sections and Chapters in the Schedule are provided for ease of reference only. But for legal purposes, classification "shall be determined according to the terms of the heading and any relevant section or Chapter Notes". If neither the heading nor the notes suffice to clarify the scope of a heading, then it must be construed according to the other following provisions contained in the Rules. **Rule-1 gives primacy to the Section and Chapter Notes along with terms of the headings. They should be first applied. If no clear picture emerges then only can one resort to the subsequent rules.** The appellants have relied upon Rule 3. Rule 3 must be understood only in the context of subrule (b) of Rule 2 which says inter alia that the classification of goods consisting of more than one material or substance shall be according to the principles contained in Rule 3. Therefore when goods are prima facie, classifiable under two or more headings, classification shall be effected according to sub-rules (a), (b) and (c) of Rule 3 and in that order.

12. Applying the Rules of Interpretation particularly Rule 1, we are of the opinion that the reasoning of the Tribunal in Jyoti Overseas is unexceptionable and in our opinion the decision in Simplex-I was correctly overruled."

(emphasis supplied)

25. The second entry at single dash level starts with the words "other apparatus". This clearly indicates that only those goods which are not covered by the first single dash entry will be covered under the second single dash entry. Thus, as the product under consideration is covered by the first single dash entry, it is not necessary to examine the second single dash entry.

26. The Explanatory Notes to HSN describe what would be covered by the second single dash entry for 85.17 as follows:

(II) Other apparatus for 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)

(A) Base stations.

The most common types of base stations are those for cellular networks, which receive and transmit radio waves to and from cellular telephones or to other wired or wireless networks. Each base station covers a geographical area (a cell). If the user moves from one cell to another while telephoning, the call is automatically transferred from one cell to another without interruption.

(B) Entry-phone systems.

The systems usually consist of a telephone handset and keypad or a loudspeaker, a microphone and keys. These systems are usually mounted at the entrance of buildings housing a number of tenants. With these systems, visitors can call certain tenants, by pressing the appropriate keys and talk to them.

(C) Videophones.

Videophones for buildings, which are a combination consisting principally of a telephone set for line telephony, a television camera and a television receiver (transmission by line).

(D) Apparatus for telegraphic communication other than facsimile machines of heading 84.43.

These apparatus are essentially designed for converting characters, graphics, images or other data into appropriate electrical impulses, for transmitting those impulses, and at the receiving end, receiving these impulses and converting them either into conventional symbols or indications representing the characters, graphics, images or other data or into the characters, graphics, images or other data themselves.

(E) Telephonic or Telegraphic Switching Apparatus.

(F) Transmitting and receiving apparatus for radiotelephony and radio-telegraphy.

(G) Other communication apparatus.

This group includes apparatus which allows for the connection to a wired or wireless communication network or the transmission or reception of speech or other sounds, images or other data within such a network.

Communication networks include, inter alia, carrier-current line systems, digital-line systems and combinations thereof. They may be configured, for example, as public switched telephone networks, Local Area Networks (LAN), Metropolitan Area Networks (MAN) and Wide Area Networks (WAN), whether proprietary or open architecture.

This group includes:

- (1) Network interface cards (e.g., Ethernet interface cards).
- (2) Modems (combined modulators-demodulators).
- (3) Routers, bridges, hubs, repeaters and channel to channel adaptors.
- (4) Multiplexers and related line equipment (e.g., transmitters, receivers or electro-optical converters).
- (5) Codecs (data compressors/decompressors) which have the capability of transmission and reception of digital information.
- (6) Pulse to tone converters which convert pulse dialed signals to tone signals.

27. A perusal of the aforesaid portion of the HSN Explanatory Notes shows that base stations, entry-phone systems, video phones, apparatus for telegraphic communication other than facsimile machines of heading 84.43, telephonic or telegraphic switching apparatus, transmitting and receiving apparatus for radio-telephony and radio-telegraphy, other communication apparatus are contained. None of these would satisfy the description of the product under consideration.

28. Emphasis has been laid by the learned Authorized Representative of the Department on II (G), which is "other communication apparatus". In this connection reliance has been placed on the decision of the Supreme Court in O.K. Play. The observations are as follows:

"7. In the case of A. Nagaraju Brothers vs. State of Andhra Pradesh reported in [1994 (72) E.L.T. 801], it has been held by this Court that no one single universal test can be applied for correct classification. There cannot be a static parameter for correct classification.

8. Further, the scheme of the Central Excise Tariff is based on Harmonized System of Nomenclature (for short "HSN") and the explanatory notes thereto. Therefore, HSN along with the explanatory notes provide a safe guide for interpretation of an Entry.

9. Further, equal importance is required to be given to the Rule of Interpretation of the Excise Tariff. Under Rule 3(a), it is provided that the heading which provides a specific description shall be preferred to a heading having a more general description. For example, in the case of "toys" referred to in the HSN Heading and the Tariff Heading, the description refers to reduced size model of an Article used by adults. This test helps us to understand the difference between "toys" and "furniture".

10. Lastly, it is important to bear in mind that functional utility, design, shape and predominant usage have also got to be taken into account while determining the classification of an item.

11. The aforesaid aids and assistance are more important than the names used in the trade or common parlance in the matter of correct classification."

29. It is not possible to accept this contention for the simple reason that an executive IP Phone does not match the description of any of the apparatus mentioned in (G). Even otherwise, in view of the decision of the Supreme Court in Mohinder Singh Gill vs. Chief Election Commissioner [AIR 1978 SC 851], this submission of the learned authorized representative of the Department cannot be entertained as the impugned order is not based on this reason. The Supreme Court in Mohinder Singh Gill observed that when a statutory functionary makes an order based on ce

grounds, the validity of that order has to be judged on the reasons stated in the order and the order cannot be supplemented by fresh reasons.

30. The Gujarat High Court in F.S. Enterprise vs. State of Gujarat [2020 (32) G.S.T.L. 321(Guj.)], followed the decision of the Supreme Court in Mohinder Singh Gill and observed that it is not permissible to supplement the original order by additional reasons.

31. The aforesaid decision of the Supreme Court in O.K. Play would not help the Department. The submissions made by the learned authorized representative of the Department in regard to (G) of (II) of entry 85.17 of the HSN cannot, therefore, be accepted.

32. What also supports the case of the appellant are the two orders dated February 27, 2020 and March 9, 2020 passed by the Commissioner of Customs (Appeals-II), Chennai, in matters relating to the present appellant, wherein in respect of similar goods, but of different models, the Commissioner (Appeals) classified the goods under CTH 8517 18 10.

33. According to learned counsel for the appellant, the orders were accepted by the Department as the goods were re-assessed and clearance was allowed pursuant to the two orders passed by the Commissioner (Appeals). Learned counsel, however, very fairly pointed out an appeal has been filed by the Department only against the order dated March 9, 2020. Learned authorized representative has also stated that till date appeal has not been filed to assail the order dated February 27, 2020 passed by the Commissioner (Appeals) at Chennai.

34. In the order dated February 27, 2020, the Commissioner (Appeals) noticed that the product under consideration was IP Phone FON-175 and though the goods were classified by the importer under CTH 8517 18 10, but the Adjudicating Authority classified the goods under CTH 8517 69 90. The Commissioner (Appeals) held that the goods would be classified under CTH 8517 18 10 and for coming to this conclusion placed reliance upon the HSN Explanatory Notes. The relevant portion of the order is reproduced below:

"6. I have carefully gone through the facts given in the appeal, the speaking order and both the submissions, written and oral, made by the Advocate of the appellant company, during the personal hearing. The issue to be decided is,

i. whether the imported CISCO IP Phone Model 8841 and FON175 Entry Level Phone of FortiFone are to be classified under CTH 85176990 or under CTH 85171810?

7. It is seen from the catalogue that Fortinet Companies Forti IP Telephones has various models including FON 175. These IP Phones has dedicated keys for the most common features and it has a PBX also with call forwarding, voice mail notification, one touch transfers, conference calling, speed dial, POE (Power Over Ethernet) support and Auto discovery for easy setup.

8. The CISCO IP Phone 8841 has five programmable line keys, these keys can be configured to support either multiple directory numbers or call features such as speed dials. Fixed function keys gives one touch access to applications, messaging, directory, holding the call, transfer and conference. This phone supports the built-in Gigabyte and Ethernet Switch for PC connection also. From the catalogues, it is observed that these are push button type telephone sets and CTH 8517 covers telephones sets, including telephones for cellular networks or for other wireless networks. Since these phones can be used through internet, these cannot be classified under CTH 85171110. **Therefore, the right classification appears to be CTH 851718 (Other) and sub-classification 85171810 push button type. Going by the HSN explanatory notes for CTH 8517 telephone sets including telephone for cellular networks or other networks, these items are appropriately to be Classified under CTH 851718 only as "others". The relevant portion of the HSN explanatory notes is reproduced;**

"Telephones sets, may incorporate or have fitted a memory for storing and recalling telephone numbers, a visual display for showing the number dialed, incoming callers number, date and time and duration of the call, an extra loud speaker and microphone to enable communication without using the hand set; devices for automatically answering calls, transmitting a recorded message, recording incoming messages and playing back recorded message on command; devices for holding a connection on line while communicating with the person on another telephone. Telephone sets incorporating these devices may also have keys or push buttons which enable their operation, including a switching key which enables the telephone to be operated without removing the hand from the cradle. Many of these devices utilized a microprocessor or digital integrated circuits for their operation.

10. The AA has classified the goods as CTH 85176990 as "others" as this can be made use of in the LAN and SIP (Session Initiation Protocol). **As these phones cannot be used for video call, they have to be essentially classified under CTH 851718 only. In the case of video screen phones, it can be classified under CTH 85176990 as "others". As these phones are meant only for audio calls, the classification claimed by the appellant M/s. Ingram Micro India Pvt. Ltd., appears to be correct.** It is not understood why they have cleared the impugned goods earlier under CTH 85176990. Therefore, in view of the above discussions, the AA's order classifying the impugned VoIP (Voice over Internet Protocol) Phone is set aside and he is directed to reassess the goods vide classification CTH 85171810. It is further directed to verify their earlier clearances of such VoIP Phones under CTH 85176990 and whether they availed wrongly any benefit of exemption notification."

(emphasis supplied)

35. The second order dated March 9, 2020 of the Commissioner (Appeals) relies upon the aforesaid order dated February 27, 2020 passed by the Commissioner (Appeals). After noticing that the 6 models of CICO IP Phone are not capable of making video call and are meant only for audio call, the Commissioner (Appeals) observed that the goods would be classifiable under CTH 8517 1810. The observation are as follows:

"10. All the other 6 models of CISCO IP Phones are not capable of making video calls and as per the literature available those are meant only for audio calls. CISCO IP 7800 Series has 4 line and programmable feature keys, high resolution graphical display, dedicated fixed keys, built-in speaker phones and handset, speaker/headset. It has PCE (Power over Ethernet) Class1 feature also, Model 8841 and 8851 has wide band audio for crystal clear voice communications, it is also supported on 3rd party hosted call control services. In addition in the Model 8851, the mobile phone also can be attached (Audio path) and this IP Phone comes with USB Port for charging.

11. As per the literature, the CISCO IP Conference Phone 8831 & 8832 are basically voice telephones having push buttons. Going by the literatures all the 6 models are having push buttons and fixed keys and are to be classified under CTH 8517 18 10 as claimed by the appellant M/s. Ingram Micro India Pvt. Ltd."

(emphasis supplied)

36. Learned counsel for the appellant submitted that different Collectorates of Customs cannot adopt different standards on a particular issue and in this connection placed reliance upon the decision of the Calcutta High Court in Opal Exports Pvt. Ltd. vs. Collector of Customs [1992 (60) E.L.T. 232 (Cal.)].

37. The Calcutta High Court held in Opal Exports that Custom Authorities cannot be permitted to practice discrimination and that the Collectorates of the Customs have to adopt a similar stand on a particular issue. The relevant portion of the judgment is reproduced below:

"28. The respondent Customs authorities by treating similar imports as imports of spares while adopting a different view in the case of the petitioner (who is placed in similar circumstances as other importers of similar goods) have discriminated against the petitioner in violation of the guarantee of equal protection contained in Article 14 of the Constitution of India.

29. The discriminatory treatment meted out by the Customs Authorities to the petitioner is also mala fide as is evident from the fact that subsequently the respondents have allowed import of similar goods and such goods have been treated as spares and customs duty has been levied accordingly. However, the imports forming the subject matter of the writ petition have been illegally and arbitrarily subjected to discriminatory treatment.

30. It is not open to the Customs authorities to contend that the subject goods were complete measuring instrument in view of the decision of the Customs Excise & Gold (Control) Appellate Tribunal, West Regional Bench at Bombay in the case of M/s. Sushu Electronic v. Collector of Customs & Central Excise, Rajkot, in which similar goods have been classified as spares and not as complete instruments. **It is a settled law that different Collectorates of Customs cannot adopt different stands on a particular issue."**

(emphasis supplied)

38. Learned counsel for the appellant also pointed out that another consignment of similar goods imported by the appellant at Air Cargo Complex, Chennai by Bill of Entry No. 8380173 dated August 5, 2020 was allowed to be cleared by the Department on September 8, 2020.

39. Thus, for the reasons stated above, the goods under consideration also require classification under CTH 8517 18 10.

40. Learned counsel for the appellant, in the alternative, submitted that even if the product under consideration is prima facie classifiable under two or more Headings, the classification would be effected in the manner prescribed in (a) or (b) or (c) of rule 3 of the General Rules and so the Heading which provides the most specific description shall be preferred to Headings providing a more general description. In such a situation also the product under consideration would fall under the Tariff Item Heading 8517.

41. This submission of learned counsel of the appellant deserves to be accepted. The product under consideration is an Executive IP Phone. It would satisfy the specific description of Tariff Item Heading 8517.

42. In *Moorco (India) Ltd. vs. Collector of Customs, Madras* [1994 (74) E.L.T. 5 (S.C.)], the Supreme Court held that the First Schedule appended to the Customs Act lays down the General Principles for the interpretation and classification of goods for import tariff and that the applicability of rule 3 arises when the goods consisting of more than one material fall in two or more headings. The Supreme Court observed that each of the classes are mutually exclusive. What is covered in (a) cannot be classified in (b), and (c) operates when neither (a) or (b) applies. It is like a residuary clause. The observations are as follows:

“The primary question, therefore, is whether the goods manufactured by the appellant fall in clause (a) and if it can be classified with reference to (a) then clauses (b) and (c) would not apply. Clause (a) incorporates the common and general principle that the goods which can be classified specifically with reference to any heading should be placed in that category alone. The specific heading of classification has to be preferred over general heading. The clause contemplates goods which may be satisfying more than one description. Or it may be satisfying specific and general description. In either situation the classification which is the most specific has to be preferred over the one which is not specific or is general in nature. In other words, between the two competing entries the one most nearer to the description should be preferred. Where the class of goods manufactured by an assessee falls say in more than one heading one of which may be specific, other more specific, third most specific and fourth general. The rule requires the authorities to classify the goods in the heading which satisfies most specific description. For instance, taking the case of the appellant the item manufactured by the appellant is described and used as flow meter. It is an instrument for measuring volume as well. Flow meter is specifically classified in Heading No. 90.24. Whereas the Heading 90.26 is general in nature. It applies to every production meter or calibrating meter for gas, liquid and electricity supply. Therefore, on the finding recorded by the Assistant Collector, the goods produced by the appellant specifically fall in Heading No. 90.24. They may also fall in Heading No. 90.26 but that being more general entry preference should have been given to the entry 90.24 as the goods satisfy most specific description of being flow meter. The Tribunal or the appellant authority without advertent to it applied clause (c) and levied duty under 90.26 as it was a latter heading. But clause (c) would apply only if clauses (a) and (b) do not apply. Since the goods manufactured by the appellant satisfied the specific description of Tariff Heading 90.24 being a flow meter, the Tribunal committed an error of law in classifying it under Tariff Heading 90.26 as it was a latter item under the classification list.”

(emphasis supplied)

43. The Commissioner (Appeals) has relied upon rule 3(c) to hold that since Tariff Item Number 8517 69 90 falls last in the numerical order among those which equally merit consideration, the product under consideration would be classifiable under CTH 8517 69 90 and not CTH 8517 18 10.

44. The Commissioner (Appeals) clearly committed in error in straight away jumping to rule 3 (c) without first exhausting rule 3(a) and rule 3 (b).

45. The Commissioner (Appeals) also committed an error in holding that the goods in question are for video calling. As noticed above, the facility of video codec support is available only in model 675i, whereas the imported goods model is 670i, which does not have any feature of video support. The Order Information contained in the product literature, also describes model 675i as an “Executive Video IP Phone”, while model 670i is described as an “Executive IP Phone”. This clearly shows that the facility of video calling is not available in the model imported by the Appellant.

46. Learned Authorized Representative of the Department also submitted that the Commissioner (Appeals) committed no legality in placing reliance upon the Exemption Notification dated January 29, 2019, which Notification suggests VoIP phones are classifiable under CTH 8517 69 90 and are not eligible for exemption.

47. This contention of learned the Authorized Representative of the Department cannot also be accepted. The classification of goods has to be done in accordance with the terms of Headings and any relative Section or Chapter Note. The classification is not required to be done in terms of any Exemption Notification. This is what was also observed by the Tribunal in Ruchi Soya Industries Ltd. vs. Commissioner of Customs (Acc& Imp.), Mumbai [2019 (369) E.L.T. 1529 (Tri.-Mumbai)] . The relevant portion of the decision is reproduced below:

“5.3 In the present case the benefit of Exemption Notification as claimed by the appellants under Notification No. 21/2002-Cus., dated 1-3-2002 has been allowed by the lower authorities. However, the issue that appellants have raised is two folds-

(i) The classification of the goods imported by them should have been done by following the classification as per the exemption notification and not by application of Chapter Note 3 to the Chapter 12.

(ii) Since no rate of duty has been mentioned under column 5 of the Notification No.21/2002Cus., assessment should have been made allowing them full exemption from Additional Duty.

5.4 We are not in position to agree with the said submissions-

(i) As per Rule 1 of **“Genera Rules of Interpretation of Import Tariff”**

“1. The 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:”

Thus by application of the said rule classification of the goods is to be done in accordance with the terms of headings and any relative Section or Chapter Note. It is not the case of the appellant that by application of the above Rule 1, the classification as done by the Revenue is erroneous but appellants are contending that the classification should have followed the exemption notification. We are not in position to agree with the said contention. The decision of Indian Tobacco Association referred by the appellants in their appeal do not advance the case of appellant as the said decision do not state so and is also not on the issue of classification. The said decision is authority for giving liberal interpretation to the exemption notification in accordance with the objective of the notifications. Hence the contentions of appellant in respect of classification cannot be agreed to.”

(emphasis supplied)

48. Thus, for all the reasons stated above, the product under consideration, which is an Executive IP Phone (Model No. FON670i), is classifiable under CTH 8517 18 10 and not under CTH 8517 69 90.

49. The order passed by the Commissioner (Appeals), therefore, cannot be sustained. It is, accordingly set aside and the appeal is **allowed**.

(Order Pronounced on December 17, 2020)

Citations: in 2020 (12) TMI 870 - CESTAT NEW DELHI

1. [2005 \(3\) TMI 117 - Supreme Court](#)
2. [2005 \(2\) TMI 139 - Supreme Court](#)
3. [2005 \(2\) TMI 114 - Supreme Court](#)
4. [1994 \(9\) TMI 68 - Supreme Court](#)
5. [1994 \(7\) TMI 88 - Supreme Court](#)
6. [1977 \(12\) TMI 138 - Supreme Court](#)
7. [2019 \(11\) TMI 711 - GUJARAT HIGH COURT](#)
8. [1991 \(3\) TMI 154 - HIGH COURT AT CALCUTTA](#)
9. [2019 \(2\) TMI 1504 - CESTAT MUMBAI](#)