CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH - COURT NO.I

Excise Appeal No.70294 of 2016

(Arising out of Order-in-Original No.22/COMMR/NOIDA-I/2015-16 dated 13.11.2015 passed by Commissioner of Central Excise, Noida-I)

M/s BPL Ltd., **.....Appellant**
(Dynamic House, 64, Church Street,
Bangalore-560001 Karnataka)

VERSUS

Commissioner of Central Excise, Noida-I **....Respondent**
(C-56/42, Renu Tower, Sector-62, Noida-201307 U.P.)

APPEARANCE:

Shri Atul Gupta, Advocate for the Appellant
Shri Santosh Kumar, Authorized Representative for the Respondent

CORAM: **HON'BLE MR. P.K. CHOUDHARY, MEMBER (JUDICIAL)**
HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)

FINAL ORDER NO.- 70262/2024

DATE OF HEARING : 30 January, 2024
DATE OF DECISION : 21 May, 2024

P. K. CHOUDHARY:

The present appeal has been filed by the Appellant assailing the Order-in-Original No.22/COMMR./NOIDA-I/2015-16 dated 13.11.2015 passed by the Commissioner of Central Excise, Noida-I. This is the second round of litigation before the Tribunal. In the earlier round, the Tribunal disposed of a batch of 23 appeals by a common order being Final Order No.A/57508-57530/2013-EX(DB) and disposed all the appeals by relying upon the judgement of Hon'ble Supreme Court in the case of Salora International Ltd. vs. CCE, New Delhi 2012 (284) E.L.T. 3 (S.C.). Vide the impugned order, the Learned Commissioner has passed the following order:-

"(1) I hold that Colour Television Sets in SKD condition manufactured by the party and supplied to their OEMs/Job

Workers are classifiable under sub-heading No.8528.00 of CETA,

(2) I confirm the demand of Central Excise duty amounting to Rs.1,41,02,716/- (Rs. One Crore Forty One Lakhs Two Thousand Seven Hundred Sixteen only) under Section 11A of the Central Excise Act, 1944.

(3) I confirm the demand of interest on the above said amount under Section 11AB (Now Section 11AA) of the Central Excise Act, 1944.

(4) I impose a penalty of Rs.1,41,02,716/- (Rs. One Crore Forty One Lakhs Two Thousand Seven Hundred Sixteen only) on the party under Section 11AC of the Central Excise Act, 1944 read with Rule 25 of the Central Excise Rules, 2002."

Hence the present appeal before the Tribunal.

2. Brief facts of the case are that the Appellant was engaged in the manufacture of Colour Television Sets[1] and their parts and sub-assemblies in their factory. The CTVs were being cleared on payment of Excise Duty by classifying the same under Heading 85.28 of the Central Excise Tariff Act. During the relevant period, the CTVs were also subject to Maximum Retail Price[2] based assessment in terms of Section 4A of Central Excise Act, 1944 and accordingly duty was being discharged on the same. The CTVs so cleared are not subject matter of dispute in the present appeal. Apart from the CTVs, the Appellant also manufactured various parts of CTVs and sub-assemblies of CTVs in their factory. The parts and sub-assemblies were being classified by the Appellant under Heading 85.29 of the Tariff and appropriate central excise duty was being paid on the same and cleared to Original Equipment Manufacturers[3]. The Appellant did not clear Colour Picture Tube[4] to the OEMs. These parts/sub-assemblies supplied to the OEMs were never assembled into a complete CTV in the factory of the Appellant. Accordingly, the same were never

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[1] CTVs
[2] MRP
[3] OEMs
[4] CPT

tested as CTV in the factory of the Appellant and then unassembled. The Appellant was not clearing all the parts required for manufacturing CTV at the same point of time, rather similar type of parts was cleared in one consignment. The OEMs with the help of the parts/sub-assemblies received from the Appellant and after receiving other components/parts including CPTs from the other manufacturers, manufactured complete CTVs and cleared the same on payment of appropriate central excise duty on the basis of MRP declared on the package of the CTVs. It is significant to note that there were two most critical parts in the manufacture of CTV i.e. (1) picture tube and (2) populated printed circuit boards. Thus, all the critical parts, which were required for the manufacture of CTVs were never supplied by the Appellant to these OEMs. In October, 2003 an audit of the records of the Appellant was conducted for the period from August, 2002 to September, 2003 wherein the Auditors were of the view that the Appellant was supplying CTVs sets in the form of assemblies & sub-assemblies but paying duty on these items as parts/components of CTVs under the tariff heading 85.29 instead of tariff heading of 85.28 of the CETA as complete CTV. By relying upon Interpretative Rule 2(a) of the Tariff and by invoking extended period of limitation under proviso to Section 11A of the Act, show cause notice[5] dated 31.01.2008 was issued demanding duty for the period from 01.04.2003 to 30.09.2003. The SCN also sought to impose penalty on the Appellant. The said SCN was adjudicated and Order-in-Original dated 26.06.2008 was passed confirming the proposal in the SCN. Order-in-Original dated 26.06.2008 was challenged in Appeal No.E/2050/2008 filed before the Tribunal. The Tribunal vide Final Order No.A/57508-57530/2013-EX(DB) dated 07.08.2013 remanded the matter to the Adjudicating Authority for fresh decision in the light of the declaration of the law by Hon’ble Supreme Court in Salora International Ltd. vs. CCE 2012 (284) E.L.T. 3 (S.C.). The impugned order has been

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[5] SCN

passed dated 13.11.2015 pursuant to the remand order. Hence the present appeal before the Tribunal.

3. Heard both sides and perused the appeal records.

4. We find that the issue is no more *res integra* and is squarely covered by the decision of the Tribunal in the case of M/s L. G. Electronics India Pvt. Ltd. vs. CCE, Noida-II. In the above matter the Tribunal has decided that the parts and Sub-assembling cleared without all the critical components cannot be classified as CTVs. The Tribunal further held that unless all the critical parts of CTVs i.e. CTPs and PCBs also, are removed together, till then Rule 1 of the Rules of Interpretation to the Tariff is applicable and Rule 2(a) of the same Rule has no application and accordingly, the classification of such parts/Sub-assemblies will fall under 85.29 of the Tariff. The Tribunal set aside the adjudication order which applied Rule 2(a) in similar case where also CTPs were not removed by the supplier with other parts/Sub-assemblies. The Civil Appeal No.C.A.002542-002544/2023 filed by the Department against the said Final Order of the Tribunal has been dismissed vide order dated 10.04.2023. The relevant paras of the Tribunal's order in the case of M/s L. G. Electronics India Pvt. Ltd. vs. CCE, Noida-II(supra) are reproduced for ready reference:-

"15. The first issue that arises for consideration is regarding Interpretative Rules 2(a) of the Central Excise Tariff. The order of the Commissioner is based on this rule 2(a) and, therefore, it will be necessary to reproduce it and rule 1 also and they are as follows:

"The Schedule-Excise Tariff
Rules for the Interpretation of the this Schedule

***1.** The titles of Sections and Chapters are provided for ease of reference only; for legal purposes, classification 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 provisions hereinafter contained.*
>
> ***2.*** *(a) Any reference in a heading to goods shall be taken to include a reference to those goods incomplete or unfinished, provided that, the incomplete or unfinished goods have the essential character of the complete or finished goods. It shall also be taken to include a reference to those goods complete or finished (or falling to be classified as complete or finished by virtue of this rule), removed unassembled or disassembled.*
>
> *(b) *****"*

16. It would be clear that this rule can be applied only if all the components which form part of the assembly or complete or finished goods are removed together at the same point of time. Thus, unless and until all the component or parts which form part of the complete goods, which in the present case are CTVS, are removed together, rule 2(a) would have no applicability.

17. It would also be useful to contrast this Interpretative Rules 2(a) with Interpretative Rules 2(a) of the Customs Tariff, which is identical with the only difference being that instead of "removed", the expression "presented" appears in the Customs Tariff. In regard to the applicability of rule 2(a) of the Customs Tariff to import of goods, it has been repeatedly held that until all the components of the complete article are presented together for assessment at the same point of time, rule 2(a) cannot be invoked to classify the parts as complete article. It has also been held *that consignments removed/presented at different points of time from different factories cannot be clubbed together to classify the parts as complete article.*

18. A Larger Bench of the Tribunal in ***Sony India*** *examined rule 2(a) of the Customs Tariff and held that rule 2(a) has to be applied while considering the relevant Tariff Entry for each item and the observations are:*

> *"16.* ***We thus come to the core dispute in this appeal whether the different parts imported under 94 Bs/E spread over the period from April, 1995 to January, 1997 can be combined together for the purpose of assessment by applying Rule 2(a), of the Interpretative Rules. Going by the language of Rule 2(a) the question whether parts or components are to be treated as article complete or finished, has to be considered at the time when they are presented unassembled or disassembled.*** *There is no case for the Revenue in these proceedings that at some point of time before the import the goods were in the form of CTV sets and thereafter they were disassembled and imported as parts or components. The contention is that parts in 94 consignments taken together should be treated as CTV sets presented unassembled. ***** It is not the case of the Revenue that import of the consignment covered by any of the 94 Bs/E is in contravention of law if the goods comprised therein are to be treated as parts of components. Assessments were also being made under the relevant heading or sub-heading in respect of each component as and when Bs/E were presented during the relevant period. It is*

> *in the background of the factual position, as above, we are to consider whether by applying Rule 2(a) of the Interpretative Rules the components imported are to be treated as CTV presented unassembled.*
>
> *17. In the light of the authoritative pronouncement of the Apex Court, it is beyond challenge that HSN Explanatory Notes to Rule 2(a) has to be applied while considering the relevant Tariff Entry for each item.*
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> ********
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> *19. It is also explained in HSN Notes that, for the purpose of Rule 2(a), 'articles presented unassembled or disassembled' means articles the components of which are to be assembled either by means of simple fixing devices (screws, nuts, bolts etc.) or by riveting or welding, for example, provided only simple assembly operations are involved.*
>
> *20. The assembly of the components of CTV involves a complex operation and not a simple one. *****"*
>
> ***(emphasis supplied)***

19. The aforesaid order of the Tribunal was assailed by the Department before the Supreme Court and the Civil Appeal was dismissed with the following observations:

> *11. Again the meaning of terms "as presented" in Rule 2(a) would clearly imply that the same refers to presentation of the incomplete or unfinished or unassembled or dis-assembled articles to the customs for assessment and classification purpose. It is also a settled position in law that the goods would have to be assessed in the form in which they are imported and presented to the customs and not on the basis of the finished goods manufactured after*

subjecting them to some process after the import is made. In the reported decision in Vareli Weaves Pvt. Ltd. v. Union of India [1996 (83) E.L.T. 255 (S.C.)] the question was as to whether the countervailing duty was liable to be left on the imports made by the assessee at a stage they would reach subsequent to their import after undergoing a process. It was contended that such goods could be subjected to duty only in the State in which they were imported. It was held that the countervailing duty must be levied on goods in the State in which they are when they are imported. This was on the basis of Section 3 of the Customs Tariff Act. Though there is no reference to Rule 2(a), in our opinion, the same Rule should apply subject ofcourse to the applicability of the Rule. We have already held that the Rule is not applicable. Similar view was taken in Dunlop India and Madras Rubber Factory Ltd. v. UOI [1983 (13) E.L.T. 1566 (S.C.).

12. Shri Lakshmikumaran argues on the basis of a German Court decision on which the Tribunal also relied upon. According to the learned counsel in that decision Rule 2(a) was considered and the Court took the view that the article is to be considered to be imported in unassembled or disassembled where the component parts, that is the parts which may be identified as components intended to make up the finished product are all presented for customs clearance at the same time. ***The interpretation that we have given to Rule 2(a) would mean that Rule 2(a) would be applicable only and only if all the components which are intended to make a final product would have to be presented at the same time for customs***

> ***clearance. Such is not the case in the present situation where the goods have been brought in 94 different consignments."***
>
> ***(emphasis supplied)***

20. In the present case, it is not in dispute that not even a single consignment was cleared or removed from the factory of the appellant to the manufacturers containing all the parts of CTVS at the same point of time. All the consignment of sub-assemblies/parts (except for 21" Flatron) the colour picture tubes were not supplied and the colour picture tubes were always purchased by the manufacturers from the picture tubes manufacturers directly. In the case of parts meant for 21" Flatron, the appellant did not supply the populated colour picture tubes, which were purchased by the manufacturers from other manufactures. Thus, when the consignments cleared by the appellant did not contain all the parts at the same point of time, Interpretative Rule (a) cannot be pressed into service.

21. It is, therefore, not possible to accept the contention of the learned authorized representative appearing for the Department that complete assemblies/sub-assemblies of CTVS were supplied to the original equipment manufacturers.

22. Even otherwise, rule 2(a) could not have been invoked for the reason that classification of the goods in the present case would be governed by Section Note 2 to Section XVI of the Central Excise Tariff and the Rules of Interpretation would not be applicable at all. Rule 1 provides that the goods are to *be classified according to the terms of the headings and relative section or chapter notes but if it is not possible to classify goods under the respective headings, then they can be classified according to other Interpretative Rules. Rule 1 further provides that unless the headings, section/chapter notes otherwise provide, classification has to be done as per headings, section/chapter notes. It is seen in the present case that Heading 85.29 covering parts of CTV is more specific to the facts of the present case and the sub-assemblies are classifiable under Heading 85.29 only. Thus, in view of Rule 1, sub-assemblies and parts cleared by the appellant are to be classified under Heading 85.29 only. Once the goods are classifiable under a particular Heading by application of the Headings and relevant section and chapter notes, the classification cannot be altered by taking recourse to the Interpretative Rules.*

23. In this connection, it would be pertain to refer to the observations made by the Supreme Court in ***Simplex Co. Ltd.*** *and they are reproduced below:*

> *"11. The rules for the interpretation of the Schedule to the Central Excise Tariff Act, 1985 have been framed pursuant to the powers under Section 2 of that Act. According to Rule 1 titles of Sections and Chapters in the Schedule are provided for ease of reference only. But for legal purposes, classification "shall be determined according to the terms of the headings and any relevant section or Chapter Notes". If neither the heading nor the notes suffice to clarify the scope of a heading, then it must be construed*

> *according to the other following provisions contained in the Rules. Rule-I gives primacy to the Section and Chapter Notes along with terms of the headings. They should be first applied. If no clear picture emerges then only can one resort to the subsequent rules."*

*24. In **Salora International**, the Supreme Court also clarified the legal position as follows:*

> *"18. The main question that arises for consideration in this case is that of the applicability or otherwise of Rule 2(a) of the Rules for Interpretation to the goods of the Appellant, and the effect of Section Note 2 to Section XVI of the Tariff, reproduced above, on the applicability of such provision.*
>
> *19. On the question of the applicability of the Rules for Interpretation vis-à-vis the Section Notes and Chapter Notes in the Tariff Schedule, the rule laid down by this Court in Commissioner of Central Excise, Nagpur v. Simplex Mills Co. Ltd. - (2005) 3 SCC 51 = 2005 (181) E.L.T. 345 (S.C.) may be seen to be applicable in this case. In that decision, a three judge bench had the following to say on the subject:*
>
> *"The rules for the interpretation of the Schedule to the Central Excise Tariff Act, 1985 have been framed pursuant to the powers under Section 2 of that Act. According to Rule 1 titles of Sections and Chapters in the Schedule are provided for ease of reference only. But for legal purposes, classification "shall be determined according to the terms of the headings and any relevant section or Chapter Notes". If neither the heading nor the notes suffice to clarify the scope of a heading, then it must be construed according to the other following provisions contained in the Rules. Rule-I gives primacy to the Section and Chapter Notes along with terms of the headings. They should be first applied. If no clear picture*

emerges then only can one resort to the subsequent rules."

20. ***Therefore, as clearly specified by the above rule, resort must first be had only to the particular tariff entries, along with the relevant Section and Chapter Notes, to see whether a clear picture emerges. It is only in the absence of such a picture emerging, that recourse can be made to the Rules for Interpretation.***

21. In the matter at hand, the entire case of the Revenue is based on an application of Rule 2(a) of the Rules for Interpretation to the goods produced by the appellant, however, the applicability of this Rule cannot be established unless the classification is first tested against the relevant Section and Chapter Notes. In this *case, the relevant Section Note is Section Note 2 to Section XVI of the Tariff, as reproduced above. The same may be reproduced again here for the purpose of a closer examination:*

"2. Subject to Note 1 to this Section, Note 1 to Chapter 84 and to Note 1 to Chapter 85, parts of machines (not being parts of the articles of heading 84.84, 85.44, 85.45, 85.46 or 85.47) are to be classified according to the following rules :

(a) parts which are goods included in any of the headings of Chapter 84 or 85 (other than headings 84.85 and 85.48) are in all cases to be classified in their respective headings;

(b) …………………

22. As can be seen from the above, the clear stipulation contained in Section Note 2 is to the effect that 'parts' of goods mentioned in the Chapters specified therein, shall in all cases be classified in *their respective heading. In that light, the fundamental enquiry in this case must be that of whether the goods produced by the appellant may be said to be covered by the above Section Note.*

23. In view of the above mentioned Section Note, the question that arises here is whether the goods produced by the appellant can be described as 'parts' under the goods included in any of the headings of Chapter 84 or 85. In this respect, it is the contention of the appellant that the goods produced by them shall inevitably have to be considered as 'parts', as they are unable to receive a picture, which is said to be a fundamental requirement for a good to be considered as a 'Television Receiver'. At the first sight, one may find force in this contention. As the test in Section Note 2 is simply that of whether the goods in question are 'parts', it may be convincingly said that as the goods transported by the appellant are incapable of functioning as 'Television Receivers', they shall have to be considered to be 'parts' thereof.

24. ***However, on closer scrutiny of the unique facts of this case, it is our view, the goods of the appellant may not be said to be 'parts' as per Section Note 2 to Section XVI of the Tariff. The appellant not only used to assemble all parts of the Television Receivers and make complete television sets, but the said Television Receivers were also operated in the manufacturing unit of the appellant and thoroughly checked and only upon it being confirmed that the Television Receivers were complete in all respects, they were disassembled***

> ***and along with relevant material and individual serial numbers, sent to the various satellite units.*** *Once the Television Receivers are assembled or are made completely finished goods, the manufacturing process is over and we are not concerned as to what happens subsequently. Whether they are sent to the satellite units of the appellant in its complete form or in a disassembled form is irrelevant."*
>
> ***(emphasis supplied)***

*25. The Tribunal in **Bigesto Food Pvt. Ltd.** vs. **Commissioner of Customs, Central Excise & Central GST, Noida** made the following observations in connection with assemblies and sub-assemblies of CTV:*

> *"14.* ***We find that in this case there is no requirement to proceed to Rule 2 (A) of Interpretation of the Schedule to the Central Excise Tariff as Rule 1 is sufficient to deal with classification of assembly and sub assemblies when they are cleared as parts and they are not ready to be used as CTV*** *which has been explained in the facts and circumstances of the case by the Adjudicating Authority in the impugned order itself. As per section note 2 of section 16 of the Central Excise Act, the goods were rightly classifiable as parts and merit classification under heading 8529.00 of the Central Excise Tariff Act 1975."*
>
> ***(emphasis supplied)***

26. Thus, it has to be held that the Commissioner was not justified in taking recourse to Interpretative Rules 2(a) of the Central Excise Tariff.

*27. Learned authorized representative appearing for the Department, however, submitted that the Commissioner was justified in placing reliance upon the decision of Supreme Court in **Salora International** to confirm the demand.*

*28. This submission cannot be accepted as the factual position in **Salora International** was different. The Supreme Court noted that the CTVS were assembled, tested and then disassembled into parts and, thereafter, the classification was claimed as part. This is not the situation in the present case."*

5. We observe that the facts of the present appeal are squarely covered by the aforesaid decision of the Tribunal in the case of L. G. Electronics India Pvt. Ltd. vs. CCE, Noida-II in Excise Appeal No.70677/2016 vide Final Order No.70138-70140/2022 dated 18.08.2022. In view of the above discussion, the impugned order dated 13.11.2015 passed by the Commissioner is set aside and the appeal filed by the Appellant is allowed with consequential relief, as per law.

(Order pronounced in open court on – **21st May, 2024**)

(P. K. CHOUDHARY)
MEMBER (JUDICIAL)

(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

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