

CASE NO.:
Appeal (civil) 6102 of 2001

PETITIONER:
Commissioner of Customs, New Delhi

RESPONDENT:
C-Net Communication (I) Pvt. Ltd

DATE OF JUDGMENT: 26/09/2007

BENCH:
Ashok Bhan & V.S. Sirpurkar

JUDGMENT:
J U D G M E N T

CIVIL APPEAL NOS.6102 OF 2001

V.S. SIRPURKAR, J.

1. Revenue has filed this appeal under Section 130 E(B) of the Customs Act, 1962 challenging the decision of the Customs, Excise & Gold (Control) Appellate Tribunal (hereinafter referred to as "the Tribunal"). By the impugned judgment the Tribunal allowed the appeal filed by the assessee M/s.C-Net Communication (I) Pvt. Ltd., challenging the orders passed by the Assessing Authority and the Confirming Order passed by the Commissioner of Appeals. The question which has fallen for consideration is "whether goods, namely, Signal Decoder which is normally used by a Cable Operator for distributing Satellite signals collected by Dish Antenna is covered under Entry 8528 or 8529".

2. Such collected signals, if weak, are strengthened by the Decoder and are fed further to the customers' television. Normally, the signals so collected by the feed-horn are weak and, therefore, a device called Low Noise Block down Converter is used for the amplification of those signals. The Decoder also converts the signals received from the Satellite by way of Dish Antenna into useable signals. In short, the signals are modulated into proper frequency and with the help of channel combiners, distribution amplifiers, channel converters and top off boxes, the signals are distributed to the subscribers for viewing the programmes. This apparatus is useful in case of some of the broadcasters transmitting the Pay Channels and for that purpose the Cable Operator connects the Decoder after the Satellite Receiver and the Decoders perform the de-coding function only after the reception of signals by Satellite Receiver and then feeds into the frequency level which the Decoder can withstand. The Revenue insists that these Decoders are covered by Entry 8528 which reads as under:
"8528. Reception apparatus for television, whether or not incorporating radio-broadcast receivers or sound or video recording or reproducing apparatus; video monitors and video projectors"

3. It was, however, the claim of the Assessee that Decoder will be covered under Entry 8543 which is as under:
"8543 \026 Electrical machines and apparatus having individual functions, not specified or included elsewhere in this Chapter;

- Particle accelerators."

4. The claim by the Assessee was negatived by the Assessing Officer as also by the Commissioner (Appeals) who held that the proper Entry

would be 8528 which we have indicated above. The Tribunal, however, came to a different conclusion which can be said to be an alternative contention and held the relevant applicable Entry to be 8529. The said Entry 8529 is:
"8529 \026 Parts suitable for use solely or principally with the apparatus of headings 8525 to 8528."

The further Entry is 8529.10 which is:
"8529.10 \026 Aerials and aerial reflectors of all kinds; parts suitable for use therewith:

- Dish Antenna.

8529.90 \026 Other."

The Tribunal has held that the Decoder is more or the less a part suitable for specific purpose with the apparatus of 8528, i.e. the Reception apparatus for television.

5. The only question, therefore, is as to whether the proper Entry would be Entry 8528 or Entry 8529 as held by the Tribunal.

6. Before we proceed to consider the question in detail, we must note that the Entry 8528 to begin with was as under:

"8528 \026 Television receivers (including video projectors), whether or not incorporating \005 radio-broadcast receivers or sound or video recording or reproducing apparatus."

This was amended with effect from 1.1.1996 and now the Entry has become as under:

"8528. Reception apparatus for television, whether or not incorporating radio-broadcast receivers or sound or video recording or reproducing apparatus; video monitors and video projectors.

8512 \026 Colour

8528.13 Black & White or other monochrome 40%

- Video monitors.

8528.21 - Colour

8528.22 Black and White or other monochrome 40%

8528.30 Video Projectors 40%

8528.12.91 - Satellite Receivers."

The major difference brought out by the amendment was, whereas previously 8528 was restricted to "Television Receivers", after amendment, the said words have been omitted and have been replaced by the words "Reception apparatus for Television".

7. Before the Tribunal the Assessee had taken a stand that Decoder is not a Satellite Receiver as it is used only to de-code video signals which have been permitted in encryptic or encoded form. According to the Assessee the Decoder has no provision for receiving or processing any audio signals and the Decoder also does not have an RF output for connecting it directly to a television. The Assessee further argued that even without signal decoder, in case of some channels the reception of satellite signals is not incomplete as even without the decoder the satellite receiver can receive the clear signals like BBC, Sony, Zee, etc. The Assessee also relied upon Board's Circular dated 16.11.1994, issued

under Section 73B of the Central Excise Act in which it was clarified that booster, amplifiers, attenuators, modulators, line splitters, channel filters, etc., are neither integral parts of television receiver nor of antenna and merit classification under Heading 8543. The Assessee, therefore, contended that this Circular was squarely applicable for determining the classification of Decoder. The Assessee also relied upon the decision of Canadian International Trade Tribunal which had classified the Decoder under Heading 8543.90 of the Canadian Customs Tariff. It was pointed out that even Madras Customs House has classified the System Decoder under Sub-heading 8543.90 only. Ultimately, the Assessee also relied on Rule 3(a) or (b) suggesting that when goods cannot be classified by reference to Rule 3(a) or (b), they shall be classified under the heading which occurs last in numerical order and, therefore, the goods were classifiable under Sub-heading 8543.90. The decision in *Manisha Pharma Plas Co. Pvt. Ltd. vs. Union of India* [1999 (112) ELT 12 (Del)] was also referred to wherein it was held that "HSN is the High Powered body to ascertain international practice of classification of a particular product and its opinion and recommendation cannot just be brushed aside." It is needless to mention that the Tribunal did not accept the case of the Assessee that the Decoder falls under the Entry 8543 or any sub-entries thereof but went on to hold that the applicable Entry would be 8529. In holding so, the Tribunal returned a finding that the Decoder is not a Satellite Receiver itself warranting classification under Sub-heading 8528.12. The Tribunal then held the Decoder to be one of the elements of Satellite Reception Apparatus and, therefore, held that it comes under Heading 8529. It observed:

"The learned DR has emphasized that according to technical literature the decoder in question has compatibility with most existing satellite receivers. This does not mean that it is a reception apparatus classifiable under sub-heading 8528.12. A decoder is an essential part of a satellite receiver and as such will be classifiable under heading 85.29" (Emphasis supplied).

The Tribunal also noted that the Assessee had made an alternative plea of classifying the impugned product under Sub-heading 8529.90 and thus the Tribunal came to the conclusion that the relevant Entry could not be under 8528 but the product should fall squarely within the Entry 8529. Learned counsel for the Assessee also relied upon this reasoning in the Tribunal's order.

8. Learned counsel for the appellant-Revenue reiterated its argument before the Tribunal as also the earlier two authorities and contended that the Tribunal was in error in not noting the amendment which was brought out on 1.1.1996. It is argued that the scope of the Entry was enlarged inasmuch as what was earlier restricted to Television Receivers, after the amendment, a broad Entry was brought as "Reception Apparatus for Television". Learned counsel also pointed out that the Board's Circular was pertaining to the unamended Entry and, therefore, was not applicable after the amendment was brought about. It was also pointed out that the earlier judgment by the Canadian Tribunal in the case of *Canadian Satellite Communications Inc.* And The Deputy Minister of National Revenue and Tee-com Electronics Inc was no longer applicable as the Tribunal itself, after the amendment, had changed its view and had held that the proper Entry covering the decoders would be 8528. We were taken through three judgments of the Canadian Tribunal. The first two judgments pertain to the Satellite Television Reception System whereas the last judgment is in the case of encoded Receiver/decoders described as Integrated Receivers/Decoders (IRDS). From this the learned counsel argued that the judgments of the first two authorities were the correct judgments, whereas the Tribunal erred in allowing the appeal filed by the assessee.

9. As against this the learned counsel for the assessee also relied on the arguments before the Tribunal and suggested that the Tribunal was correct in accepting the alternative plea of the assessee that the correct Entry would be 8529 as the decoders can be viewed as a part useful for a

specific purpose, namely, to de-code the scrambled signals received by Dish-antenna.

10. We have given our deep consideration to the matter and we are of the clear view that the Tribunal erred in allowing the appeal filed by the assessee.

11. We must first deal with the judgments of the Canadian Tribunal, relied upon by the parties. The first judgment relied upon by the assessee was dated 8th December, 1995 \026 Canadian Satellite Communications Inc. And The Deputy Minister of National Revenue and Tee-com Electronics Inc was the intervener in this case. The Tribunal has held that the decoder in issue should be classified under Tariff Item No.8543.90.95 as part of Television Converters. It is observed therein that the decoders are designed for use with satellite receivers and are not of any value or use unless inserted into the backs of satellite receivers or attached to satellite receivers by coaxial cable. In theory, the decoders are optional add-ons to satellite receiver. In practice most consumers who buy a satellite receiver also buy a decoder module or a stand-alone decoder. Therefore, in the Tribunal's view a decoder is an essential part of a satellite receiver for the customer. The Entry which was considered was 8528 and the same was reiterated by the Revenue. There also the question was as to whether the relevant Entry would be 8543.80.50 or 8529.10.10. The Tribunal seems to have considered the argument by the assessee that the decoders in issue cannot be classified as part of Colour Television Receivers since Television Receivers function without decoders. The Tribunal there also considered the argument that the decoders in issue are not Television Converters nor composite goods nor functional units. The alternative argument raised was that if the IRD was a composite machine, it would have to classify it in heading No.85.28 based on its principal function as an "apparatus for television reception". The Tribunal found that the function which although related to the function of a "television receiver" is distinct from that function. A satellite receiver converts satellite signals to signals which can be received by and viewed on a television receiver. Moreover, a satellite receiver can perform this conversion function without a television receiver. In that view the Tribunal rejected the contention of the Revenue that the relevant Entry could be 8528 and held that the relevant Entry would be 8543. It must be stated that the Entries 8528, 8529 and 8543 are identical before us. This was the judgment which was very heavily relied upon by the assessee. However, we must note that the Entry 8528 underwent an amendment and as many as three judgments came after the amendment. Those three cases are Jonic International Inc. And The Deputy Minister of National Revenue (decided on September 28, 1998); C.L. Blue Systems Ltd. And The Deputy Minister of National Revenue (decided on November 24, 1999) and Star Choice television Network Incorporated And The Commissioner of the Canada Customs and Revenue Agency (decided on November 8, 2002). It will not be necessary for us to refer to the first two cases in detail which though are relevant, are related to the Satellite Television Reception Systems (STRS). In Jonic International Inc, the Tribunal has considered in these two cases the operation of STRS in the following terms:

"The experts agreed on the operation of the STRs. The dish antenna reflects microwave satellite television signals to the LNBF. The LNBF converts the signals from 11,000 MHz down to 1,000 MHz. The LNBF also amplifies the signals and sends them through coaxial cables to the receiver. The receiver then converts the signals to 61-67 MHz, which is the frequency for channel 3 on a television channel selectors, or to a video base band that can be received by some television sets. If the user is a subscriber of the selected satellite television channel, a decoder built into the receiver then descrambles the signals so that they can be displayed to the user on the television set. The remote control operates the receiver and is used through on-screen menus."

Ultimately, the Tribunal considered the language of Entries 8528 and 8529

held:

"The Tribunal is of the view that STRS cannot be classified in heading No.85.29 as a part of reception apparatus for television, even if it has functions similar to those of a cable television converter. While acknowledging that each case must be determined on its own merits and that there is no universally applicable test, the Tribunal in York Barbell, indicated that the following criteria are relevant in determining whether a product is a part: (1) the product is essential to the operation of another product; (2) the product is a necessary and integral component of the other product; (3) the product is installed in the other product; and (4) common trade usage and practice. In the present appeal, none of those criteria is fulfilled. An STRS is not essential to the operation of a television reception apparatus, e.g., a television set, is not a necessary and integral component of such an apparatus and is not installed in such an apparatus. No evidence relating to common trade usage and practice was submitted to support the classification of an STRS as a part of a television reception apparatus."

The Tribunal further held that while a Cable Television converter could be covered under the Entry 8529.90.91, such was not the case with the STRS. The decision in Canadian Satellite Communications Inc. (supra) was referred to and the Tribunal specifically held that the STRS cannot be classified as a part in heading 8529. Ultimately, the Tribunal came to the conclusion that the STRS in issue is properly classified in sub-heading 8528.12 as "colour reception apparatus for television".

12. The second decision in C.L. Blue Systems Ltd is also more or the less on the same lines. Here also the relevant goods were STRS and the law laid down in Jonic International Inc (supra) was reiterated.

13. The most important, however, is the case of Star Choice Television Network Inc., which decision was given on November 8, 2002. Here the question, as to whether the integrated receivers/decoders (IRDs) are properly classified under Tariff Item No.8528.12.99, fell for consideration. While, according to the assessee, the correct Tariff Item was 8529.90.90, the Tribunal held that the said decoder is nothing but a part of Satellite Television Reception System (STRS). It was further held that IRDs was essential to the operation of the STRS and it is necessary and integral component of STRS and STRS cannot function without it. It was noted by the Tribunal that IRD is attached to the STRS by a coaxial cable and is sold along with the rest of the components and make up an STRS. Accordingly a finding was given by the Tribunal that the goods in issue are a part of STRSs. The Tribunal noted the amendment brought about in Entry 8528.12 and pointed out that the words "receiver for satellite television" were replaced by the words "reception apparatus for television". The argument before the Tribunal, at the instance of the assessee, was that the goods in issue should be classified in the Entry 8529 "as the other parts if suitable for use solely or principally with the apparatus of any numbers 8525 to 8528". It was also alternatively argued that if the goods are properly classified in heading No.8528, they should be classified under Tariff Item no.8528.12.10 as incomplete or unfinished television receivers. It was also argued before the Tribunal, at the instance of the assessee, that IRD is only one of the components of STRS and cannot perform satellite television reception function, described in heading 8528, on its own and, therefore, IRD cannot be classified in Heading No.8528 and must consequently be classified under Heading 8529. The Tribunal then referred to Section 10 of the Customs Tariff which directed the classification in accordance with the General Rules for the interpretation of the Harmonized System and the Canadian Rules. It noted Rule which provided that for legal purposes, classification shall be determined according to the terms of the heading and any relative section or chapter notes. It also referred to Section 11 and then referred to the Jonic International Inc and CR Blue's cases (supra) and came to the conclusion that IRD is the part of STRS and is essential to the operation of

STRS. It is a necessary and integral component of STRS and STRS cannot function without it. It is attached to the STRS by a coaxial cable and is sold along with the rest of the components that make up STRS.

The Tribunal ultimately held:

"The appellant submitted that the IRD is only one of the components of an STRS and cannot perform the satellite television reception function on its own. While it is true that the IRD cannot receive satellite television signals transmitted by a satellite without the dish antenna and the LNBF, the IRD can receive television signals transmitted by the LNBF. This suffices for the IRD to constitute a reception apparatus for television. There is no requirement that a machine be capable of receiving satellite television signals to be classified in heading No.85.28 as a reception apparatus for television." .(emphasis supplied)

In short the Canadian Tribunal has held Entry 8528 to be the proper Entry to cover the IRD or, as the case may be, the decoder.

14. On the backdrop of these cases it is to be seen as to whether the correct Entry would be 8528.

15. While the appeal was being heard, this Court had directed the respondents to file technical/product literature for the proper adjudication of the matter. The respondents accordingly have filed such literature. A "decoder", as per the Dictionary of Computer, W.R. Spencer, is an electronic device that is capable of accepting decoded data at its input and generating unencoded data at its output. The decoding process employed may conform to an agreed standard or be user-defined. The outputs of these devices are capable of directly driving external equipment such as LCD or LED-type displays. As per the information obtained from Wikipedia which is a free encyclopedia, the "decoder" is described as under:

"A decoder is a device which does the reverse of an encoder, undoing the encoding so that the original information can be retrieved. The same method used to encode is usually just reversed in order to decode.

In digital electronics this would mean that a decoder is a multiple-input, multiple-output logic circuit that converts coded inputs into coded outputs, where the input and output codes are different, e.g., n-to-2ⁿ, BCD decoders."

The User Manual which has been supplied to the court indicates that:

"This decoder enables normal viewing of satellite programmes broadcast using the STARCrypt system of encryption. When used in conjunction with the correct viewing card these broadcasts are descrambled. The decoder incorporates the following features:

- * Phono connectors for connection to a satellite receiver.
- * Option de-emphasis for baseband input signal;
- * Power on LED indicator;
- * De-emphasis on LED indicator;
- * Pay preview programme capability;
- * Cable and SMA TV compatibility;
- * Compatibility with most existing satellite receivers.

From the User's Manual it is apparent that the decoder is an equipment which is required to be connected to the power supply by way of a cord. The said cord is terminated at one end with a connector to be inserted into the power input socket on the rear panel of the apparatus. This decoder is required to be connected with the help of cords to the satellite receiver. All this is connected to the Television set. In short it is only when the connections between the decoder satellite receiver and the Television have been made that the subscriber would be able to view the programme if he has the valid card for the same. The functioning of the decoder, therefore, clearly indicates that it is essential for receiving the decoded signals and the subscriber can view the programmes either of the pay channels or meant for the cable subscribers with the aid of the decoder. In case the decoder is not connected to the Television and to the satellite

receiver, then it will not be possible for the subscriber to view any programme which is aired by the Cable TV or which is meant as a pay channel. In short, before making a full use of Television, the signals which are received by the dish-antenna are passed through the decoder which does the function of decoding the encoded signals so that the viewer can watch them. Under such circumstances it is clear that it become "reception apparatus for television". It may be that even without the decoder the television may work but in order to enjoy the television in a more meaningful manner, as also for its complete utilization the decoder is required. It may not be fitting into the description of "television receiver" but it certainly is an apparatus which works for receiving the signals for television. In our view, therefore, when we compare unamended and the amended Entries, it is clear that the amended Entry has widened the scope of the earlier Entry and what was earlier "television receiver" has now become "reception apparatus for television". If this is so, in our opinion, the amended Entry under 8528 would aptly apply to the decoder which is one of the "apparatus for receiving the signals for television". In our opinion the true test is not as to whether the television could still work without the decoder, but the true test is as to the function that the decoder achieves in the user of the television. It is clear to our mind that decoder with which we are concerned passes the signals which have been received from satellite after decoding them into television so as to enable the viewer to have intelligible signals which, at times, would be available only by way of pay channels or which would be available if viewer is a subscriber to the Cable TV. Again that is not the only function of the decoder. At number of times the signals which are received from the satellite are weak and, therefore, would not reach the television intelligibly for the viewer, the decoder strengthens these signals. This leaves us with no doubt that decoder can be aptly described as a "reception apparatus for television". It is an apparatus which helps the television to receive intelligible signals for the viewer.

16. As per Stroud's Judicial Dictionary the term "apparatus" includes the distribution board of an electrical installation. It must be considered when current is passing through and not when it is in its inanimate state. This meaning has been assigned to it in Waddell's Curator Bonis v. Alexander Lindsay Ltd. [1960 SLT 189 (OH)]. This would indicate that the terms "apparatus" has been interpreted as something which is inclusive of some other appliance. This is clearly an indicator to the fact that the amendment was brought in with an idea to include a unit like the Decoder. This term was absent at the pre-amended stage and its inclusion in Entry 8528 clearly indicates the intent of the Legislature that the scope of the Entry was to be broadened and widened so as to include a signal unit like decoder. Unfortunately all this has escaped the attention of the Tribunal.

17. Learned counsel for the respondent strongly argued that the decoder in question is not a satellite receiver and is merely connected between the satellite receiver and the modulator. In case where the satellite signals are encoded or scrambled condition and the decoder is used only for the purpose of decoding the encoded/scrambled signals and that the signals decoder is nothing but one of the device connected after the satellite receiver and is used to convert the scrambled signals into unscrambled signals. Thus, the decoder is not a "satellite receiver". There can be no quarrel with this argument regarding the function of the decoder. However, what we are at pains to point out is the effect of amendment which has undoubtedly widened the scope of the Entry 8528. The argument put forward by the respondent would have been a sound argument had the Entry 8528 been restricted to "television receivers". However, now the Entry is not restricted to "television receivers" and has been widened into "reception apparatus for television". The thrust is on the word "reception apparatus", as against the thrust on the word "receiver" in the unamended Entry. In our opinion, the word "apparatus" would certainly mean the compound instrument or chain of series of instruments designed to carry out specific function or for a particular use.

18. We must, at this stage, take stock of the arguments by the respondents regarding the Board's Circular dated 16.11.1994 which has also been relied upon by the Tribunal. In our opinion the said circular

cannot be made applicable to the present Entry. We must at once point out that the Entry has undergone a change so as to include the "reception apparatus". In our opinion the reliance on the circular is, therefore, not called for in the wake of the amended wording of Entry 8528.

19. It was further argued that the relevant Entry should be 8529 as has been held by the Tribunal. We have seen the Tribunal's order. The Tribunal has dealt with Entry 8529 in an extremely sketchy manner. All that the Tribunal justifies in holding the relevant Entry to be 8529 is that a decoder is an essential part of the satellite receiver and as such would be classifiable under that Entry. We do not think that such would be the correct approach. A decoder cannot be held as part of the television, though it can be a "reception apparatus for television". Entry 8529 reads as under:

"8529 \026 Parts suitable for use solely or principally with the apparatus of headings 8525 to 8528."

In our view in order to make this Entry applicable, the decoders would have to be viewed as part of television. It is not a part of the television for the simple reason that it is an independent instrument itself though it is one of the apparatus for reception of coded signals and decoding the same for the user of the subscriber. Decoder is not a built in part, nor is the decoder essential to the operation of television. Further it is not integral component of the television nor it is treated as part of the television in the common usage and practice. We, therefore, accept the interpretation given by the Canadian Tribunal in *Jonic International Inc* (supra). The only reason given by the Tribunal that it is an essential part of the satellite receiver and, therefore, it would be classifiable under Heading 8529 does not appear to be correct for the above reasons.

20. We have already extensively quoted from the Canadian decision. In our considered opinion the last three decisions and more particularly, the decision in the case of *Star Choice Television Network Inc.* (supra) would be apposite decision in the present matter. In view of this we proceed to set aside the order of the Tribunal and restore that of the Commissioner of Appeals. However, in the circumstances of the case, there will be no order as to costs.