

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

REGIONAL BENCH – COURT No. III

**Customs Appeal Nos. 103 and 104 of 2010**

(Arising out of Order-in-Original No. 9924/2009 dated 31.10.2009 passed by Commissioner of Customs, No. 60, Custom House, Rajaji Salai, Chennai – 600 001)

**Mr. K. Sankar**

**...Appellant**

Partner **M/s. Swamy Engineering Works,**  
No. 3, Blackers Road, Vijay Complex,  
First Floor, Anna Salai,  
Chennai – 600 092.

And

**M/s. Swamy Engineering Works,**

**...Appellant**

No. 3, Blackers Road, Vijay Complex,  
First Floor, Anna Salai,  
Chennai – 600 092.

***Versus***

**Commissioner of Customs**

**...Respondent**

Chennai II Commissionerate,  
No. 60, Custom House,  
Rajaji Salai,  
Chennai – 600 001.

**APPEARANCE:**

For the Appellants : Ms. S. Muthuvenkataraman, Advocate

For the Respondent : Ms. Anandalakshmi Ganeshram, Authorised Representative

**CORAM:**

**HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)**

**HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)**

**FINAL ORDER Nos. 40256-40257 / 2026**

DATE OF HEARING : 16.09.2025

DATE OF DECISION : 19.02.2026

**Per Mr. VASA SESHAGIRI RAO**

At the outset, the present appeal is the third round of litigation in relation to Show Cause Notice bearing F. No. VIII/48/29/2007-DRI dated 30.01.2008 before this

Tribunal. The present appeal Customs Appeal No. C/103/2014 & Customs Appeal No. C/104/2014 have been filed by Mr. K. Sankar, Partner of the main Appellant Company, being aggrieved by the imposition of personal penalty under Sections 112(a) and 114AA of the Customs Act, 1962, *vide* the same Order-in- Original No. 9924/2009, dated 31.10.2009, passed by the Commissioner of Customs (Sea Port-Import), Chennai, has been remanded from the Hon'ble High Court of Madras and hence taken up.

2. The brief sequence of events in the present case leading up to the present appeal is provided hereunder for ready reference: -

<b>S.No.</b>	<b>Date</b>	<b>Event</b>
1	B/E filed Between 2003-2006	Bill of Entry
2	30.01.2008	Show Cause Notice bearing F. No. VIII/48/29/2007-DRI
3	28.08.2008	Order-in-Original No. 8076/2008
4	27.04.2009	Final Order No. 334, 335/2009
5	31.10.2009	De Novo Order-in-Original No. 9924/2009
6	29.09.2017	Final Order No. 42473-42474/2017
7	28.04.2022	Order of the Hon'ble High Court of Madras in CMA No. 961 & 965 of 2022 and CMP No. 7143 of 2022

3. This Customs Appeal No. C/103/2014 has been filed by M/s. Swamy Engineering Works, i.e., the main appellant & Customs Appeal No. C/104/2014 has been filed by Mr. K. Sankar, Partner, being aggrieved by Order-in-Original No. 9924/2009, dated 31.10.2009 (impugned Order

herein), passed by the Commissioner of Customs (Sea Port-Import), Chennai, whereby differential duty demand along with interest was confirmed under Section 28(2) read with Section 28AB of the Customs Act, 1962, goods were ordered to be confiscated under Section 111(m), and penalties were imposed under Sections 112(a), 114A and 114AA of the Customs Act, 1962.

4. Briefly stated the facts of the appeals are that the appellants are engaged in import of professional Audio Equipment. The Appellants were the authorized distributors of Eminence Speakers for Indian Market and were also engaged in the trading of speakers and parts thereof manufactured by other companies.

5. The Appellants procured Eminence speakers directly from manufacturers located in the Eminence Speaker Europe Limited, U.K. and the Eminence Speaker LLC, U.S.A and sell them in India. During the period in question, the Appellants imported speakers by classifying them in the Bills of Entry dated between May 2003 to October 2006 as "cone-type" loudspeakers and accordingly claimed exemption from customs duty under Sl.No.244 of the Notification No. 21/2002- Cus. Such classification and exemption were claimed in respect of several models (APT 50, APT 80, APT

150, and APT 200), imported by them under the Bill of entry No.316152 dated 14.10.2006.

6. It is seen that during the relevant period, only cone-type loudspeakers were eligible for partial exemption under Notification No. 21/2002-Cus, with a concessional rate of duty of 15% during 2003-04, 5% during 2004-05 and 2005- 06, and 10% during 2006-07, while speakers of other types fall outside the scope of the said Notification.

7. However, based on specific intelligence, the Directorate of Revenue Intelligence (DRI) initiated investigation against the Appellant on the basis that the Appellants had resorted to misclassification of certain categories of imported speakers as "cone-type loudspeaker" and had wrongly availed the benefit of Notification No. 21/2002-Cus, resulting in alleged evasion of customs duty, a search was conducted at the Appellants' premises/godown on 03.08.2007, where goods imported by the appellants were kept. During the course of the search, all the speakers stored in the godown including the speakers imported under Bill of entry dated 14.10.06 totally valued at Rs.1,40,36,292/ approximately, were detained under mahazar proceeding.

8. The said impugned goods were seized on 08.08.2007 and were provisionally released on 14.08.2007 upon the Appellants furnishing a bond for ₹1.40 crores, supported by a bank guarantee of ₹20 lakhs. Thereupon, further samples of the APT 150 speaker from among the seized goods were drawn for further verification under mahazar proceedings on 16.08.2007. K. Sankar, Partner of the main Appellant and the Appellant in (C/104/2014) was summoned and statement was recorded from him on the technical aspects of the loud speakers on 28.08.2007.

**SHOW CAUSE NOTICE:**

9. The Revenue, basis upon the manufacturer's catalog, alleged as under: -

- a. A loudspeaker may comprise either a transducer of the cone type or a compression driver, also referred to as a high-frequency (HF) element.
- b. APT 50 Speaker: As per the Eminence product catalog, the APT 50 is classified under HF products with a phenolic diaphragm. The said speaker does not contain any cone element.
- c. APT 80 Speaker: The Eminence catalog classifies the APT 80 under HF products. Although its dispersion is conical

in nature, it does not appear to contain any cone element.

d. APT 150 and APT 200 Speakers: These models are described as horns without any cone element.

10. Accordingly, the Revenue alleged that the speakers such as APT 50, APT 80, and APT 150 imported by the Appellants, in respect of which exemption under Notification No. 21/2002-Cus was claimed, did not contain any cone composition and, therefore, were not eligible for the benefit of the said exemption.

11. Based on the above understanding, the Department issued a Show Cause Notice bearing F. No. VIII/48/29/2007-DRI dated 30.01.2008, alleging that the items *viz.*, APT-50, APT-80, APT-150 and APT-200 did not qualify for exemption under Notification No. 21/2002-Cus, and that the customs duty foregone was recoverable under Section 28AB of the Customs Act, 1962. It was further alleged that the importer was liable to penalty under Sections 112A, 114A and 114AA of the Customs Act. The notice further proposed confiscation of the APT 150 speaker (sample drawn *vide* Mahazar proceedings) and goods covered in the disputed Bills of entry under Section 111(d) and 111(m) of the Customs Act, 1962, and as to why the

bond of Rs.1,40,00,000/- and Bank Guarantee of Rs.20,00,000/- executed by them should not be enforced for recovery of adjudicated liabilities.

12. The Show Cause Notice further alleged that Shri Sankar, Partner of Swamy Engineering Works (the Appellant in (C/104/2014)), though technically qualified in the field of acoustics, had intentionally mis-declared the type of speakers to avail the benefit of the aforesaid notification. Accordingly, personal penalty under Sections 112, 114A and 114AA of the Customs Act, 1962 was also proposed.

#### **I. 1<sup>st</sup> ROUND OF LITIGATION:**

Order-in-Original No. 8076/2008 dated 28.08.2008

13. After following due process of law, the adjudicating authority, *vide* Order-in-Original No. 8076/2008 dated 28.08.2008, observed that the Appellants were not eligible for the claimed exemption on the ground that the diaphragms used in Loudspeaker Models APT-50, APT-80, APT-150 and APT-200 were not of cone shape but of dome shape. Accordingly, the Adjudicating Authority confirmed the entire demand proposed in the Show Cause Notice by placing reliance on the extracts and conclusions of the Chief Commissioner's Conference held on 28th and 29th June, 2001 at Mumbai; the reply dated 26.08.2008 received

from Shri Anthony Lucas, Senior Lab Technician, Eminence Speaker LLC, in response to a specific email enquiry dated 25.08.2008 addressed to the manufacturer to ascertain the shape of the diaphragm; the analysis of the exploded view of the APT-50 catalogue stated to have been received from the manufacturer, M/s Eminence Speaker Europe Limited, England and forwarded by the importer; the Master Handbook of Audio Production by Jerry C. Whitaker (2002); and certain materials downloaded from the internet.

14. Aggrieved by the said Order-in-Original, the Appellants preferred an appeal before Chennai Tribunal primarily on the ground that Order-in-Original No. 8076/2008 dated 28.08.2008 was contrary to law, without jurisdiction, and violative of the principles of natural justice, inasmuch as the Commissioner failed to consider the replies and documents submitted by the Appellants and proceeded to pass the order with a pre-determined mind, while placing complete reliance on materials obtained by him behind the back of the Appellants and without their knowledge.

15. The Appellants further contended that there was no misstatement or misdeclaration on their part and that there was no intention whatsoever to evade payment of duty, as alleged in the Show Cause Notice as erroneously

confirmed in the impugned order. This Tribunal, upon careful examination and analysis of the issues involved, *vide* Final Order Nos. 334-335/2009 dated 27.03.2009, set aside the order passed by the Respondent and remanded the matter to the Commissioner for fresh *de novo* adjudication. The relevant extracts of the order passed by this Tribunal are reproduced below: -

*"3. The contention of the importers is that the demand is barred by limitation as an out-of-charge order has been passed in terms of Section 47 of the Customs Act, 1962 after it was found that the goods were as described by the importers namely "loud speakers of cone type" In this connection, they relied upon the decision of the apex court in Northern Plastics Ltd., New Delhi Vs Collector of Customs, Rajkot (1998) 6 Supreme Court Cases 443. The further submission of the appellants, which finds favour with us, is that the Commissioner has relied upon extracts from Master handbook of audio production by Jerry C. Whitaker, 2002 which has been downloaded from the internet to conclude that on a comparison with the diagram in the handbook, the diaphragm of the imported goods is of 'dome type'. He has further relied upon the response sent by Mr. Anthony Lucas of M/s. Eminence Speaker LLC, USA, supplier of the goods to the importers, that APT 50 uses a phenolic dome diaphragm. The manufacturer of the goods is a Polish company M/s.Pro Tonsil Sp. Z.O.O. who have certified to the appellants that the exploded view of APT- 50 and the diaphragm used in it is parabolic (Cone) in shape. This would show that the diaphragm of the exploded view relied upon by the Commissioner to conclude that the goods were of dome type is contrary to the certificate given by the manufacturer of the goods that they are of cone type. In any event, the material relied upon by the Commissioner to come to a conclusion that the goods were not of cone type but of dome type was obtained by him, without putting the appellants to notice that he intended to rely on such material and, therefore, the learned counsel for the appellants is correct in his submissions that the order smacks of violation of the principles of natural justice.*

*4. The appeals are thus allowed by way of remand after setting aside the impugned order. All other issues are left open for fresh decision by the Commissioner and it is open to the appellants to make all other submissions before him."*

**II. DE-NOVO Adjudication - Order-in-Original No. 9924/2009 dated 31.10.2009**

16. Accordingly, the Respondent adjudicated the matter afresh in compliance with the directions issued by this Tribunal, inter alia, by supplying the documents relied upon in Order-in-Original No. 8076/2008 dated 28.08.2008, namely: (a) a copy of the email from Shri Anthony Lucas dated 26.06.2008; (b) an extract of page 177 of the Master Handbook of Audio Production by Jerry C. Whitaker (2002), stated to have been downloaded from the internet; and (c) a copy of the image of the "Eminence ED2SD" replacement diaphragm for APT-50.

17. Pursuant thereto, the Appellants appeared for personal hearing and submitted their detailed written submissions dated 28.07.2009. The Appellants raised several objections and submissions rebutting the contentions of the Department, which have been recorded in the impugned order. The relevant extract thereof is reproduced below: -

*"17. However, the noticees have contented that Eminence replied to them vide letter dated 18.9.2008 stating that they replied to Mr. Krish as a customer and that the clarification had not been issued technically; that vide letter dated 18.9.2008 they further clarified that they were not the manufacturers of APT-50, APT-80, APT-150 and APT-200; that it was manufactured in Poland by M/s. Pro Tonsil Sp. Z.O.O; that any technical clarification had to be issued only by them; that M/s. Pro Tonsil Sp. Z.O.O.*

*clarified that the exploded view of APT-50 and the Diaphragm used in it was parabolic (cone) in shape; that the above said documents are all Internet documents and hence they do not have any evidentiary value; that the diagram of Master Handbook of Audio production was not applicable as the page 177 does not show any author's name or the name of the book whether it is authenticated or not."*

18. The Ld. Adjudicating Authority *vide denovo* Order-in-Original No. 9924/2009 dated 31.10.2009, had made the following conclusions: -

*"17. ....This is not acceptable as I observe that firstly the noticees have not questioned the authenticity of the email received from Shri Anthony Lucas, Sr. Lab Technician, M/s. Eminence Speaker LLC. Secondly, nothing has been brought on record by the noticees to show that Shri Anthony Lucas had retracted from what he had replied. Thirdly, the clarification stated to have been given by M/s Eminence that they replied to Mr. Krish as a customer, that the clarification had not been issued technically and that any clarification can only be given by M/s Pro Tonsil Sp ZOO who were the manufacturer, is a feeble argument. I observe from the reply given by Shri Anthony Lucas that he was asked a specific question and to that a specific reply was given. If M/s Eminence was not technically qualified to answer the said question, they could have replied accordingly at the first instance itself. I also observe that all along till the issue was adjudicated, the point that M/s Pro Tonsil Sp ZOO was the manufacturer and not M/s Eminence, was never brought on record. On the contrary, the noticees were maintaining that M/s Eminence was the, manufacturer. In order to wriggle out of the situation, they have come up with photocopy of a certificate stated to have been issued by one M/s Pro Tonsil Sp ZOO, that the diaphragm used in it was a parabolic (cone) in shape, which is prima facie a questionable document. On perusal of the said photocopy and a similar certificate issued by M/s Eminence at the time of original adjudication, it is evident that the exploded view as reproduced below, are identical.*

*.....*

*In this regard, the noticees have now enclosed one more certificate from M/s Eminence England dated nil, wherein it is interalia stated that they had issued Exploded view certification of APT-50 Speaker Driver which are used in APT-80, APT-150 and APT-200 with the consent of the manufacturer in Poland. This fact was never brought on record at the time of original adjudication, as they were all along maintaining that M/s Eminence were the*

manufacturers. If M/s Eminence were not the manufacturers, the noticees had no locus standi to submit a clarification from M/s Eminence. From the entire gamut of things, I find that there is no consistency in the stand maintained by the noticees. In fact, they have come up with conflicting stands at different times in order to suit their needs. On the other hand, analysis of the exploded view of APT 50 catalogue stated to be received from the manufacturer clearly reveals that the diaphragm is dome shaped only.

18. Next, I observe that the noticees have not anywhere countered that the Eminence ED2SD, a copy of which was furnished to them, is not the replacement diaphragm for APT 50. A copy of the image of the said diaphragm reproduced below indicates that the diaphragm is dome shaped.

.....

19. The other argument that page 177 of the Master Handbook of Audio Production by Jerry C. Whitaker, 2002, downloaded from the internet, does not have any evidentiary value and it cannot be relied upon as it does not show any author's name or the name of the book whether it is authenticated or not, is a weak and totally misplaced one. In order to support their claim that the diaphragm is parabolic (cone) type, they have argued that the same is reflected in serial No. 'a' of the said diagram in page 17, wherein the parabolic shape is described. This is totally wrong. Perusal of the diagram (detailed below) clearly shows that cone and dome shape are opposite to each other. Further, it is also clear that dome shape is one where the opening is at the bottom and cone shape is one, where the opening is at the top. They have also relied on the write-up given by Shri G. Venkatesh, Lecturer, Department of Electrical and Electronics Engineering, Anna University. The same cannot be taken on record for the simple reason that no evidence has been brought on record to show that the said opinion was obtained on the basis of examination of the representative sample of the goods under dispute, and drawn in the presence of Customs.

A look at the replacement diaphragm would very clearly indicate that the shape is dome shaped.

.....

.....

In view of my discussions above, I hold the shape of the Diaphragm to be of dome shape and therefore, I hold that they are not eligible for the benefit of the said notification *ibid.*"

19. Having so held on merits, the Learned Adjudicating Authority, while dealing with the issue as to whether the Show Cause Notice was barred by limitation on account of the alleged mis-declaration, observed that the extended period of limitation was invocable under the proviso to Section 28(1) of the Customs Act, 1962. The relevant portion of the impugned order is extracted below for kind perusal: -

*"20.....I find that the importer has resorted to adding the words "Loudspeaker (Cone type)" against the description column, in order to avail undue benefit of Notification. It is clear from the catalogue and other materials available on record that the items imported are actually "HF Drivers". Instead of restricting themselves in declaring the goods as above, they had deliberately added the words "Loudspeaker "Cone type" in order to avail ineligible benefit of Customs Notification. Therefore, in view of the willful mis-statement and suppression of facts, as discussed above, I hold that the extended period of '5' years as per proviso to Section 28(1) of the Customs Act, 1962 is clearly invocable in this case."*

20. The finding of the Adjudicating Authority rejecting the Appellants' contention that, once an assessment is completed, the same cannot be reopened except by way of review under Section 129D of the Customs Act, 1962, based on the judgment of the Hon'ble Supreme Court in *M/s. Priya Blue Industries Ltd.* reported in 2004 (172) E.L.T. 145 (S.C.), which is reproduced below: -

*"...In other words, an order of assessment could be modified only by following the statutory provisions relating to filing of appeal against such order or on review provided under Section 28 of the Customs Act, 1962. It is therefore clear from the judgment cited supra that Section 28 of the Customs Act, 1962 empowers the issue of notice in a case where any duty has not been levied or has been short*

*levied by the Proper Officer. The judgment does not speak about Section 129D of the Customs Act, 1962 at all. It instead specifically mentions Section 28 of the Customs Act, 1962. Hence the act of demanding duty under Section 28 of the Customs Act, 1962, cannot be found fault with. If the contention of the appellants that no demand notice can be issued without reviewing the order of assessment is accepted, then Section 28 of the Customs Act, 1962 would become redundant."*

21. In view of the aforesaid findings, the Learned Adjudicating Authority confirmed the entire demand along with applicable interest and imposed penalty on the Appellants under Section 114A of the Customs Act, 1962. Further, a personal penalty was imposed on Shri K. S. Sankar, Partner of the Appellant Company, who is also in appeal before this Tribunal, on the allegation that he had played a major role in deliberately misdeclaring the goods in order to avail undue benefit of the exemption notification, despite being fully aware of their ineligibility, thereby rendering the goods liable for confiscation under Section 111(m) of the Customs Act, 1962.

22. Meanwhile, the Ld. Adjudicating Authority held the imported goods valued at Rs. 6,68,434/-, including one APT-150 Tweeter drawn as a sample under Mahazar dated 16.08.2007, as liable for confiscation under Section 111(m) of the Customs Act, 1962. At the same time, it was observed that the goods in question were neither restricted nor prohibited during the relevant period and, therefore, not

liable for confiscation under Section 111(d) of the Customs Act, 1962. However, the above finding is contrary to the facts stated in the Show Cause Notice, which specifically recorded that the entire goods in question were not available for seizure.

### **III. 2<sup>nd</sup> ROUND OF LITIGATION:**

23. Aggrieved by the aforesaid *DENOVO* Order-in-Original No. 9924/2009 dated 31.10.2009, the Appellants preferred again an appeal before this Tribunal who *vide* Final Order Nos. 42473-42474/2017 dated 29.09.2017, primarily examined the issue of jurisdiction, namely, whether the Directorate of Revenue Intelligence (DRI) had the authority to issue the Show Cause Notice under the Customs Act, 1962, since in the present case the notice had been issued by DRI, Chennai.

24. While deciding the said issue, this Hon'ble Tribunal placed reliance on the judgments of the Hon'ble High Court of Delhi in *BSNL v. Union of India* and *Mangli Impex v. Union of India*, the operation of which had been stayed by the Hon'ble Supreme Court, as reported in *2016 (339) E.L.T. A49 (S.C.)*, against which appeals were pending before the Hon'ble Supreme Court.

25. Considering the facts and circumstances of the case, this Tribunal, *vide* Final Order Nos. 42473-42474/2017 dated 29.09.2017, set aside the impugned order and remanded the matter to the original adjudicating authority for adjudication on the issue of jurisdiction. The relevant extract of the order passed by this Hon'ble Tribunal is reproduced below: -

*"11. By following the ratio laid down by the Hon'ble High Court of Delhi in the case of BSNL (Supra) as well as by considering totality of facts and circumstances, we set aside the impugned order and remand the matter to the original adjudicating authority to first decide the issue of jurisdiction after the availability of Hon'ble Supreme Court decision in the case of Mangli Impex and then on merits of the case but by providing an opportunity to the assessee of being heard. Till the final decision, the status quo will be maintained.*

*12. The impugned order is set aside and the appeals are allowed by way of remand to the adjudicating authority to decide the issue afresh after the judgment of the Hon'ble Supreme Court in the case of Mangli Impex (supra)."*

Appeal filed by the Department before Hon'ble High Court of Madras: -

26. Aggrieved by the Final Order dated 29.09.2017 passed by this Tribunal, the Department preferred an appeal before the Hon'ble High Court, inter alia, challenging the power of the Tribunal to remand the matter without adjudicating the issues on merits. Upon hearing the said appeal, the Hon'ble High Court, *vide* order dated 28.04.2022 passed in CMA Nos. 961 & 965 of 2022 and CMP No. 7143 of

2022, remanded the matter to this Tribunal with a specific direction to keep the proceedings pending until the decision of the Hon'ble Supreme Court in Mangali Impex is rendered. The Hon'ble High Court further left all substantial questions of law open, to be decided after the pronouncement of the final verdict by the Hon'ble Supreme Court.

#### **IV. 3<sup>rd</sup> ROUND OF LITIGATION:**

27. In view of the above directions of the Hon'ble High Court of Madras, the present appeal is now being heard by this Tribunal.

28. The Ld. Advocate S. Muthu Venkataraman appeared for the appellant and made the following submissions: -

- a. The impugned order merely reiterates the stand taken by the DRI that the goods were mis-declared in the Bill of Entry by the Appellant, without undertaking any independent verification, which is erroneous. He submits that the Bills of Entry were filed strictly in accordance with the description of the products, namely APT 50, APT 80, APT 150 and APT 200, as mentioned in the invoices issued by the manufacturer (Paper Book-I, Page Nos. 1, 5, 11, 17 and 22, along with the country of origin as reflected at Page Nos. 6, 12 and 18). He

submits that there is no mis-declaration as alleged by the Department, and the allegation of mis-declaration is wholly unsustainable and liable to be set aside.

- b. He contests that the Department's claim that the products APT 50, APT 80, APT 150 and APT 200 are fitted with dome-type diaphragms is incorrect and factually erroneous. He submits that the Appellant has not imported dome tweeters at all, but has imported HF drivers with horn. He submits that the Appellant had clearly explained the distinct working principles of a dome tweeter and an HF driver/compressor driver, demonstrating that the imported products fall under the latter category and not the former. (Paper Book III, Page No.33-36.)
- c. The manufacturer, PRO TONSIL Sp. z 0.0., from whom the Appellant's supplier had procured the products in question, has categorically certified that the said products are speakers of cone type only. He places reliance on the certificate issued by the manufacturer to show the nature and construction of the goods. The relevant extract of the said certificate is reproduced below for ready reference: -

*"We, the manufacturer Tonsil of APT-50 Speaker Driver certify the exploded view of APT-50 and the Diaphragm used in it is parabolic (Cone) in shape."*

- d. A physical sample of the product in question has been shown during the hearing before this forum to demonstrate that the product is cone-shaped and not dome-shaped, as claimed by the Respondent.
- e. He further draws attention of this Tribunal to the discussion happened during Chief Commissioner's conference held on 28th and 29th June, 2001 at Mumbai on the issue of eligibility for exemption available to importers importing "tweeters" under Notification No. 17/2001-Cus., Sl. No. 256, List 22, Item No. 6. During the said conference, the Commissioner of Customs (Import), Mumbai, while considering the issue such that "whether "tweeter" should be classified as a loud speaker and whether the shape of diaphragm is the determining factor for deciding the type of loud speaker as 'cone type' or otherwise", consequent upon discussion and debate, the conference had opined that "it was observed that the phrase signified only the shape of the diaphragm, which could be in the shape of a cone, dome or flat." In view of the above, it is submitted that classification of a tweeter is required to be determined on the basis of the shape of the diaphragm used in the tweeter (loudspeaker).

- f. The Id. Advocate further draws the attention of this Tribunal to the certificate issued by Mr. G. Venkatesan, Lecturer, Department of Electrical and Electronics Engineering, Guindy, wherein it has been categorically certified that a horn speaker is a cone driver only. (Certificate attached in Paper Book III, Page No.22.)
- g. Further submits that competitors of the Appellant, who are importing identical or similar products, have classified the same as "cone type" and not as "dome type". It is stated that the Department has accepted such classification in their cases and has also extended the benefit of exemption under Notification No. 21/2002-Cus. to those importers.
- h. The products imported by the Appellant, namely APT 50, APT 80, APT 150 and APT 200, are horn tweeters (cone-type speakers). It is stated that the Appellant classified the said products as cone type strictly on the basis of the shape of the diaphragm used therein. In this regard, he submits that the observation of the learned Authority in the impugned order that the products imported by the Appellant are "dome tweeters" is factually incorrect and contrary to the evidence on record. Further submits that the Appellant had imported only horn tweeters fitted with cone diaphragms, whereas a "dome tweeter" necessarily

contains a dome-shaped diaphragm, which is admittedly absent in the present case. In view of the above, it is submitted that the products were correctly classified as Horn Tweeter (Cone Type) in the Bills of Entry.

- i. The learned Authority has not considered the examination order/report mentioned in the Bill of Entry. (Paper Book-II, Page No.21.) He refers to the following extract of the examination order/report issued by the Appraiser to the Examiner: -

Extract of the relevant portion of the Examination Order

"64521723/06/2004

-PL OPEN AND INS S/2 OR MORE PKGS VFY DES WRT MFG INVOICE & ALL ORIGINAL IMP DOCS. PL VFY THE APPLICABILITY OF NOTIFICATION BENEFIT FOR ALL ITEMS BY PRABAKAR ON 23/06/2004 at 3:30P.M.

Extract of the relevant portion of the Examination Report by Examiner / Inspector

"Opened and examined 2 pkgs in the presence of CHA -Special Observation: ---BD LCL: OPEND & INSPECTED S/2% PKGS. CONTS. SPEAKER CONE TYPE (MODEL NOS. ALPHA BA, BETA 12 LTA, APT

80). VFD DESC WR. T. IM. DOCUMENTS By BHAGVATI dated 26/06/2004 at 04:51 P.M."

j. The concerned officer had duly inspected the description of the goods as well as the applicability of the exemption notification and, being fully satisfied with the declarations made by the Appellant, had released the goods in question. He submits that the question of mis-classification does not arise and the impugned order is therefore unsustainable. Further, he submits that the allegations of mis-declaration or wilful misstatement do not hold good in the facts of the present case. Mere claiming of the benefit of an exemption notification, based entirely on a bona fide belief, cannot be construed as mis- declaration merely because the Department is of the view that the exemption is not admissible. Moreover, claiming the benefit of an exemption notification is well within the statutory right of the Appellant. In support of this submission, reliance is placed on the following judicial precedents: -

- a. *STONEX INDIA PVT. LTD. Vs C.CUS., MUNDRA, KACHCHH - 2025 (391) E.L.T. 652 (Tri. Ahmd.)*
- b. *L.G. BALAKRISHNAN & BROS. LTD. Vs C.CUS. (IMPORT), CHENNAI 2024 (389) E.L.T. 117 (Tri. Chennai) / (2024) 17 Centax 94 (Tri. - Chennai)*
- c. *SAFT INDIA PVT. LTD. Vs. C.CUS., CHENNAI - 2025 (391) E.L.T. 522 (Tri. Chennai) / (2024) 22 Centax 460 (Tri. Chennai).*
- d. *MIDAS FERTCHEM IMPEX PVT. LTD.Vs PRINCIPAL COMMR. OF CUS., ACC(IMPORT), NEW DELHI 2023*

*(384) E.L.T. 397 (Tri. - Del.) / (2023) 4 Centax 73  
(Tri. - Del.)*

- k. The Ld. Advocate submits that in the present case the goods have already been finally assessed and released based on the assessment. Subsequently, if there is any issue pertaining to the same, unless the department has sought to set aside the assessment, no demand under section 28 of the Customs Act, 1962 can be raised.
- l. Finally, the Ld. Advocate emphasized that in view of the above, the allegations made by the department is baseless and hence requested for setting aside order.

29. The Ld. Authorized Representative Ms. Anandalakshmi Ganeshram representing the Department reiterated the findings of the lower Adjudicating Authority.

30. We have heard both the sides and carefully considered the submissions and evidences on record.

31. The issues that arise for our consideration are as follows: -

- i. Whether the goods imported by the Appellants during period 2002-2007 are speaker "cone type" as being claimed by the Appellants and whether benefit of

exemption has been rightly claimed by them under Notification No.21/2002 against Sl.No.244, List 26, Item No.23?

- ii. Whether invocation of extended period is correct in the present factual scenario?
- iii. Whether issuance of notice, without challenging assessment done, is correct on law? and,
- iv. Whether confiscation and imposition of penalties are sustainable?

32. We find that the main contention of the Appellant is that the loudspeakers in question are cone type and not dome type. The Appellants have submitted that they are therefore eligible for exemption under Notification No. 21/2002-Cus., dated 10-9-2004.

33. Upon analyzing the product classification, we find that the Department has accepted that the products in dispute, namely APT 50, APT 80, APT 150 and APT 200, are all High Frequency (HF) speaker drivers, and that the dispute is confined only to their type, i.e., whether they are of the "cone" type or "dome" type. Having carefully appreciated the facts and the evidence on record, including the catalogues, technical literature and expert certificates produced by the Appellants, as well as the conclusions arrived at during the

Chief Commissioner's Conference-wherein it was concluded that the shape of the diaphragm is the determining factor for deciding the type of loudspeaker and in adherence to the principles of judicial discipline, we hold that the Appellants are entitled to the benefit of Notification No. 21/2002-Cus., dated 10-09-2004, since the diaphragm is in the shape of parabolic. The exploded view of the imported goods also indicate the diaphragm shape as cone type. It is evident from the records that the Examination order/report referred *supra*, wherein it has been mentioned that the goods examined are "SPEAKER CONE TYPE" and the same has been admitted by department, as the same has not been disputed anywhere in the impugned proceedings. Accordingly, it cannot be classified as a speaker of the "dome" type. Consequently, the impugned de novo Order-in-Original No. 9924/2009 dated 31.10.2009 classifying the product as "dome" type is unsustainable in law and is therefore set aside. Whether what was imported is cone type speaker or not should have been left to be decided by an expert strictly following the sampling procedure which is absent in this appeal. Being third round of litigation, it is not pragmatic to keep the issue pending or remanding for fresh examination when the examination report of the imported goods was clearly found to be cone type, there was no challenge for examination or assessment. In the peculiar circumstances of

this case where the dispute could not be resolved for over 17 years and considering the minutes of CC's Conference as referred to *supra* and as the Diaphragm shape is undisputedly in parabolic shape, the importer is eligible for the benefit of Notification No. 21/2002-Cus. dated 01.03.2002.

34. With regard to the invocation of the extended period of limitation and the imposition of penalty, we find that the dispute pertains to technical interpretation and classification, as is evident from the facts that the issue itself required deliberation at the Chief Commissioner's Conference. In such circumstances, allegations of suppression of facts, wilful misstatement or misdeclaration cannot be invoked. Accordingly, the extended period of limitation is not invocable, and so imposition of penalty is unsustainable in law.

35. The appellant has placed reliance on the decision of this Tribunal in the case of *M/s. Luker Electric Technologies Pvt. Ltd. Vs. Commissioner of Customs, Chennai (2025 (12) TMI 247 CESTAT CHENNAI)*: -

*"19.3 Thus, in the absence of any finding of suppression by the Appellant in the impugned order, we find that the allegation of deliberate availment of concessional rate of duty under Notification No. 50/2017 dated 30.06.2017 with an intent to evade payment of appropriate duty by the Appellant is not at all tenable as misclassification or availment of benefit of the Notification could not be*

*equated with misdeclaration or suppression within the meaning of Section 28(4) of the Customs Act, 1962. It is a settled law that once the goods are correctly described and the appellant has availed the benefit of the concessional rate of duty of Notification which has been accepted by the Departmental Authorities, the importer's action cannot be termed as suppression or misdeclaration or with wilful misstatement.*

*19.4 From the above facts, we find that the issue has been very much in the know of the revenue as the Appellants, initially not being aware of these amendments paid higher duty and subsequent to the appeal proceedings, they were able to get a refund of the excess duty paid for 5 bills of entry filed between 18.12.2017 and 26.12.2017. In respect of 15 other consignments, for which, bills of entry were filed subsequently, benefit of lower duty was claimed and extended by the Department. Subsequently only the DRI, Cochin conducted detailed investigation resulting in the issuance of the impugned order dated 29.09.2023. Hence invocation of extended period of limitation is not legally sustainable as we are of the considered view that the appellant has not suppressed or mis-declared any fact. Therefore, invoking extended period in these proceedings, either for demand of duty or for imposition of penalties is not at all sustainable. So, the issue of limitation is decided in favour of the appellant and consequently the order of confiscation and imposition of fine and penalties are set aside."*

In view of the above, we find that, in respect of the goods in question, Bills of Entry were filed, the benefit of lower rate of duty was claimed and extended by the Department, and it was only thereafter that the DRI conducted a detailed investigation, culminating in the issuance of the show cause notice and the passing of the impugned order. This sequence of events further negates any allegation of suppression or wilful misstatement on the part of the Appellant. It is well-settled that mere availment or claim of the benefit of an exemption notification cannot, by itself, be equated with suppression of facts or wilful misstatement

36. We, therefore, hold that the imported speaker are eligible for the benefit of the said Notification No. 21/2002-Cus., dated 10-09-2004. We are of the view that there is no ground for invoking the extended period in this appeal and the impugned Order-in-Original No. 9924/2009 dated 31.10.2009 is liable to be set aside.

37. Consequently, in view of the above, the appeal filed by the main appellant and the appeal filed by the partner of the main appellant company are allowed with consequential relief, if any, as per the law.

(Order pronounced in open court on 19.02.2026)

Sd/-  
**(VASA SESHAGIRI RAO)**  
MEMBER (TECHNICAL)

MK

Sd/-  
**(P. DINESHA)**  
MEMBER (JUDICIAL)