

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
HYDERABAD**

Division Bench – Court No. – I

Customs Appeal No. 28146 of 2013

(Arising out of Order-in- Appeal No.30/2013 (H-II) Cus dt.27.06.2013 passed by
Commissioner of Customs, Central Excise & Service Tax (Appeals-II), Hyderabad)

M/s Space Technologies

7-3-196/1, Portion A, 1st Floor, Laxmi Complex,
RP Road, Secunderabad – 500 034

.....Appellant

VERSUS

**Commissioner of Customs
Hyderabad - Customs**

Kendriya Shulk Bhavan, LB Stadium Road,
Basheerbagh, Hyderabad – 500 004

.....Respondent

Appearance:

Shri P. Rosi Reddy, Advocate for the Appellant.

Shri V. Srikanth Rao, AR for the Respondent.

**Coram: HON'BLE MR. A.K. JYOTISHI, MEMBER (TECHNICAL)
HON'BLE MR. ANGAD PRASAD, MEMBER (JUDICIAL)**

FINAL ORDER No. A/30160/2026

Date of Hearing: 02.12.2025

Date of Decision: 13.03.2026

[Order per: ANGAD PRASAD]

M/s Space Technologies (hereinafter referred to as the appellant) are in appeal against OIA dt.27.06.2013, whereby, the Commissioner (Appeals) has upheld the order passed by the adjudicating authority confirming the demand of Customs duty of Rs.8,55,011/- along with interest and imposition of equal amount of penalty (impugned order).

2. The brief facts of the case are that the appellants imported Facsimile machines and parts from M/s Panasonic Asia Pacific, Singapore during the years 2007-08 and 2008-09. They have filed Bills of Entry declaring the goods to be falling under CTH 8443 3260 claiming exemption from Basic Customs Duty (BCD) under Notification No.24/2005-Customs dt.01.03.2005. DRI has investigated the said imports and issued SCN demanding differential

duty alleging that the Facsimile machine is classifiable under CTH 8443 3970 and parts are classifiable under CTH 8443 9960 and are not eligible for exemption from BCD. On adjudication, the adjudicating authority confirmed the demand of customs duty along with interest and imposition of penalty. Aggrieved by the same, the appellants went on appeal before the Commissioner (Appeals), who, vide the impugned order, upheld the order passed by the adjudicating authority and dismissed the appeal filed by the appellant, against which the present appeal has been filed by the appellant.

3. Learned Advocate for the appellants has submitted that the issue involved in the present appeal pertains to the classification of facsimile machines of various models and their parts imported by the appellants during the relevant period. The facsimile machines were classified under CTH 8443 along with printing machinery, other printers, copying machines, etc. The relevant entries are reproduced below.

	--	Other printers, copying machines and facsimile machines, whether or not combined:
8443 31 00	-	Machines which perform two or more of the functions of printing, copying or facsimile transmission, capable of connecting to an automatic data processing machine or to network
8443 32	--	Other, capable of connecting to an automatic data processing machine or to network
8443 32 60	--	Facsimile machine
8443 39	--	Others
8443 39 70	--	Facsimile machine not capable of getting connected to automatic data processing machine

4. Further, the parts of facsimile machines were classified under the following chapters under the Customs Tariff:

	--	Parts and accessories:
8443 99	-	Other
	--	Parts and accessories of goods of sub-heading 8443 31, 8443 32
8443 59	99 --	Others
8443 60	99 --	Parts and accessories of goods of sub-heading 8443 39

5. He has submitted that from the above table, it is clear that the classification would depend on whether the facsimile machine is capable of connecting to automatic data processing machine or to a network or not and with the help of external device of VBC of ATA, the said facsimile machine can be networked. Thus, the charge of mis-classification of said specified facsimile machines that the same are not network enabled is mis-conceived and without any substance. In other words, he has submitted that as long as the facsimile machine is capable of connecting to network, they fall under CTH 8443 3260. He has further submitted that circular issued by CBEC is prospective in nature when it is adverse to the importer. He has relied on the following judgments in this regard.

- a) HM Bags Manufacturer Vs CCE [1997 (94) ELT 3 (SC)]
- b) Jet Speed Audio Pvt Ltd Vs CCE, Mumbai-V [2006 (198) ELT 296 (Tri-Mumbai)]
- c) UMS Radio Factory Ltd Vs CCE, Coimbatore [2005 (180) ELT 169 (Tri-Chennai)]

6. He has submitted that Commissioner (Appeals) has not discussed about the prospective effect of Circular No.11/2008-Cus dt.01.07.2008. Without prejudice to their contention that imported goods and parts are rightly classified in the Bills of Entry, if at all the same are to be classified under CTH 8443 3970, the Commissioner (Appeals) ought to have confirmed the demand from 01.07.2008 only and not to earlier period. The burden to prove that the imported machines merit classification under CTH 8443 3970 is on the department, which is not discharged. To classify the said imported facsimile machines under the said tariff heading, they must not be capable of getting connected to ADP machine but the imported machines are connectable to network through ATP as per admitted evidence on record. It is settled law that statute has to be interpreted as per the language used and the language used is that facsimile machine must not be capable of getting connected to Automatic Data Processor. He has relied on the judgment of Hon'ble Bombay High Court in the case of UOI Vs Sahney Steel and Press Works Ltd [1992 (58) ELT 38 (Bom)] in support of his contention that burden of proof is on the department that particular good falls within a particular item of Tariff. Hence the imported machines are rightly classifiable under CTH 8443 3260 and parts under CTH 8443 32 90.

7. He has further submitted that appellants have filed Bills of entry declaring the goods as Facsimile machine falling under chapter sub heading 8443 3260 claiming exemption from basic customs duty under Notification No.24/2005-customs dt.1.3.2005, as amended. The said goods were assessed by the Department and an out of charge was given, after physical verification of the goods. Hence the assessments made during the physical clearance could not be revised as they were time barred as held in many cases. Further, he has submitted that the imposition of second penalty on the proprietor would amount to imposition of penalty twice over, which cannot be sustained in eyes of law. He has relied on the following case laws.

- a) Vinod Kumar Gupta Vs CCE [2013 (287) ELT 54 (P&H)]
- b) CC, Amritsar Vs Jyoti Industries Ltd [2005 (188) ELT 88 (Tri-Del)]
- c) CC, Amritsar Vs Jyoti Industries Ltd [2007 (209) ELT 180 (P&H)]

8. He has further submitted that the bills of entries were filed, describing the goods as facsimile machines and classified under CTH 84433260. Assessment was not self-assessment and was assessed by the Department and goods were cleared after physical verification. The issue is related to interpretation of connectivity to a network i.e., whether by a cable or other paths. It is not a case of suppression, willful misstatement and it is only related to interpretation. In such a situation, suppression and willful misstatement do not arise and extended period in not invocable, as held by the Hon'ble A.P. High court in the case of CC & CE Vs Indian Institute of Chemical Technology [2012 (26) STR 97 (AP)].

9. Further, he has submitted that mere claim of a classification, based on bona fide reason to believe same to be applicable, cannot be a reason to arrive at a mis-declaration, as held in the case of Pearl Enterprises Vs CC (Port), Kolkata [2006 (203) ELT 71 (Tri-Kolkata)]. Accordingly, he has prayed that the impugned order passed by the Commissioner (Appeals) may be set aside with consequential relief.

10. Learned AR has reiterated the findings of the Commissioner (Appeals).

11. Heard both sides and perused the records.

12. The issue involved in the present appeal relates to classification of facsimile machines and their parts imported by the appellant during the

period 2007-08 and 2008-09. The appellants classified the goods under CTH 8443 3260 claiming the exemption from BCD under Notification No.24/2005-Cus dt.01.03.2005, whereas, the department has proposed classification under CTH 8443 3970 for facsimile machines not capable of connecting to Automatic Data Processing (ADP) machine or network.

13. The classification dispute essentially revolves around the interpretation of the tariff entry relating to whether the facsimile machines imported by the appellant were capable of connecting to ADP machine or network. It is the case of the appellant that by using external devices such as VBC or ATA adapters, machines were capable of networking and therefore, correctly classifiable under CTH 8443 3260.

14. We find merit in the submissions of the appellant that the tariff entry clearly differentiates facsimile machines based on their capability to connect to ADP machine or network. If such connectivity is available, the classification would fall under entry relating to machines capable of networking.

15. In the present case, the department has not produced any technical evidence to establish that the imported machines were incapable of connecting to a network or ADP machine. It is a settled principle that the burden of proving classification under a particular tariff entry lies upon the department, as held by Hon'ble Bombay High Court in the case of UOI Vs Sahney Steel and Press Works Ltd (supra). We also note that the goods were assessed by the department at the time of import and were cleared after physical verification. Therefore, the allegation of deliberate misclassification cannot be sustained in the absence of any evidence of suppression or misstatement.

16. Further, the dispute essentially relates to interpretation of tariff entries and technical capability of the machines, which is a matter of classification or interpretation of law. In such circumstances, the extended period of limitation cannot be invoked, as held by Hon'ble AP High Court in the case of CC & CE Vs Indian Institute of Chemical Technology (supra).

17. We also find that the Circular No.11/2008-Cus dt.01.07.2008 relied upon by the department could be applied only prospectively, particularly

when it imposes a burden adverse to the importer. The Hon'ble Supreme Court in the case of HM Bags Manufacturer Vs CCE (supra) has held that circulars which are adverse to the assessee cannot be applied retrospectively. Further, the Coordinate Bench at Mumbai in the case of Jet Speed Audio Pvt Ltd Vs CCE, Mumbai-V (supra) and Coordinate Bench at Chennai in the case of UMS Radio Factory Ltd Vs CCE, Coimbatore (supra), have held that classification disputes must be resolved based on the functional capability of the goods and not merely on assumptions made by the department.

18. In view of the above, we find that the department has failed to discharge the burden of proving that the imported machines were not capable of connecting to ADP machine or network. Therefore, the classification adopted by the appellant under CTH 8443 3260 appears to be correct.

19. Once the classification claimed by the appellant is accepted, the demand of differential duty confirmed in the impugned order cannot survive. Consequently, the imposition of penalty is also unsustainable. It is a settled law that penalty cannot be imposed in cases involving bonafide interpretation of classification, as held by Coordinate Bench at Kolkata in the case of Pearl Enterprises Vs CC (Port), Kolkata (supra).

20. In view of the discussions and findings, the impugned Order-in-Appeal dt.27.06.2013 is set aside.

21. Appeal filed by the appellant is allowed with consequential relief, if any, as per law.

(Pronounced in the Open Court on 13.03.2026)

(A.K. JYOTISHI)
MEMBER (TECHNICAL)

(ANGAD PRASAD)
MEMBER (JUDICIAL)