CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI
REGIONAL BENCH – COURT No. I

Customs Appeal No. 40134 of 2017

(Arising out of Order-in-Appeal C.Cus I No. 300 to 303/2016, dated 27.09.2016 passed by Commissioner of Customs (Appeals II), 60 Rajaji Salai, Custom House, Chennai 600 001)

M/s. Interplex Electronics India (P) Ltd. **...Appellant**
E – 16 A, SIPCOT Industrial Park
Sriperumbudur, Tamil Nadu 602 016

Versus

Commissioner of Customs **...Respondent**
Chennai VII
New Custom House
Air Cargo Complex
Meenambakkam, Chennai 600 027

WITH

Customs Appeal No. 40135 of 2017

(Arising out of Order-in-Appeal C.Cus I No. 300 to 303/2016, dated 27.09.2016 passed by Commissioner of Customs (Appeals II), 60 Rajaji Salai, Custom House, Chennai 600 001)

M/s. Interplex Electronics India (P) Ltd. **...Appellant**
E – 16 A, SIPCOT Industrial Park
Sriperumbudur, Tamil Nadu 602 016

Versus

Commissioner of Customs **...Respondent**
Chennai VII
New Custom House
Air Cargo Complex
Meenambakkam, Chennai 600 027

WITH

Customs Appeal No. 40136 of 2017

(Arising out of Order-in-Appeal C.Cus I No. 300 to 303/2016, dated 27.09.2016 passed by Commissioner of Customs (Appeals II), 60 Rajaji Salai, Custom House, Chennai 600 001)

M/s. Interplex Electronics India (P) Ltd. **...Appellant**
E – 16 A, SIPCOT Industrial Park
Sriperumbudur, Tamil Nadu 602 016

Versus

Commissioner of Customs **...Respondent**
Chennai VII
New Custom House
Air Cargo Complex
Meenambakkam, Chennai 600 027

WITH

Customs Appeal No. 40137 of 2017

(Arising out of Order-in-Appeal C.Cus I No. 300 to 303/2016, dated 27.09.2016 passed by Commissioner of Customs (Appeals II), 60 Rajaji Salai, Custom House, Chennai 600 001)

M/s. Interplex Electronics India (P) Ltd. **...Appellant**
E – 16 A, SIPCOT Industrial Park
Sriperumbudur, Tamil Nadu 602 016

Versus

Commissioner of Customs **...Respondent**
Chennai VII
New Custom House
Air Cargo Complex
Meenambakkam, Chennai 600 027

AND

Customs Appeal No. 40723 of 2017

(Arising out of Order-in-Appeal C.Cus I No. 310/2016, dated 27.09.2016 passed by Commissioner of Customs (Appeals II), 60 Rajaji Salai, Custom House, Chennai 600 001)

M/s. Interplex Electronics India (P) Ltd. **...Appellant**
E – 16 A, SIPCOT Industrial Park
Sriperumbudur, Tamil Nadu 602 016

Versus

Commissioner of Customs **...Respondent**
Chennai VII
New Custom House
Air Cargo Complex
Meenambakkam, Chennai 600 027

APPEARANCE:

Shri M. Karthikeyan, Advocate for the Appellant
Shri Sanjay Kakkar, Authorised Representative for the Respondent

CORAM:

HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)
HON'BLE MR. AJAYAN T.V., MEMBER (JUDICIAL)

FINAL ORDER Nos. 41037-41041/2026

DATE OF HEARING : 21.04.2026
DATE OF DECISION : 22.09.2026

Per Mr. AJAYAN T.V.

M/s. Interplex Electronics India (P) Limited, the appellant herein, has preferred these five appeals. As the issue involved is common, they were heard together and are disposed of by this common order.

2. The relevant facts are that the appellant filed Bill of Entry No.4887764 dated 12.04.2016 for the clearance of goods declared as Rivet Mobile Contact CH ALR 041 per dwg 356504501/02, classifying the goods under Customs Tariff Item 85389000.

3. During examination of the cargo, on suspicion that the imported Rivets might be made of silver, a sample was drawn and referred to the Appraiser, Jewellery Expert, who opined that the item was made of silver with a silver content of 99.116 per cent and recommended classification under Chapter Heading 7114. The appellant is stated to have expressed urgency, citing that production had been held up, and requested adjudication of the matter without issuance of a show cause notice or a personal hearing. The Adjudicating Authority passed Order in Original No.306/2016 dated 22.04.2016 classifying the goods under CTI 71141120, attracting Basic Customs Duty at 15 per cent, confiscated the goods under Section 111(m) of the Customs Act, 1962 (Act), allowed redemption of the goods under Section 125(1) of the Act on payment of a fine of Rs.50,000/-, and imposed a penalty of Rs.40,000 under Section 112(a) of the Act.

4. The appeal preferred by the appellant against Order in Original No.306/2016 was rejected vide Order in Appeal C.Cus.I No.310/2016 dated 27.09.2016, the Commissioner (Appeals) holding that having waived the right to a show cause notice and a personal hearing, the appellant could not thereafter challenge the department’s classification. Aggrieved, the appellant has preferred the appeal captioned C/40723/2017.

5. The facts of the remaining appeals are that for subsequent imports of the identical goods, in order to avoid delay in clearance, the appellant self

assessed the goods under CTI 71159010 as other articles of precious metal or of metal clad with precious metal, attracting Basic Customs Duty at 10 per cent, and thereafter preferred appeals against its own self assessment, praying for classification under CTH 8538. These appeals, concerning Bills of Entry No.5104620 dated 30.04.2016, No.4962761 dated 19.04.2016, No.5297447 dated 17.05.2016 and No.5802824 dated 29.06.2016, were dismissed by the Commissioner (Appeals) by the common Orders in Appeal C.Cus.I No.300 to 303/2016 dated 27.09.2016, on the ground that an appeal under Section 128 of the Act lies against a decision or order passed by an officer of customs, whereas these appeals had been filed against the appellant's own self assessment, there being no reassessment contrary to such self assessment, rendering the appeals non maintainable. Aggrieved, the appellants have preferred these appeals and are before us.

6. Shri M. Karthikeyan, Ld. Counsel appearing for the appellant submitted that the appellant is engaged in tooling, precision metal stamping, electroplating and insert moulding for the automotive, communications, consumer electronics, industrial and medical sectors. The disputed goods, described as Rivet Mobile Contact, are custom manufactured to the appellant's drawing and are not of a general standard type usable for other purposes. The appellant's foreign supplier, Rielka, France, procures silver wire (AgSnO2) with a silver content of approximately 88 per cent from Umicore and manufactures the rivets to the design furnished by the appellant's customer, Schneider. On import, the appellant assembles the rivet with a component of phosphor bronze and a component of brass to produce a finished good called Moving Contact, being parts of connectors, switches and relays classifiable under CETH 8538 90 00, which in turn forms part of Miniature Circuit Boards classifiable under CETH 8536 2030 manufactured by Schneider.

7. Ld. Counsel contended that the goods, being electrical contacts, are excluded from Chapter 71 by Chapter Note 3(k), which excludes from that Chapter machinery, mechanical appliances or electrical goods, or parts thereof, of Section XVI. He drew attention to Heading 71.14, covering articles of goldsmiths' or silversmiths' wares and parts thereof, of precious metal or of metal clad with precious metal, and to Heading 71.15, covering other articles of precious metal, and submitted that Explanatory Note (d) to Heading 71.15 of the HSN excludes machinery, mechanical appliances, electrical goods and identifiable parts thereof falling under Section XVI,

expressly including electrical contacts. He argued that the impugned goods, being composite goods in which silver is present only for conductivity, derive their essential character from their function as electrical contacts, and that the mere presence of silver cannot govern classification in the absence of any exclusion under Chapter 85.

8. Placing reliance on the decision of the coordinate Bench in *Collector of Central Excise, Surat v. Modison Metals Pvt. Ltd., 2000 (116) E.L.T. 535 (Tribunal)*, Ld. Counsel submitted that silver alloy and other metal contacts used for switching, protecting circuits or making connections have consistently been held to be parts under Heading 85.38, and not articles of the base metal of which they are made, since the Explanatory Notes confining Heading 8538 to non electrical parts apply to parts in general and not to parts specifically identifiable as electrical contacts. He prayed that the appeals be allowed and the goods be classified under CTH 8538.

9. Shri Sanjay Kakkar, Ld. Authorised Representative, reiterated the findings of the Appellate Authority in both impugned orders. He submitted that the appellant, having sought adjudication of Order in Original No.306/2016 without a show cause notice or a personal hearing and having expressly consented to the Department's classification, could not resile from that position in appeal, and that the appeals against the appellant's own self assessment, there being no reassessment, were rightly held non maintainable under Section 128 of the Act. He submitted that the Appellate Authority has rightly relied on the decision of this Tribunal in *Vikas Spinners v. Commissioner of Customs, Lucknow, 2001 (128) E.L.T. 143 (Tri.-Del.)*.

10. We have heard the rival submissions and perused the records.

11. The following questions arise for our determination, namely,

(i) Whether the appeals against the self assessed bills of entry, in the absence of any reassessment by the department, were rightly held to be non maintainable under Section 128 of the Act?

(ii) Whether the appellant's request for adjudication of Order in Original No.306/2016 without a show cause notice and a personal hearing operated to forfeit its statutory right of appeal against the classification adopted therein?

(iii) What is the classification appropriate to the Rivet Mobile Contact on the basis of material on record? and

(iv) Whether the confiscation, redemption fine and penalty imposed in Order in Original No.306/2016 are tenable?

Discussion and findings

12. We take up issues (i) and (ii) together, since both concern the correctness of the threshold view taken by the Commissioner (Appeals) that foreclosed any examination of the classification dispute on its merits.

13. On the question of maintainability, the Commissioner (Appeals), in the impugned Orders in Appeal No.300 to 303/2016, held that an appeal under Section 128 of the Act lies only against a decision or order passed by an officer of customs, and that since the appellant had appealed against its own self assessment without any reassessment by the department, no appealable order existed. We are of the firm opinion that this view cannot survive in the light of the law declared by a three Judge Bench of the Supreme Court in *ITC Ltd. v. Commissioner of Central Excise, Kolkata-IV, 2019 (368) E.L.T. 216 (S.C.)*. Rejecting the identical contention, the Hon'ble Court held that a self assessed bill of entry is nonetheless an order of assessment within the meaning of Section 2(2) of the Act and is therefore appealable at the instance of any person aggrieved, whether the assessee or the Revenue. It was further held that it is not only an order of reassessment that is appealable, but that Section 128 makes appealable any decision or order under the Act, including that of self assessment, and that the absence of a lis or of a speaking order does not stand in the way of such an appeal. This position has since been consistently followed, including by the Kolkata Bench of this Tribunal in *S K Timber and Company v. Commissioner of Customs (Port), Kolkata, 2021 (6) TMI 170 - CESTAT KOLKATA,* where it was held, applying *ITC Ltd*., that neither the assessee nor the Revenue can bypass a self assessed order by proceeding directly to refund or recovery under Section 27 or Section 28 without first having that order modified in appeal. The appeals in C/40134 to 40137/2017 were consequently maintainable, and the Commissioner (Appeals) fell in error in declining to examine them on their merits.

14. What renders this error the more striking is that on the very same date, in respect of the very same commodity, the very same Commissioner (Appeals) took a materially different view. The Ld. Advocate has brought to our notice an Order in Appeal C.Cus I No.309/2016 dated 27.09.2016 bearing Departmental reference C3-I/260/O/2016-AIR, also passed by the Commissioner (Appeals) on that date, concerned Bill of Entry No.5953566

dated 12.07.2016 filed by the very appellant for clearance of the identical Rivet Mobile Contact, self assessed under CTH 85389000 and reassessed by the assessment group to CTH 71141120. There, on facts involving a reassessment contrary to self assessment coupled with a protest, the Commissioner (Appeals) directed the assessment group to issue a speaking order under Section 17(5) of the Act, even while otherwise vacating the protest. That order is not the subject matter of challenge in these appeals, and we express no opinion on its correctness. It is referred to only because, confronted on the same day with a closely comparable classification controversy concerning the same importer and the same product, the Commissioner (Appeals) recognised that the dispute called for a reasoned, appealable determination, whereas in the impugned Order in Appeal No.300 to 303/2016 an identical controversy, differing only in that the self assessment had not been the subject of a departmental reassessment, was shut out at the threshold without any examination of its merits. Such an inconsistency of approach within orders of the same date and the same authority, upon a question the law had in any event already settled otherwise, reinforces our conclusion that the view taken in Order in Appeal No.300 to 303/2016 cannot be sustained.

15. We now address the question whether the appellant's request for adjudication of order in original No.306/2016 without a show cause notice or a personal hearing disentitled it from thereafter challenging the classification in appeal, as held in order in appeal No.310/2016. The Commissioner (Appeals) based this conclusion on the decision of this Tribunal in *Vikas Spinners v. Commissioner of Customs, Lucknow, 2001 (128) E.L.T. 143 (Tri.-Del.)*, which held an importer estopped from resiling from an enhanced value that it had voluntarily accepted and paid duty upon without protest. That decision concerned acceptance of a loaded value for the purpose of assessment, a matter of fact voluntarily conceded by the importer at the relevant time. It furnishes no support for the distinct proposition that a request for expedited adjudication, made by waiving the procedural safeguards of notice and hearing under Section 124 of the Act, also extinguishes the independent statutory right of appeal conferred by Section 128. The two rights operate at different stages and serve different purposes. A waiver of that procedural safeguard at the adjudication stage cannot, without more, be read as an implied surrender of the right of appeal against the order that follows, a right conferred by Section 128 on any person

aggrieved by a decision or order, without qualification as to whether that person had earlier sought an expedited hearing.

16. We are reinforced in this view by two further considerations. First, the Board itself, by *Circular No.290/6/97-CX dated 20.01.1997*, has directed that where offences of a serious nature, high stakes or legal questions are involved, a show cause notice must not be permitted to be waived, a circular applied by the Delhi High Court in *Shiv Shakti Trading Company v. Commissioner of Customs, 2016 (336) ELT 415 (Del)*. A classification dispute of the present kind, involving a disputed technical composition, competing Chapter Notes and HSN Explanatory Notes, and a duty differential arising from reclassification from Chapter 85 to Chapter 71, is squarely of that description, and the Adjudicating Authority ought not to have proceeded to adjudicate on a bare request citing commercial urgency. Secondly, and in any event, the request recorded in Order in Original No.306/2016 was couched in standard, undifferentiated terms, expressing readiness to pay the fine, penalty and duty, without any informed indication that the appellant thereby intended to surrender its right to dispute the classification thereafter. The Delhi High Court has recently deprecated precisely such a practice in *Sai Kiran Goud Tirupathi v. Commissioner of Customs, 2025-TIOL-470-HC-DEL-CUS*, holding that waiver of a show cause notice and a personal hearing in standard format is contrary to law. For these reasons, Order in Appeal No.310/2016 proceeded upon an erroneous premise, and the appellant cannot be held to have forfeited its right to challenge the classification adopted in Order in Original No.306/2016.

17. We turn to the classification of the Rivet Mobile Contact. On this issue, the onus lay squarely on the Revenue to establish that the goods fall under the heading it proposed, in departure from the classification claimed by the appellant. It is well settled that where the Revenue seeks to classify goods under a heading different from that claimed by the assessee, the burden of proving that departure rests upon the Revenue, and if that burden is not discharged, the classification claimed by the assessee must prevail. The Hon'ble Supreme Court has consistently held right from its decision in *Hindustan Ferodo Ltd. v. Collector of Central Excise, Bombay, 1997 (89) E.L.T. 16 (S.C.) ,* through *HPL Chemicals Ltd. v. Commissioner of Central Excise, Chandigarh, 2006 (197) ELT 324 (SC),* to *Commissioner of Customs and Central Excise, Amritsar v. D.L. Steels, 2022 (381) ELT 289 (SC),* that the onus of establishing that goods fell within the tariff item invoked was

upon the Revenue and would remain undischarged in the absence of any evidence led by it. This principle has since been reiterated as recently as 25.02.2026 by the *Supreme Court in Hamdard (Wakf) Laboratories v. Commissioner, Commercial Tax, U.P., 2026 INSC 195*, which, again following *Hindustan Ferodo Ltd*. and *HPL Chemicals Ltd*., held that where the Revenue seeks to displace the classification claimed by an assessee, the onus rests squarely upon it, and that reliance on regulatory material or nomenclature, without cogent and objective evidence, does not discharge that onus. A Larger Bench of this Tribunal has taken the same view in *Brindavan Beverages Pvt. Ltd. v. Commissioner of Customs, Central Excise and Service Tax, Meerut, 2019 (29) G.S.T.L. 418 (Tri.-LB)*, holding, upon a review of *Hindustan Ferodo Ltd.* and *Union of India v. Garware Nylons Ltd., 1996 (87) E.L.T. 12 (S.C.)*, that the burden of proof is on the taxing authority to show that the goods are taxable in the manner it claims, that mere assertion is of no avail, and that a heavy burden lies upon the Revenue to disprove, by adducing proper evidence, the material relied upon by the assessee.

18. Tested against that onus, the Revenue's case does not withstand scrutiny. The sole material relied upon to reclassify the goods under CTI 71141120 is the opinion of the Appraiser, Jewellery Expert, that the item contains 99.116 per cent silver. That opinion goes no further than the composition of the goods. It neither addresses, nor could an expert consulted for that limited purpose be expected to address, the distinct legal question whether the goods, being identifiable as electrical contacts, stand excluded from Chapter 71 by Chapter Note 3(k) and by Explanatory Note (d) to Heading 71.15. The opinion of a technical expert consulted for compositional analysis is confined to that analysis and cannot be treated as a determination, or as evidence, on the question of tariff classification, which remains for the proper officer and the appellate authorities to decide upon a correct application of the Section and Chapter Notes. The Jurisdictional High Court has in its decision in *Agro Pipes Pvt. Ltd. v. Union of India, 2021-TIOL-1350-HC-MAD-CUS (Mad.)*, emphasised that a testing authority is not competent to determine classification, and that its role is limited to furnishing indicators of composition for the assessing officer to arrive at the correct classification. This Tribunal in *Commissioner of Central Excise, Ahmedabad-I v. Dhariyal Chemicals, 2014 (309) E.L.T. 727 (Tri.-Ahmd.)* held likewise that the opinion of a Chemical Examiner is properly restricted to analysis of the product and that the Examiner cannot opine on its classification. This accords with the caution administered by the Supreme

Court in *Hindustan Ferodo Ltd.*, that the technical knowledge available to an adjudicating or appellate authority makes for better appreciation of the record but is not a substitute for it, and that a technical view is no answer to the Revenue's failure to lead evidence on the question actually in issue. Neither Order in Original No.306/2016 nor the impugned Orders in Appeal engages at all with Chapter Note 3(k) or with the exclusion under Heading 71.15, and at no stage, including in the submissions of the Ld. Authorised Representative before us, has the Revenue advanced any case addressed to that exclusion. A finding of silver content, without more, does not answer the statutory exclusion, which turns not on the material of which the goods are made but on whether they are, in their condition as imported, identifiable as parts of machinery, mechanical appliances and electrical goods of Section XVI, with electrical contacts cited as one such example.

19. On that question, the material on record is one sided. The Rivet Mobile Contact is manufactured to the appellant's own drawing reference per dwg No.356504501/02, is not of a standard type usable for any other purpose, and is supplied by Rielka, France to that specification, as shown by the foreign supplier's invoice on record. On import, it is assembled with a phosphor bronze component and a brass component into the Moving Contact, which the appellant supplies to Schneider as a part of connectors, switches and relays, as shown by the appellant's own invoice to Schneider on record. This evidence of dedicated design and end use has not been controverted by the Revenue at any stage. Nor does the silver content relied upon by the Revenue alter this position. Classification of a composite article follows the component that gives it its essential character, and not the ingredient that merely predominates by quantity, if that ingredient performs only a facilitating role; see *Hamdard (Wakf) Laboratories, 2026 INSC 195*, applying *Kemrock Industries and Exports Ltd. v. Commissioner of Central Excise, 2007 (210) E.L.T. 497 (S.C.)*. Here, the silver serves as the electrically conductive material of the contact; it does not detract from, but subserves, the essential character of the Rivet Mobile Contact. This brings the goods squarely within the ratio of the coordinate Bench in *Collector of Central Excise, Surat v. Modison Metals Pvt. Ltd., 2000 (116) E.L.T. 535 (Tribunal)*, and in *Modison Metals Ltd. v. Commissioner of C.Ex., Surat, 2002 (144) E.L.T. 667 (Tri.-Mumbai)*, where silver alloy and other metal contacts used for switching, protecting circuits or making connections, were held classifiable under Heading 85.38 as parts of the apparatus of Headings 85.35 and 85.36 under Section Note 2(a) of Section XVI, notwithstanding their

precious or other metal content. That decision, rendered by a coordinate Bench of this Tribunal and not shown to have been dissented from, reversed or referred to a Larger Bench, binds us, and we respectfully follow it. We accordingly hold that the Rivet Mobile Contact is excluded from Chapter 71 by Chapter Note 3(k) and by Explanatory Note (d) to Heading 71.15, and is classifiable under CTH 8538.

20. We therefore see no occasion to remand the classification question. The Revenue has, at every stage before the Adjudicating Authority, the Commissioner (Appeals) and this Tribunal, rested its case on threshold objections rather than on any submission addressed to Chapter Note 3(k) or the exclusion under Heading 71.15, notwithstanding that the onus of establishing the reclassification lay upon it throughout. It bears noting that the appellant itself never had an opportunity to place this very argument before the Adjudicating Authority, since it was the waiver of the show cause notice and the personal hearing, for reasons we have already held to be legally infirm, that pre-empted any such engagement at the adjudication stage. Now that the classification has finally been ventilated, with the benefit of the Chapter Notes, the HSN Explanatory Notes, the coordinate Bench decisions and the supplier's and customer's invoices, before an authority actually seized of the question, a remand would serve only to give the Revenue a further opportunity to make out a case it has consistently declined to make, in a dispute that has already remained unresolved for a decade.

21. It follows that the confiscation of the goods under Section 111(m), the redemption fine of Rs.50,000/- under Section 125(1) and the penalty of Rs.40,000/- under Section 112(a), all premised on the classification under CTI 71141120 that we have set aside, cannot survive. We may add that even independently of our finding on classification, there is no allegation in order in original No.306/2016, or in either of the impugned orders in appeal, that the appellant misdeclared the description, quantity or value of the goods. The dispute throughout has been one of classification between competing tariff entries upon material that was before the Adjudicating Authority at the time of import, and confiscation under Section 111(m) does not follow as a matter of course from a difference of opinion on classification honestly declared. The redemption fine and the penalty, resting on that premise, cannot be sustained.

22. For the reasons recorded above, all the impugned orders in appeal are set aside.

The appeals are allowed in the aforesaid terms, with consequential relief(s) in law, if any.

(Order pronounced in the open court on 22.09.2026)

(AJAYAN T.V.)
MEMBER (JUDICIAL)

(VASA SESHAGIRI RAO)
MEMBER (TECHNICAL)

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