

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
1st Floor, WTC Building, FKCCI Complex, K. G. Road,
BANGLORE-560009

COURT-2

Customs Appeal No. 558 of 2010

*[Arising out of the Order-in-Appeal No.169/2009 dated
23.12.2009 passed by the Commissioner of Customs
(Appeals), Bangalore.]*

The Commissioner of Customs

C.R. Building,
No.1, Queens Road
Bangalore – 560 001.

....Appellant

Vs.

M/s. Kronos Systems India Pvt. Ltd.

Regus Millenia,
Level-1, Tower-B,
No.1 & 2, Murphy Road,
Ulsoor,
Bangalore – 560 008.

....Respondent

Appearance:

Mr. K. Vishwanath,
Superintendent (AR)

**....For
Appellant**

Vs.

None

**.... For
Respondent**

CORAM:

HON'BLE MR. P. A. AUGUSTIAN, MEMBER (JUDICIAL)
HON'BLE MRS R. BHAGYA DEVI, MEMBER (TECHNICAL)

Date of Hearing: 24.07.2023

Date of Decision: 20.10.2023

FINAL ORDER No. 21155 of 2023

Per R. BHAGYA DEVI:

M/s. Kronos System India Private Limited, Bangalore, the
respondent had imported '553 series for 4500 Full A/N Prox. Exp

Memory'. The importers had claimed that this item was to be part of computer and accordingly classified items under Chapter Heading 8473 3020 as part of the computers. On examining the samples, the operation manual and the catalogue of the goods, it was found that the item imported was described as data collection device. There are known as kronos 4500 Touch ID terminal chips with an integrated badge reader. It has integrated bar code reader, integrated proximity reader and integrated magnetic reader. When an employee swipes his card in the card reader slot or enters his pin through the alphanumeric keys, the machine identifies the employee and marks his attendance and exit. The data so collected is routed to a central server which is further processed. Based on the above description and referring to Chapter Note 5(E) to Chapter 84, those in authority states that the data collection device functions like a badge reader which works in conjunction with a central server and such proximity such badge readers are rightly classifiable under chapter heading 8543 7099.

2. The appellate authority in the impugned order after analysing the Chapter Headings of 8543 and 8471 states that 8543 is meant for "Electrical machines and apparatus having individual functions". From the description of the product catalogue submitted by the respondent, the same does not fall in this category. The product under import has a Central Processing Unit (CPU) runtime memory, storage memory, operating system and application software. As is the case with automatic data

processing machine unit under import has the ability to accept and process data locally. The installation guides submitted by the respondent confirms the above statement and items under import prescribed to Chapter Note under Chapter Heading 84. He further submits that *“I am of the opinion that this classification is more appropriate as it has functions of an automatic data processing machine and is a standalone function. I accept the contention of the appellants that the 4500 Terminal is not itself a badge reader, but rather includes one as one of the several possible input devices.”* Accordingly, he classifies the imported item under Chapter Heading 8471 4190 by setting aside original authority's classification under Chapter Heading 8543. Aggrieved by this impugned order, Revenue is appeal before us.

3. The grounds on which the appeal is filed by the Revenue is that the Commissioner (Appeals) had ignored the findings of the original authority that the item was not a data processing machine or any part or accessory of the same even though the product is a CPU keyboard and display. Since item imported only collect the data as and when the card is swiped and pin is entered but does not process the data, it cannot be construed as an automatic data processing machine and hence, are rightly classifiable under chapter 8543. The authorised representative on behalf of the Revenue reiterating the grounds of appeal submits that the device itself is not able to perform any data processing operations; it only acts upon the program run by the central server; it has the functionality and the characteristic of proximity card reader and hence, are rightly classifiable under Chapter Heading 8543. He

further submitted that there was an error in the impugned order classifying the product under a classification which was not pleaded before the original authority and prays for upholding the order of the original authority.

4. None appeared for the respondent.

5. The Original Authority at para 5 of the order has stated that the importers claimed the impugned goods i.e., data collection device as parts of computers falling under Chapter Heading 8473 3020. However, the Commissioner (A) in the impugned order classifies the item under Chapter 8471 41 90 as Automatic Data Processing Machines which was never claimed by the importer. The Apex Court in the case of **Precision Industries Pvt. Ltd. 2016 (334) ELT 577 (SC)** held that no new case could have been set up or decided contrary to the show-cause notices for the classification other than what was part of the notice. In this case, the importer admittedly had requested for classification under Heading 8473 while the Department classified the items under 8543. The Commissioner (A) should have restricted himself to these headings and cannot classify the item entirely under a different heading which was not part of the order of the lower authority. Hence, the Commissioner (A)'s order is bad in law.

6. Now the question arises as to whether the item is classifiable under Chapter 8543 as claimed by the Revenue. From the catalogue, it is noticed that:

“-The item is described as 'Data Collection Device'

-Every Kronos 4500 badge terminal or Kronos 4500 Touch ID Terminal ships with an integrated badge reader. These readers identify users in a consistent and reliable manner, facilitating faster time and labor transactions. The machine also support connection of customer supplied external readers, including contact less MIFARE and iCLASS smart card readers.

-It has integrated Bar code reader, Integrated Proximity reader and integrated Magnetic reader.

-The employ may swipe his card in the card reader slot or enter his PIN through the alphanumeric keys on the machine.

-upon swiping or entering the pin the machine identifies the employee and mark his attendance and exit.

-the data so collected will be routed to the central server through Ethernet cable connection/modem.

-the central server process the data of the employees for further processing and data is archived there.”

7. As seen from the above and as noted by the original authority, the device captures the data from the employee’s card or the data of the particular employee who key in the PIN into the device. The device does not do anything except for collecting the data at the time of entry or exit and this data is transmitted to a central server for further processing like marking the attendance, preparation of payroll or for other purposes. These facts are not in dispute. Based on the General Rules of Interpretation and the Chapter Notes, the item needs to be classified in the heading akin to it or where the specific description is provided. In this case, the data collection device imported by the respondent is nothing but a card reader working in conjunction with the server. Thus, this device functions such as proximity readers/badge readers, which are specifically classified under Chapter Heading No.8543 and as per Chapter Note 5(E) to Chapter 84.

“Chapter Note 5(E) to Chapter 84 “Machines performing a specific function other than data processing and incorporation or working in conjunction with an automatic data processing machine are to be classified in the headings

appropriate to their respective functions or, falling that in residual headings”.

8. Since the specific function of the imported item is to mark attendance or to take note of the persons of the employees for the purpose of attendance or payroll or leave, they cannot be classified under Chapter 84 as it excludes from this Chapter as per the Chapter Note 5(e) discussed above.

9. In the case of **Commissioner of Customs, Bangalore vs. Scatia: 2019 (370) ELT 703 (Tri.-Bang.)**, a similar product viz., fingerprint scanner was classified under Chapter Heading 8543 7099 as per the observations made by the Tribunal at para 5.1, wherein it has held that:

“5.1 The Department contended that CTH 8543 70 99 is more applicable due to the fact that the item imported basically operates on electrical/electric technology. We find that the Head 8543 covers electrical machines and apparatus having individual functions not specified or included elsewhere in the chapter. Therefore, the classification of the Finger Print Reader would be more appropriate under this heading. We also accept the Department’s contention that when the item is *prima facie* classifiable under two headings in terms of Rule 3(c) of General Rules of Interpretation of Import Tariff, the goods should be classified under the heading which occurs last in numerical orders among those which equally merits consideration. We accept this contention. Going by merits as well as by the Rules of Interpretation, we hold that the impugned product merits classification under CTH 8543 70 99 as contended by the Department.”

10. Hence, based on the discussions above and by following the decision of this Bench, we find that the product is rightly classifiable under chapter 8543.

11. The appeal is allowed.

*(Order pronounced in Open Court on **20.10.2023.**)*

(P. A. AUGUSTIAN)
MEMBER (JUDICIAL)

(R. BHAGYA DEVI)
MEMBER (TECHNICAL)

iv