

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI**

PRINCIPAL BENCH – COURT NO. 4

Customs Appeal No. 51783 of 2022

(Arising out of Order-in-Appeal No. CC(A)CUS/D-I/Import/NCH/02/2022-23 dated 05.04.2022 passed by the Commissioner of Customs (Appeals), New Delhi)

M/s Proffer IT Consultancy Private Limited **Appellant**
509, 5th Floor, DLF Prime Tower,
Okhla Industrial Area, Phase-I,
New Delhi-110020.

Versus

Principal Commissioner of Customs, **Respondent**
New Delhi (ACC Import)
New Customs House, Near IGI Airport,
New Delhi-110037.

And

Customs Appeal No. 51785 of 2022

(Arising out of Order-in-Appeal No. CC(A)CUS/D-I/Import/NCH/01-02/2022-23 dated 05.04.2022 passed by the Commissioner of Customs (Appeals), New Delhi)

M/s Proffer IT Consultancy Private Limited **Appellant**
509, 5th Floor, DLF Prime Tower,
Okhla Industrial Area, Phase-I,
New Delhi-110020.

Versus

Principal Commissioner of Customs, **Respondent**
New Delhi (ACC Import)
New Customs House, Near IGI Airport,
New Delhi-110037.

Appearance:

Present for the Appellant: Shri Vishal Nath and Shri S.C. Jain,
Advocates

Present for the Respondent: Shri Nikhil Mohan Goyal, Shri Girijesh
Kumar and Shri Ranjan Prakash, Authorized Representatives

CORAM:

Hon'ble Dr. Rachna Gupta, Member (Judicial)
Hon'ble Mr. P.V. Subba Rao, Member (Technical)

Date of Hearing : 24/09/2025
Date of Decision : 19/12/2025

Final Order Nos. 51899-51900/2025**Dr. Rachna Gupta:**

The present order disposes of two appeals involving the same issue to assail the Order-in-Appeal bearing No. 01-02/2022-23 dated 05.04.2022 vide which the assessment Order No. 143/2021-22 dated 24.01.2022 passed by the Assistant Commissioner, Group-VE, Air Cargo Complex, New Delhi has been upheld.

2. The facts, in brief relevant for the present adjudication, are as follows;

2.1 M/s Proffer IT Consultancy Private Limited¹ is engaged in providing IT solutions to the businesses. Appellant filed a Bill of Entry No. 6929150 dated 03.01.2022 importing a consignment of six different types of 'Newland NLS Handheld Barcode Scanners' classifying them under CTH 8471 6050. The exemption from Basic Customs Duty was claimed, as it was not payable on import of goods falling under CTH 84716050. The goods were covered under Master Airway Bill No. 8281493760 dated 02.01.2022 having various consignments importing different models of aforesaid NLS Handheld Scanners. The adjudicating authority, however assessed the consignment of scanner bearing No. MT9052-GL and MT-9055-GL and alleged that the imported goods are classifiable under CTH 85171300. The authorized CHA of the appellant viz. M/s AeroShip Logicare Pvt. Ltd. vide letter dated 10.01.2022 had requested for waiver of show cause notice and personal hearing. After seeking reply to certain queries raised by the assessing officer and in view

1 the appellant herein

of the said request of waiver that the assessment order bearing No. 143 dated 24.01.2022 was passed holding that the imported goods are not the scanners classifiable under CTH 84716050 but are telephones for cellular network/mobile phones rightly classifiable under 85171300. The goods of the said CTH since were not eligible for any exemption of Basic Customs Duty. The classification under CTH 84716050 was rejected and the customs duty was reassessed under CTH No. 85171300. The said order has been upheld by Commissioner (Appeals) vide the impugned order. Being aggrieved, the appellant is before this Tribunal.

3. We have heard learned counsels for the appellant and learned Authorized Representatives for the Revenue.

4. Learned counsel for the appellant has submitted that the imported goods are used for scanning barcodes and processing data in order to increase the efficiency of functions in supply chain management such as inventory management, asset tracking, stock taking etc. The product carries a processing ability of a laptop and the functionality of a scanner. These goods essentially perform 1D and 2D barcode scanning. Additional features such as WiFi/ SIM Slot, Bluetooth, Camera, GPS. etc. have been provided to assist the main function of scanning and data processing. The predominant use of these Handheld devices is in warehousing logistics/inventory operations for data capturing/ storage and its transmission for allied functions. However, the Assessing Officer re-assessed the imported goods under the Customs Tariff Item 8517 1300 (as Smartphones) which is leviable to BCD @ 20% resulting in a differential customs duty demand of INR 8,47,416/-.

4.1 It is submitted that issue of this classification is no more res integra. Following decisions have been relied upon:

- (i) **Senate Solutions Pvt. Ltd.²;**
- (ii) **Tech Pvt. Ltd.³;**
- (iii) **Rashi Peripherals Pvt. Ltd.⁴;**
- (iv) **Delmon Solutions Pvt. Ltd.⁵**

These decisions have held that the product as that of scanner is Automatic Data Processing Machine classifiable under CTH 8471. It is further submitted that the principal function of the imported product is bar reading/scanning the product/scanners are pre-installed with a special hardware for the purpose. The fact that the imported product has additional feature/functionality such as display screen, dual SIM card slot, Blue tooth camera etc. They have been wrongly classified as mobile phones. The purpose of the said additional functions is merely to enhance the principal functioning of scanning bar codes. These functions are merely ancillary to the function of scanning. The product was rightly classified as scanner under CTH 8471 60 50.

4.2 Learned counsel has relied upon the following decisions:

- (i) **Bloomberg Data Services (India) Pvt. Ltd.⁶;**
- (ii) **Xiaomi Technology India Pvt. Ltd.⁷;**
- (iii) **M/s Brightpoint India Pvt. Ltd.⁸**

2 2023 (385) ELT 282
3 2023 (383) ELT 581
4 2023 (383) ELT 355
5 Advance Ruling by AAR Mumbai
6 2005 (179) ELT 146
7 2019 (21) GSTL 333
8 CAAR/CUS/APPL/21/2022

4.3 Learned counsel finally has impressed upon the principle of trade parlance test or consumer perception test. It is submitted that the product in question is traded in the market for their scanning functionality and not for receiving calls or to access data over internet. The buyers of the imported goods are warehouse keepers, logistic players, inventory management, client etc. Hence trade also recognizes the product as scanner and not as mobile phone. The product is wrongly held to be a smart phone/mobile phone under 84171300. Following decisions have been relied upon:

- (i) **PMP Auto Industries Ltd. Vs. Union of India⁹;**
- (ii) **Samsung India Electronics Pvt. Ltd.¹⁰;**
- (iii) **Union of India Vs. JMA Industries¹¹;**
- (iv) **Commissioner of Central Excise Vs. Shervani Industrial Syndicate Ltd.¹²**

With these submissions, the order under challenge is prayed to be set aside and the appeal is prayed to be allowed.

5. While rebutting these submissions, learned Departmental Representative has reiterated the findings arrived at by the adjudicating authority in the impugned order. It is submitted that though the goods in question are declared as Handheld Bar Code Scanners but the product fulfilled all the criteria as is required for the goods to be classifiable as "smart phones". The product is equipped with 4G dual SIMs for making calls; it operates on android operating system; calling VOIP is also possible through

9 1987 (31) ELT 369 (Bom.)

10 2016 (340) ELT 430

11 1995 (77) ELT 278 (SC)

12 2006 (197) ELT 315 (SC)

numerous third party applications being supported by the android OS. From the technical write up of the product also, it appears that product supports Google play store. The device admittedly captures default applications for messaging and calling. While relying upon Chapter Note V of Chapter 85 which defines smart phones for the purposes of CTH 8517, learned Departmental Representative thus impressed upon that the imported product was a smart phone. Hence it is rightly held classifiable under 85171300. Since 20% BCD is attracted on this CTH is different from 0% BCD on 84175060, differential customs duty has rightly been confirmed against the appellant. Impressing upon no infirmity in the order, the appeal is prayed to be dismissed.

6. Having heard both parties and perusing the entire records, we observe that the issue in the present appeal pertains to the classification of goods items declared as "Handheld Mobile Barcode Scanner, NLS-MT-9052-GL-2WE" and "Handheld Mobile Barcode Scanner, NLS-MT9055-GL-2WE". The appellant had classified the said goods under CTH 84716050, however the Department re-assessed the same under CTH 85171300.

6.1 To decide the correct classification of the imported goods we need to look into both the entries.

Heading 8471 as declared by the appellant:

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 30	-Portable automatic data processing machines, weighing not more than 10 kg. consisting of at least a central processing unit, a keyboard and a display;
8471 30 90	Other automatic data processing machine
8471 60 50	Scanners

6.2 The relevant extract of Heading 8517 as alleged by the department is as below:

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
8517 13 00	Smartphone

Definition of smartphone as per Note 5 to Chapter 85 is as below:

"For the purposes of heading 85 17, the term "smartphones" means telephones for cellular networks, equipped with a mobile operating system designed to perform the functions of an automatic data processing machine such as downloading and running multiple applications simultaneously, including third-party applications, and whether or not integrating other features such as digital cameras and navigational aid systems'.

HSN Explanatory notes for Heading 8517 on Page No XVI-8517-1 states that:

"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".

Further, the HSN Explanatory notes for Heading 8517 on Page XVI-8517-3 covers "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)".

6.3 It is the contention of the appellant that the imported goods are not classifiable as smartphones under Heading 8517 for the simple reason that the goods in question are not primarily meant for communication purposes. The communication abilities as that of traditional telephone/mobile telephone is only an ancillary

function and that these scanners performed. We observe that the classification of the goods under the Customs Tariff is governed by the principles as enumerated in the General Rules of Interpretation ("GRI") set out in the Tariff. As per Rule 1 of the GRI classification of the products 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 remaining Rules of the GRI.

6.4 In order to merit classification under Heading 8471, it is clear, that the devices need to satisfy the requirements of Note 6(A) to Chapter 84, the said Chapter note is reproduced below :

For the purposes of heading 8471, the expression "automatic data processing machines" 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.

Note 6(D) to Chapter 84 lists certain separately presented products that are to be excluded from Heading 8471, even if they can be

classified as part of an ADP system. Note 6(E) to Chapter 84 mentions that a machine incorporating or working in conjunction with an automatic data processing machine and performing a specific function other than data processing are to be classified in the headings appropriate to their respective functions or, failing that, in residual headings. The perusal makes it clear that if the specific function of a machine is as mentioned in note 6(A) of CTH 8471, the machine shall be the ADP.

6.5 In circular No. 20/2013-Cus. dated 14.05.2013, clarification has been given by the Board regarding the classification of "tablet computers" under heading 8471 stating that; "The mobile phone calling function could be provided by the products only as a supplementary function because it could not be activated without running an operating system of the devices. These devices are not intended to be a substitute for a mobile phone to make voice calls, but, according to its main technical features is designed as a substitute for laptops".

6.6 It has been clarified in the Circular that:

"The classification is to be determined by application of the General Rules for the Interpretation (GRIs) of the First Schedule to the Customs Tariff Act (CTA), 1975. GRI 1 requires that, "in classifying articles, for legal purpose it shall be determined according to the terms of the headings and any relative Section or Chapter Notes,..". Hence, all relevant legal texts must be considered. Note 5(A) to Chapter 84 states that, "For the purposes of heading 8471, the expression "automatic data processing machine" 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". In addition to the above relevant Note 3 to Section

XVI stipulates that, "unless the context otherwise requires, composite machines consisting of two or more machines fitted together to form a whole and other machines designed for the purpose of per-forming two or more complementary or alternative functions are to be classified as if consisting only of that component or as being that machine which performs the principal function"

Seen from the clarification also since the mobile phone functionality in the impugned gadget is ancillary and specific function is that of scanner. The imported goods in present case are to be classified as scanners (8471) CTH instead of mobile phone (8517) CTH.

6.7 Further, the trade parlance test is the another relevant criteria for determining the product and the relevant customs tariff entry. Hon'ble High Court Bombay in the case of **P.M.P Auto Industries Ltd. Vs. Union of India**¹³ has held that the goods are to be classified the way they are known by those who deal with them. It is the contention of the appellant that the product in question is used for logistic purposes by the warehouses and all those who required to maintain the inventory as the product is a competent barcode scanner. The features of mobile phone are merely the ancillary features. Department has not produced any evidence to counter the said contention and to prove that the primary function of the imported good was that of mobile phone/smart phone.

6.8 At the time of arguments, the appellant produced a sample of the imported goods. It was comparatively bigger than the mobile phone it had a handle for the product to be held in hand which is actually not the feature of the product which are sold in the market as mobile phone. Chapter note 8 of chapter 84 also

13 1987 (31) ELT 369 (Bom.)

stipulates that a machine which is used for more than one purpose is, for the purposes of classification, to be treated as if, its principal purpose were its sole purpose. In the documents on record in the form of brochures, invoices, packing list etc., the imported goods are described as a Handheld Scanners. They are known as such to trade. Hence, we do not find any reason to hold the product is smart phone merely because the product has an ancillary function of being used as a smart phone.

7. With these observations, the finding in the impugned orders-in-appeal in these appeals that the goods in question were mobile phones is set aside. Consequent thereto, both the appeals are allowed with consequential relief to the appellants.

(Pronounced in open Court on 19.12.2025)

(Dr. Rachna Gupta)
Member (Judicial)

(P.V. Subba Rao)
Member (Technical)

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