

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD**

REGIONAL BENCH - COURT NO.II

Excise Appeal No.70159 of 2016

(Arising out of Order-In-Original No.- 25-26-COMMR-NOIDA-I-2015-16, dated -13/11/2015 passed by Commissioner, CGST & Central Excise, Noida)

Kevin Infotech Pvt. Ltd.,
(E-42, Sector-8, Noida)

.....Appellant

VERSUS

Commissioner, CGST & Central Excise, Noida

....Respondent

(Noida)

WITH

Excise Appeal No.70160 of 2016

(Arising out of Order-In-Original No.- 25-26-COMMR-NOIDA-I-2015-16, dated -13/11/2015 passed by Commissioner, CGST & Central Excise, Noida)

Anthony Joseph, Manager Accounts,
(E-42, Sector-8, Noida)

.....Appellant

VERSUS

Commissioner, CGST & Central Excise, Noida

....Respondent

(Noida)

AND

Excise Appeal No.70161 of 2016

(Arising out of Order-In-Original No.- 25-26-COMMR-NOIDA-I-2015-16, dated -13/11/2015 passed by Commissioner, CGST & Central Excise, Noida)

Krishan Kalani, Chief Operating Officer
(E-42, Sector-8, Noida)

.....Appellant

VERSUS

Commissioner, CGST & Central Excise, Noida

....Respondent

(Noida)

APPEARANCE:

Shri Atul Gupta, Advocate for the Appellant

Shri A. K. Choudhary, Authorised Representative for the Respondent

CORAM: HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)
HON'BLE MR. ANGAD PRASAD, MEMBER (JUDICIAL)

FINAL ORDER NO.70739-70741/2025

DATE OF HEARING : 15.07.2025
DATE OF DECISION : 16.10.2025

SANJIV SRIVASTAVA:

These appeals are directed against Order-In-Original No 25-26/Commr/NOIDA-I/2015-16 dated 13.10.2015 of Commissioner, Central Excise, Noida – I. By the impugned order following has been held:

"ORDER

(A) In respect of Show Cause Notice issued vide C. No. IV-CE(9)CP/86/02/1117-19 dt. 14.10.03. I pass the following order: "

- 1. I Confirm the demand of Central Excise duty amounting to Rs. 16,30,69,507/- (Rs. Sixteen Crores Thirty Lacs Sixty Nine Thousand Five Hundred Seven only) under Section 11A of the Central Excise Act, 1944.s"*
- 2. I order for recovery of interest at appropriate rate on above confirmed demand under Section 11AB (Now Section 11AA) of the Central Excise Act, 1944.*
- 3. I impose a penalty of Rs 16,30.69,507/- (Rs. Sixteen Crores Thirty Lacs Sixty Nine Thousand Five Hundred Seven only) on the party under Rule 173 Q of the Central Excise Rule 1944 and Rule 25 of the Central Excise Rule 2001/2002 read with Section 11AC of the Central Excise Act. 1944*
- 4. I Confirm the demand of Central Excise duty on shortage of inputs and finished goods amounting to Rs 5,00,062/- (Rs Five Lacs and Sixty Two only) under Rule 9(2 of the Central Excise Rules. 1944 and Rule 12 of the Cenvat Credit Rules 2001/2002 read with Section 11A of the Central Excise Act, 1944. As this amount is already deposited by the party, I order for its appropriation. I confirm the demand of interest on this amount*

under Section 11AB (Now Section 1 1AA) of the Central Excise Act 1944.

5. *I impose a penalty of Rs. 5,00.062/- (Rs Five Lacs and Sixty Two only) upon the party under Rule 13 of the Cenvat Credit Rules. 2002 read with Section 1 1AC of the Central Excise Act. 1944*

(B) In respect. of. Show Cause Notice issued vide C. No. V (15 Adi/Noida/Kevin/18/04/2120-2121 dt. 08.04.04, I pass the following order:

1. *I Confirm the demand of Central Excise duty amounting to Rs. 20,75,755/- (Rs. Twent Lacs Seventy Five Thousand Seven Hundred Fifty Five only) under Section 11A of th Central Excise Act. 1944.*
2. *I order for recovery of interest at appropriate rate on above confirmed demand unde Section 11AB (Now Section 11AA) of the Central Excise Act. 1944*
3. *I impose penalty of Rs-20,75,755/- (RS. Twenty Lacs Seventy Five Thousand Seven Hundred Fifty Five only) upon the party under Section 11AC of the Central Excise Ac 1944 read with Rule 25 of the Central Excise Rules. 2002.*

(C) I impose a penalty of Rs. 5,00,000/- (Rs. Five Lacs -only) on Shri Krishan Kalani Chie Operating Officer under Rule 209 A of the Central Excise Rule 1944 and Rule 26 of the Central Excise Rule 2001/2002, in, respect of Show Cause Notice issued vide C. No. IV/CE(9)CP/86/02/1117-19 9.dt. 14.10.03 and Show Cause Notice issued vide C. No. V(15)/Adj/Noida/Kevin/18/04/2120-2121 dt. 08.04.04.

D) I impose a penalty of Rs. 1,00,000/- (Rs. One Lacs only) on Sh. Antony Joseph, Manager Accounts of the said unit under Rule 209 A of the Central Excise Rule 1944 and Rule 26 of the Central Excise Rule 2001/2002 in respect of Show Cause Notice issued vide C. No. IV- CE(9)CP/86/02/1117-19 dt. 14.10.03.

2.1 Appellant 1 is registered with the Central Excise department and engaged in manufacture of Colour TV (CTV), VCD players and computer system under the brand name 'Oscar' and 'Ronix'. They were also clearing assemblies/ sub-assemblies

of CTV called Chassis subassembly and cabinet sub assembly to their Original Equipment Manufacturers (OEMs in short), to assemble complete T.V. which were then sold to market in the brand of 'Oscar'. They were classifying the said assemblies as parts of TVs under chapter sub-heading No. 8529.00 of the Central Excise Tariff Act. 1985.

2.2 The premises of the Appellant was visited by Anti-Evasion Branch Central Excise Commissionerate, Noida on 12.11.2002, and it was observed:

- A Physical stock taking of finished goods revealed that there was a shortage of goods involving duty amount of Rs. 6430/- which was debited by them on spot in PLA.
- Appellant was clearing processed waste generated during the course of manufacturing process without paying duty
- Supplying waste components of CTVs and VCD players to their customers/ service centers as free supplements without payment of duty or reversal of credit. Appellant submitted details of process waste and inputs cleared without payment of duty and debited Rs 1,09,174/- and Rs 3,84,458/- voluntarily in PLA accounts.

2.3 Investigations were conducted regarding clearances of sub-assemblies by the Appellant to their OEMs. Shri P.K. Jain Factory Manager in his statement dated 12.11.2002 *inter alia* stated that:-

- Chassis sub assembly is manufactured from populated circuit board. ICs. EHT, resistance, tuner, capacitor, relay and wiring.
- The cabinet sub- assembly is manufactured with cabinet, CRT, Speaker, operation unit, main lead, on/off switch, thermal and packing box. In some cases the CRT is not fitted at the time of clearance but are supplied in the same consignment which can be fitted by the OEMs, but even without CRT, this sub, assembly is called cabinet sub assembly.

- a TV can be manufactured/ assembled with chassis sub assembly and cabinet sub assembly by fixing/fitting with proper screw and adjustment of parameter such as voltage by adjustments of presets.

2.4 Shri Anthony Joseph, Manager Accounts (Appellant 2) in his statement stated that:

- the company is manufacturing TV sub-assemblies for CTVs of various sizes and models.
- the CTV sub assembly includes PCB, also known as TV chassis Sub assembly and cabinet sub assembly fitted with or without CPT. The speakers and control switch board are also fitted and remote control units are also supplied by them.
- There is no written agreement with the manufacturers of CTVs

2.5 The scrutiny of invoices revealed that on a given date equal number of cabinet and chassis assemblies with remote controls etc., were being cleared to a particular OEM. Shri Krishan Kalani, Chief Operating Officer (Appellant 3) in his statement 21.08.2003 also confirmed that they were supplying complete CTV assemblies with CPTs and packing materials to OEMs and that they were providing distribution network for sales of CTVs to OEMs.

2.6 On enquiry -

- M/s East India Vision Pvt Limited, an OEM, confirmed that appellant had supplied certain numbers of cabinet sub-assemblies and chassis sub-assemblies to them from which they assembled same-numbers of CTVs.
- M/s Om Industries Jammu, another OEM, confirmed that in a particular consignment they were receiving cabinet sub-assemblies and chassis sub-assemblies, remote controls and CPTs. Smt. Chanchal Mahajan, Partner, in her statement, stated that all sub-assemblies components and parts required to manufacture a CTV are supplied by the appellant along with the packing materials to OEM. All sub-

assemblies, components and parts/ packing material for specific number of pieces are received in one consignment and no other component are required for manufacture of a CTV.

- M/s Clear. Vision Industry Raisen, stated they had received same number of remotes, CPTs and sub-assemblies under invoices from the appellant and they assembled them in to CTV of various sizes of -OSCAR brand. Shri Rajesh Radhe Krishnan DGM stated that dispatches of CTVs were made on the telephonic instructions of the marketing department of the party.

2.7 In terms of Section Notes 4 and 5 of Section XVI read with Rule 2 a of Rules for interpretation of the schedules to CETA, 1985 and the facts of the case, it is observed that sub-assemblies supplied by the appellant to their OEMs had the essential character of a complete CTV and thus merit classification under Chapter heading No 8528 instead of 8529 of the Central Excise Tariff Act. 1985.

2.8 As the kits of CTVS were supplied to OEMs who were industrial consumers hence the goods should have been assessed to specific rates of duty meant for goods classifiable under heading 85.28 of CETA.1985 and not on ad-valorem rates as assessed by the appellant.

2.9 A show cause notice dated 14.10.2003, was issued to Appellants asking them to show cause as to why:-

- (1) *Duty amounting to Rs: 16,30,69,507/- (Rs. Sixteen Crore Thirty Lac Sixty Nine Thousand Five Hundred Seven only) short paid by them on clearance of kits of Colour television sets during the period 14.10.99 to 3 1.10.02 as above should not be demanded*
- (2) *Duty amounting to Rs. 6430/- and Rs 493632/- paid on shortage of goods and processed waste of Cenvatable inputs should not be appropriated.*
- (3) *Penalty under rule, 173 Q of erstwhile Central Excise Rules 1944, Rule 25 of Centre Excise Rules, 2001/2002,*

Rule 13 of Cenvat Credit Rules 2002, read with Section 11 AC of the Central Excise Act. should not be imposed upon them for contravention of Rule 9, 54, 173 B, 173-C, 173-F, 173-G of erstwhile CER, 1944 and Rule 4,6,8, and 12 of CER,2001/2002 and Rule 57F and 57A of erstwhile CER, 1944 and Rule 3 & 7 of Cenvat credit Rules, 2001/2002 respectively.

- (4) Interest under section 11 AB should not be demanded from them on the proposed amount of demand above.*
- (5) Penalty under Rule 209A erstwhile Central Excise Rules, 1944 & Rule 26 of Central Excise Rules. 2001/2002, should not be imposed on Shri Krishan Kalani, Chief Operating Officer and Shri Anthony Joseph Manager (Accounts).*

2.10 Another show cause notice dated 08.04.2004 was issued on the same lines to Appellants in which Rs. 20,75,755/- (Rs. Twenty Lac Seventy Five Thousand Seven Hundred Fifty Five only) short paid on Kits of CTVs during the period March 2003 to December 2003 was demanded alongwith invocation of penal and interest clauses.

2.11 Both the show cause notices were adjudicated vide Order-In-Original No.94-95/Commr/ Noida/ 2004 dated 22.11.2004 holding as follow:-

- A) Confirmed the demand of Central Excise duty amounting to Rs. 16,30,69,507/- (Rs. Sixteen Crore Thirty Lac sixty Nine Thousand Five Hundred Seven only) and Rs. 20,75.755/- Rs. Twenty Lac Seventy Five Thousand Seven Hundred Fifty Five only) on clearances of Kits of CTV sets and order for recovery alongwith interest.*
- B) Confirmed the demand of shortage of inputs amounting to Rs 5,00,062/- (Rs Five Lacs and Sixty Two only). As this amount is already deposited by the party, ordered for its appropriation. The demand of interest on this amount was also confirmed.*

- C) *A penalty of Rs 16,56,45,324/- (Rs. Sixteen Crore Fifty Six Lac Forty Five Thousand Three Hundred Twenty Four only) was imposed on the party under Rule 173 Q of the Central Excise Rule 1944 and Rule 25 of the Central Excise Rule 2001/2002 read with Rule 13 of Cenvat credit Rule and Section 11 AC of the Central Excise Act, 1944*
- D) *Imposed a penalty of Rs. 5,00,000/- (Rs. Five Lacs only) on Shri Krishan Kalani Chief Operating Officer under Rule 209 A of the Central Excise Rule 1944 and Rule 26 of the Central Excise Rule 2001/2002.*
- E) *Imposed a penalty of Rs. 1,00,000/- (Rs. One Lacs only) on Sh. Antony Joseph. Manager Accounts of the said unit under Rule 209 A of the Central Excise Rule 1944 and Rule 26 of the Central Excise Rule 2001/2002.*

2.12 Aggrieved appellants filed an appeal before the CESTAT. The appeal vide Final Order No. A/57508-57530/2013-EX(DB) dated 07.08.2013 was allowed and the matter remanded for the matter for de novo adjudication, observing as follows:

"As regards other appellants, after hearing the learned advocate Shri Lakshmi Kumaran for the appellant and Shri L.P. Asthana, learned advocate for the Revenue, we find that both sides are in agreement for remand of the matter to the original adjudicating authority for fresh decision in the light of the declaration of law by the Hon'ble Supreme Court in the case of Salora International referred supra. We make it clear that we have not gone to the merits of the case and the other contentious issues which the appellant may raise and have remanded the matters for fresh decision on simpliciter for fresh decision in the light of Apex Court judgment without expressing any opinion on the merits of the case. The party is at liberty to raise any issues"

2.13 Matter in the remand proceedings have been adjudicated as per the impugned order.

2.14 Aggrieved appellants have filed these appeals.

3.1 We have heard Shri Atul Gupta, Advocate for the Appellant and Shri A. K. Choudhary, Authorized Representative for the Revenue.

3.2 Arguing for the Appellant learned Counsel submits that:-

- The impugned order is arbitrary and has been passed without application of mind, therefore, is bad in law and cannot be sustained.
- The goods supplied by the Appellant to the OEMS and the Mohali unit were parts of CTV and were correctly classified under Tariff Heading 85.29 of the CETA. Reliance is placed on following decisions:-
 - Simplex Mills Co. Ltd., 2005 (181) ELT 345 (SC)
 - Salora International Ltd. v. CCE, New Delhi, 2012 (284) ELT 4 (SC)
- The Board Circular dated 03.02.1994 is incorrect and is not binding on the Appellant.
- Applying the law declared down by the Hon'ble Supreme Court in the case of M/s Salora International Ltd. [2012 (284) ELT 3 (SC)], goods cleared by the Appellant to the OEMS and Mohali Unit are classifiable under heading 85.29 as parts of CTV and not under heading 85.28 as complete CTV.
- Department is demanding payment of duty twice on one CTV.
- Differential duty demand in terms of Sl.No.229(ii) cannot be raised as sub-clause (ii) of Sl.No.229 of Notification No.5/98-CE is inapplicable to the present case.
- Entire exercise is revenue neutral, hence, the demand is not sustainable.

- Invocation of extended period of limitation is not sustainable. Reliance in this regard is placed on following decisions:-
 - Accurate Chemicals Industries [2014 (300) ELT 451 (Tri.-Del)], affirmed by the Hon'ble Allahabad High Court at [2014 (310) ELT 441 (All)]
 - Goran Pharina Pvt. Ltd [2010 (250) E.L.T. 57 (Tri.-Ahmd)]
 - Anand Nishikawa Co. Ltd. [2005 (188) ELT 149 (SC)]
 - Continental Foundation Jt. Venture [2007 (216) ELT 177 (SC)]
 - Ajay Mishra [2023 (386) E.L.T. 310 (Tri- Del.)]
 - Pushpam Pharmaceuticals Co. [1995 Supp (3) SCC 462]
 - PVR Ltd. [2021 (55) G.S.T.L. 435 (Tri- Del.)]
 - Densons Pultretaknik [2003 (155) E.L.T. 211 (S.C.)]
- Imposition of penalty and the order for recovery of interest is not sustainable. Reliance is placed on following decisions:-
 - Haldia Petrochemicals Ltd. [2006 (197) ELT 97 (Tri-Del.)]
 - ITEL Industries Pvt. Ltd. [2004 (163) ELT 219 (Tri-Bang.)]
 - Hindustan Steel Ltd. [AIR 1970 (SC) 253]
- Imposition of penalty on the chief operating officer (Appellant 3) and the accounts manager (Appellant 2) is not sustainable. Reliance is placed on:-
 - Amit Industries [2004 (165) ELT 177 (Tribunal)]
 - Rajendra F. Doshi [2007 (82) RLT 429 (CESTAT - Mum.)]

- Globe Rexine Pvt. Ltd. [2006 (203) ELT 632 (Tri.-Chennai)]
- Rutvi Steel & Alloys [2009 (243) EL T 154 (Tri.-Ahmd.)]

3.3 Departmental Representative reiterated the findings recorded in the impugned order:-

4.1 We have considered the impugned order alongwith the submissions made in the appeal and during the course of arguments.

4.2 We find that the matter has been taken up in remand proceedings as per the Tribunal Final Order No.57508-57530/2013 dated 07.08.2013 wherein the matter has been remanded making observation as under:-

"Both sides agree that the legal issue stands decided by the Supreme Court in the case of Salora International Ltd. vs. CCE New Delhi [2012 (284) ELT 3(SC)]. It stands held in the said decision that as various parts of television sets were being assembled as television in the assessee's factory and the same were thoroughly checked and it is only upon being satisfied that television receiver are complete in all respects, they were subsequently dis-assembled along with relevant material and individual serial numbers, the same were sent to various units. As such, the Hon'ble Supreme Court in para 24 of their decision, held that on closer scrutiny of the unique facts of the case, the clearance effected by M/s. Salora International have to be treated as clearance of complete television sets.

4.3 In the case of **Solara International Ltd. V/s Commissioner of C.Ex., New Delhi reported as 2012 (284) E.L.T. 3 (S.C.)** the Hon'ble Supreme Court has observed 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)" [Emphasis added]

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.

25. Looking to the facts of the case, it is not in dispute that complete Television was manufactured by the appellant and therefore, in our opinion, the Revenue had rightly classified the goods-product as complete Television set even though it was subsequently disassembled.

26. It is seen from the material on record, that at the time of the parts of the TV set being transported from the factory of the appellant, the parts manufactured

by it are already identified as distinct units. As it can be seen from the affidavit of the Revenue, which has not been controverted by the appellant, the parts manufactured by it are matched and numbered within the factory itself, and also assembled together to receive pictures for the purpose of testing and quality control. The consequence of this is that the goods assembled at the satellite units would be identifiably the same as those assembled together by the appellant in its factory for the purpose of testing, as all such parts are already numbered and matched. This element of identifiability shall take the goods manufactured by the appellant away from being classified as 'parts', and they will be classified as identifiable Television Receivers. The fact that the packing material for the products is also manufactured and transported by the appellant further lends credence to this conclusion.

27. The facts in the case of Sony India Ltd. (supra) may be distinguished in this respect. In that case, the assessee had imported different parts of television sets in 94 different consignments. The said parts were imported separately in bulk, and thereafter, the process of matching, numbering and assembling was carried out once they were in the possession of the assessee. Therefore, it may be seen that what the assessee had imported in that case were merely various parts which could not yet be identified and distinguished as individual Television Receivers such as the parts transported by the appellant in this case. The said decision is, therefore, distinguishable on facts.

28. For further clarification, it may also be stated that if the appellant had been in the practice of simply manufacturing and transporting parts of Television

Receivers in bulk, while leaving the matching and numbering functions to be done at the satellite units, then it could have availed the benefit of Section Note 2, because in such a case, there would not have been any production of identifiable television sets such as in the present case.

29. Once the question of applicability of Section Note 2 to Section XVI of the Tariff is answered in the above manner, i.e. in the negative, there may be seen to be no bar to the application of Rule 2 of the Rules for Interpretation to the goods transported by the appellant. Consequently, the only question that remains is with respect to whether such goods shall fall foul of the said Rule.

30. In this regard, despite the attempts of the appellant to establish otherwise, we are unable to see how the goods transported by them shall not be covered by the Rule, especially as a complete or finished article, 'presented unassembled or disassembled'. The terminology of the Rule is wide enough to cover the goods transported by the appellant, and we are not convinced that the processes required to be carried out at the satellite units are so vital to the manufacture of the Television Receivers so as to render the goods transported by the appellant lacking the 'essential character' of Television Receivers. Rule 2(a) of the Rules for Interpretation has been couched in wide terms, and in terms of this Rule, it is our view that the goods produced by the appellant do in fact possess the essential character of Television Receivers.

4.4 Impugned order records as following in the remand proceedings:-

"5.5 I find that detailed investigations were carried out by the department in the matter prior to issuance of the SCNs. During the course of examination of invoices, packing lists

and other related documents of the party. it was found that the party were supplying complete kit of Colour Television Sets (in SKD form), which included sub-assemblies. plastic moulded cabinets, packing materials and all other parts required for the manufacture of Colour Television Sets (with or without Colour Picture Tubes) to various OEMs for the purpose of manufacture of Colour Television Sets of "OSCAR" brand on their behalf. The party was not engaged in selling of these sub-assemblies/CTV Chassis in general market. **Thus, neither the party was engaged in setting of these assemblies, sub-assemblies/CTV Chassis in general market nor the OEMs to whom these were supplied, were selling it in the open market or disposing it in any otherwise manner. It thus follows that exactly the same number of such assemblies or sub-assembly are supplied to the OEMs as is the number of CTVs intended to be assembled at OEMs premises and no supply of any of the assemblies or sub-assembly is in bulk, thus matching each CTV Set.** Investigations were conducted regarding clearances of sub-assemblies by the party to their OEMs. I find that Shri P.K. Jain Factory Manager in his statement dt 12.11.2002, inter alia stated that Chassis sub assembly is manufactured from populated circuit board, ICs, EHT, resistance, tuner, capacitor, relay and wiring. The cabinet sub assembly is manufactured with cabinet, CRT, Speaker, operation unit, main lead, on/off switch thermal and packing box. In some cases the CRT is not fitted at the time of clearance but is supplied in the same consignment which can be fitted by the OEMs, but even without CRT, this sub assembly is called cabinet sub assembly. He further stated that" a TV can be manufactured/ assembled with chassis sub assembly and cabinet sub assembly by fixing/fitting with proper screw and adjustment of parameter such as voltage by adjustments of presets."

*I also observe that as per the process of manufacturing at OEMs ne substantial work was being done in respect of manufacturing of CTVs. Assembly of CTV from the sub-assemblies. parts/components supplied by SCIL required simple process of fitting. connecting the sub-assemblies/components and testing and packing. **As also observed by the Hon'ble Supreme Court in the case of Salora International Limited, in this case too, I therefore find that the processes required to be carried out at the satellite units are not vital to the manufacture of the Television Receivers so as to render the goods transported by the appellant lacking the 'essential character' of Television Receivers.***

5.6. I have examined the statement of Shri Anthoney Joseph, Manager Accounts who has accepted the facts that the company is manufacturing TV sub- assembly for CTVs of various sizes and models. The CTV sub assembly includes PCB also known as TV chassis sub-assembly and cabinet sub-assembly fitted with or without color picture tube. The speakers and control switch board are also fitted and remote control units are also supplied by them, and there is no written agreement with the manufacturers of CTV.

5.7. The scrutiny of services revealed that on a given date equal number of cabinet and chassis assemblies with remote controls etc were being cleared to a particular OEM. Shri Krishan Kalani Chief Operating Officer under his statement given under Section 14 of Central Excise Act,1944 on 21.08.2003 also confirmed that they were supplying complete CTVs assemblies with CPTs and packing materials to OEMs and that they were providing distribution network for sales of CTVs to OEMs.

5.8. Enquiry from M/s East India Vision Pvt Limited. an OEM, confirmed that party has supplied certain numbers of

cabinet subassemblies and chassis sub-assemblies to them from which they assembled same numbers of CTVs.

5.9. Enquiry from M/s Om Industries Jammu another OEMs confirmed that in a particular consignment they were receiving cabinet subassemblies and chassis sub-assemblies remote controls and CPTs. Smt Chanchal Mahajan Partner of M/s Om Industries Jammu in the statement given under Section 14 stated that all sub-assemblies components and part required to manufacture a CTV are supplied by the party and that packing materials to OEM and that all sub-assemblies components and parts/ packing material for specific number of pieces are received in one consignment and no other component are required for manufacturer of a CTV.

5.10. Enquiry from M/s Clear Vision Industry. Risen revealed that they had received same number of remotes, CPTs and subassemblies under invoices from the party and assemble them into CTVs of various sizes of 'OSCAR' brand. The statement of Shri Rajesh Radha Krishnan DGM of M/s Clear Vision Industry, confirmed the same and further revealed that dispatches of CTVs were made on the telephonic instructions of the marketing department of the party.

5.11. In the light of Section Notes 4 and 5 of Section XVI read with Rule 2A of Rules for interpretation of the schedules to CETA, 1985 and the facts of the case, it is observed that the assemblies supplied by the party to their OEMs had the essential character of a complete CTV and thus merit classification under Chapter heading No 8528 instead of 8529 of the Central Excise Tariff Act, 1985

5.12. Further that kits of CTVs were supplied to OEMs who were industrial consumers hence the goods should have been assessed to specific rates of duty meant for goods

classifiable under heading 85.28 of CETA 1985 and not on advalorem rates as assessed by the party.

5.13 1 find that a GTV basically consists of PCBs and CPT fitted inside a cabinet and connected through wires and cables. The audio and video signals are received through devices known as assemblies and sub-assemblies. Assemblies and sub-assemblies are manufactured by mounting complicated integrated electric circuits on board in preplanned way. By connecting all such assemblies and sub-assemblies, essential characteristics of a signal receiving device come in to being. Expertise is used in manufacture of such assemblies/sub-assemblies and CPTs. It is noticeable that chassis sub-assembly was manufactured by the party by mounting various integrated circuits and components. The moment various components are mounted on complex integrated circuit they lose their character as components and are called sub-assemblies. Thus, in various sub-assemblies like Cabinet Assembly, Chassis Assembly etc. and essential character TV receiver is developed as these sub-assemblies have no other function or use except be used in a TV receiver for which these were intended to be used. It is also a fact that the party has complete facility to manufacture CTVs. These various sub-assemblies also with picture tubes and other components were captively used by the party to manufacture CTVs. In case of OEMs, the party sent these sub-assemblies with other items like pack material, labels etc., They arranged to send CPTs directly to OEMs for sake of convenience to save the transit cost. In any case, they had all the right to check and inspect conversion of CTVs at OEMs any point of time. Also it is evident from the enquiry from M/s Clear Vision Industry, that the dispatches of CTVs were also made on the telephonic instructions of the marketing department of the party.

5.14. I find that classification of an item under First Schedule to the Central Excise Tariff Act, 1985 is basically governed by the provisions contained in the 'Rules Interpretation' (in short referred to as 'Interpretation Rules'). Rule 1 of the Rules of Interpretation reads as under:

"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 headings and any relative Section or Chapter Notes and, provided such headings or notes do not otherwise require, according to the provisions hereinafter contained."

When I examine the issue of classification of the assemblies/sub-assemblies etc of CTV in the instant case in the light of the above quoted Rule 1 of the Rules of Interpretation. the above provisions clearly indicate that the classification of excisable goods will be determined keeping in view of the provisions given in relative Section or Chapter Note. Chapter Note 4 & 5 of Section XVI as are relevant to the instant case. Section Note 4 of the Section XVI of the schedule to the CETA, 1985 is reproduced as under:

"Where a machine (including a combination of machine) consists of individual components (whether separate or inter connected by piping, by transmission devices, by electrical cables or by other devices) intended to contribute together a clearly defined function covered by one of the headings in chapter 84 or chapter 85. then the whole falls to be classified in the heading appropriate to that function".

Section Note 5 of Section XVI *ibid* reads as under:

"For the purpose of these Notes, the expression machine' means any machine. machinery, plant equipment, apparatus or appliance cited in the headings of chapter 84 or chapter 85."

I find that CTV is called as CTV Set i.e. it is an appliance which consists of individual components (whether separate or inter, connected by piping, by transmission devices, by electrical cables or by other devices) which are intended to contribute together a clearly defined function of Color Television (CTV). CTV set falls under Chapter 85.28 of the First Schedule to the CETA, 1985. Thus, applying Section Notes 4 & 5 of the Section XVI of the Schedule to the CETA, 1985 quoted above in the instant case, I find that the same falls to be classified under Chapter-heading 85.28 only.

5.14.1 The party has also submitted that Rule 2(a) of the Interpretative Rules is not applicable, where the classification can be determined under Rule 1. In this regard. I find that Rule 1 provides that headings and relative Section or Chapter Notes. Further, Rule 2(a) of the Interpretative that the goods are to be classified according to the terms of the Rules reads as under:

"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."

I have gone through the submissions put forward by the party in this regard. They also submitted that Rule 2(a) of Interpretative Rules is not applicable in the instant case. It is also submitted that Note 4 to Section XVI is not applicable in the instant case. I have carefully examined these arguments and various case laws cited by the party in their support. The relevant Rules and Chapter Notes have been quoted in the foregoing paras. Now, given the unique facts of the case as discussed in detail above, and also keeping in mind the characteristics of the impugned goods, resort to Rule 2 of the Interpretative Rules has rightly been taken

and I find the same as proper and legal. From the perusal of Rule 2(a) it is clear that incomplete television or unfinished television having essential character of television is to be assessed as a complete television. Rule 2(a) would also apply to complete television or finished television which is removed in unassembled or disassembled form. The goods removed from the factory of the party were having essential character of a CTV and were required to be assessed under chapter 85.28 and not under chapter 85.29. The arguments of the party as stated above are not proper in the light of the provisions cited above and details of the case.

5.15 I find that the above Chapter/Section notes when read in a synchronized manner, it visibly indicate that any Machinery', whether in SKD condition or CKD condition has to be classified in the heading appropriate to the function it renders. Further, it does not matter whether the components are separate or inter-connected. The only requirement is that all the individual components are intended to contribute together a clearly defined function. I find that in the present case, the complete chassis sub-assemblies, various other tube, though separate, contribute together the clearly defined function of a TV receiver

5.16 I find that the process undertaken by the OEMs were merely that of a fitting of assemblies and subassemblies in the chassis and connecting of wires/cables nature from the parts and components supplied from the party. No activity of manufacturing of a substantial nature was done at OEMs as per the statement tendered by Shri P.K. Jain Factory Manager that" a TV can be manufactured/ assembled with chassis sub assembly and cabinet sub assembly by fixing/fitting with proper screw and adjustment of parameter such as voltage by adjustments of presets."

5.17. It is also clear that th the party was supplying the parts and components in such a quantity that they were required to get assembled a definite number of CTVs. Even the packing materials were supplied according to the need

and quantity simultaneously. In the light of foregoing. I find that party have supplied each and every part of a CTV, directly or indirectly (viz. CPT). to their OEMs in such a manner that they were fit for getting assembled in a pre-decided quantity without any further substantial act of manufacture. The parts and components and assemblies/sub-assemblies were manufactured in the factory of party and they had right to inspect the activity of assembling these parts at OEMs at any time by their technical team. Further their sales staff had full control over sales/ the dispatches of the TVs so manufactured as evident from the enquiry from M/s Clear Vision Industry, who categorically stated that the dispatches of CTVs were also made on the telephonic instructions of the marketing department of the party. Hence, it is evident that complete kit of CTVs having essential characteristic of a CTV were cleared to the OEMs by party. It is very important to mention here that the manufacturing process of the CTVs was already over when the said parts/components/ assembly/ sub-assembly/ CPTs/ packing materials etc. reached OEM. No further manufacturing process was required to make a complete CTV at OEMs. I find that Technical persons/ Engineers at various OEMs in their statements and opinion have referred the impugned goods as CTV sets in SKD condition since they were having all the essential character of complete CTV. Thus, the facts indicate it beyond any doubt that the goods manufactured and cleared by the party merit classification under Chapter 85.28 and not under Chapter 85.29.

5.18. I further observe that vide Circular No. 12/12/94-CX dated 03.02.1994 the Central Board of Excise & Customs has also examined the matter relating to the classification/excitability of various sub-assemblies emerging during the course of manufacture of T.V. and has clarified as under.

"It is observed that in trade, the Cabinet with chassis, speakers etc. (but without the picture tube) is traded as a sub-assembly, though the same has essential characteristics of a TV. Thus by application of Rule 2(a) of Rules of Interpretation of the Tariff, a sub-assembly of the nature mentioned above when cleared as such, has to suffer its duty liability at the rates applicable to a TV."

It may be observed that the Board in the above Circular has specifically examined the issue of classification of assemblies/sub-assemblies of TV sets when these are traded as such without picture tubes (CPTs) and jhas clarified that by application of Rule 2(a) of Rules of Interpretation of the Tariff, such assemblies/sub-assemblies of TV sets, when cleared as such, would be liable to duty at the rates applicable for TV

5.19. The judgment quoted by the party in its support of Texla Enterprises (2002(145)ELT537(T)) cited by the party in defense, have no application in their case, as the facts of the said case was that the appellants had imported F.V. parts and filed Bill of Entry claiming the classification under Heading 85.29 of Customs Tariff which the department alleged to be classifiable as TV on the ground that the goods in question appeared to be in the form of components which are to be mounted on bare Printed Circuit Board (PCB), which had also been imported and the process of mounting on PCBs and shouldering of the imported components was the only process left after import in the instant case the party has already completed this process and manufactured assemblies/sub-assemblies of CTV before making supplying to the OEMs Hence, the facts of the instant case are different from the facts of Texla case

I find that the judgments in the following case laws are relevant in the instant case on which I place reliance

(i) Padmavathy Panel Boards Ltd. Vs. CCE Bangalore-2001(132)ELT36(Tri.-Bang) The Hon'ble Tribunal held that

an item has to be classified as per rules of interpretation. relevant tariff headings and chapter notes as applicable.

(ii) CCE Hyderabad Vs. Fevoplast- 1994(72)ELT 313(SC) and CCE, Kanpur Vs Karishma Carbon Paper Co.- 1998(37) ELT480(SC)- In both the cases the Apex Court held that the trade parlance is relevant only when the statute does not define the words. If words are defined in the statute, trade parlance is not relevant.

(iii) CCE Vs Woods Polymers Ltd- 1998(9)ELT-193(SC) In this case the Hon'ble Supreme Court has held that classification should be done as per the Rules of Interpretation contended in the Tariff and not as per trade parlance and commercial understanding.

(iv) Collector of Customs, New Delhi Vs. Printer House Ltd., 1998(104)ELT632(Tri.)-The Hon'ble Tribunal held that the legal provision in fiscal enactment is to be construed in a manner that it does not promote evasion of tax.

(v) Collector of Customs. Bangalore Vs. Maestro Motors Ltd., 2004(174)ELT289(SC), The Hon'ble Supreme Court held that, "...In our view, CEGAT has erred in holding that the Interpretative Rule 2(a) does not apply to a Notification When a Notification exempts goods falling within the First Schedule to the Customs Tariff Act, 1975, then the goods must be classified in the same manner both for purposes of payment of customs duty as well as for the purposes of exemption/benefit under tha Notification..."

5.20. The, Hon'ble CESTAT, New Delhi has remanded the case back to the adjudicating authority to decide the matter afresh in the light of the law declared by the Hon'ble Supreme Court in the case of Salora International Limited. The party has emphatically contended that their case is different from that of Salora International Limited as decided by the Apex Court. In Para 28.2 of these "Discussions & findings", I have already noted down t relevant portion of the judgment of the Apex Court. The Hon'ble Supreme Court in the said judgment has not in any

way, questioned the validity of the Chapter Note 4 Section XVI of CETA 1985 which says that "Where a machine (including a combination of machine) consists of individual components (whether separate or inter connected piping, by transmission devices, by electrical cables or by other devices) intended contribute together a clearly defined function covered by one of the headings in chap 84 or chapter 85. then the whole falls to be classified in the heading appropriate to function, Rule 1 of the Rules of interpretation also says that "for legal purpose classification shall be determined according to the terms of headings and any relation **Section Note or Chapter Notes**". The Board's Circular No. 12/12/94-CX date 03.02.1994 the Central Board of Excise & Customs has also clarified that the Cabinet w chassis, speakers etc. (but without the picture tube) traded as a sub-assembly, has to suffer d liability at the rates applicable to a T.V by application of Rule 2(a) of Rules of Interpretation the Tariff. The Hon'ble-Supreme Court has not questioned the validity of the said Boar Circular. Further Rule 2(a) of the Rules for Interpretative which says that "a reference in a heading to goods shall be taken to include a reference to those goo incomplete or unfinished. provided that, the incomplete or unfinished goods have essential character of the complete or finished goods. It shall also be taken to include reference to those goods complete or finished (or falling to be classified as complete finished by virtue of this Rule) removed unassembled or disassembled." only support the above statutory position and the clarification issued by the Board. I do not find that by the judgment of the Hon'bele Supreme Court in the case of Salora International Limited. the statutory legal position as laid down under Chapter Note 4 of Section XVI of CETA 1985 read with Rule 1 of the Rules of Interpretation or as laid down under Rule 2(a) of the Rules of Interpretation or as explained in the Board's Circular No. 12/12/94-CX dated 03.02.1994 has been altered. When I go

through the said judgment of the Apex Court I find the following law declared therein:

(i) When different parts or components are supplied in bulk without matching the correlative numbers so as to match as a definite number of TV set, in that case it may be called as 'parts': I find that the law laid down by the Hon'ble Supreme Court in the case of Salora International Limited is that, in case the different parts of TV are supplied /received in bulk without matching the correlative numbers so as to match to a definite number of TV sets, then it is removal of "parts" of TV classifiable under Chapter heading \$5.29 of the First Schedule to the CETA. 1985. It is important to see that the Apex Court has used the word "**bulk**" two times in its judgment in regard to the nature of supply of different parts of TV; first time in Para 27 of the judgment and again in Para 28 of the said judgment, which are reproduced below:

"27. The facts in the case of Sony India Ltd. (supra) may be distinguished in this respect. In that case, the assessee had imported different parts of television sets in 94 different consignments. The said parts were **imported separately in bulk**, and thereafter, the process of matching. numbering and assembling was carried out once they were in the possession of the assessee. Therefore, it may be seen that what the assessee had imported in that case were merely various parts which could not yet be identified and distinguished as individual Television Receivers such the parts transported by the appellant in this case. The said decision is, therefore, distinguishable on facts

For further clarification, it may also be stated that if the appellant had been in the practice of simply manufacturing and transporting parts of Television Receivers **in bulk, while leaving the matching and numbering Junctions to be done at the satellite units,** then it could have availed the benefit of Section Note 2. become in such a

case, there would not have been any production of identifiable television sets such as in the present case

*I find that in the case of Sony India Limited, discussed by the Apex Court in the said case, different parts of TV were imported in bulk and thereafter the process of matching, numbering, assembling was carried out when such parts were received. The Apex Court held that the parts transported by the Salora International were distinguishable from 'the parts' imported by Sony India Limited, in as much as, in the latter case, the supply was in bulk and it could not be said that such parts were matched numbered & assembled so as to make an individual TV set. Coming to the facts of the instant case, I find that there was no supply of parts of CTV **in bulk** without matching the number of CTV sets intended to be taken out from the respective OEMs. The OEMs did not sale or trade any such part from their end. Thus, exactly the same number of assembly /sub-assembly/part was supplied by the party as was the number of CTV sets which the OEMs were required to deliver. Thus, I find that as per the law declared by the Apex Court in Salora International, the assembly/sub-assembly / part were supplied by the party, cannot be treated as parts classifiable under Chapter heading 8529 of the First Schedule of CETA. 1985 and the case of the party is not different from Salora International when adjudged with this legal position declared by the Apex Court in its said judgment.*

(i) When at the time of clearance of the parts of the TV set being transported from the factory of the appellant, such parts manufactured by it are already identified as distinct units, the same cannot be classified as 'parts': The Hon'ble Supreme Court under Para 26 of the Judgment in Salora International case has held as under-

26. It is seen from the material on record, that at the time of the parts of the TV set being transported from the factory of the appellant, the parts manufactured by it are

already identified as distinct units. As it can be seen from the affidavit of the Revenue, which has not been controverted by the appellant, the parts manufactured by it are matched and numbered within the factory itself, and also assembled together to receive pictures for the purpose of testing and quality control. The consequence of this is that the goods assembled at the satellite units would be identifiably the same as those assembled together by the appellant in its factory for the purpose of testing, as all such parts are already numbered and matched. This element of identifiability shall take the goods manufactured by the appellant away from being classified as 'parts', and they will be classified as identifiable Television Receivers. The fact that the packing material for the products is also manufactured and transported by the appellant further lends credence to this conclusion.

I find that the ratio underlying in the above Para of the judgment is that when the parts at the time of clearance from the factory are identifiable as distinct units, then the element of such identifiability shall take the subject goods manufactured in the factory away from being classified as 'parts'. In the instant case of the party, I find that the party manufactured assembly/sub-assembly in their own factory and the same were identifiable as distinct units of CTV at the time of clearance from their factory. Therefore, the same cannot be classified as 'parts'. As regards observations of the Apex Court that such distinct units were assembled to test it and thereafter de-assembled to transport it from the factory, I find that these are observations of the Apex Court on the facts specific to that case, in the form of obitor dicta which cannot be termed as the ratio of the judgment in as much as the criteria of identifiability of distinct unit and holding it not be 'parts' forms the basis i.e. ratio of the judgment of the Apex Court. I therefore, find that the case of the party is not different

from Salora International when adjudged with this legal position declared by the Apex Court in its said judgment.

(iii) When at the OEMs end, no process vital so vital to the manufacture is being undertaken, it would lead to conclude that no CTV was manufactured at OEM's end and the goods supplied were not 'parts' but were having the essential character of Television Receivers: The Hon'ble Supreme Court under Para 26 of the Judgment in Salora International case has held as under-

"30. In this regard, despite the attempts of the appellant to establish otherwise, we are unable to see how the goods transported by them shall not be covered by the Rule, especially as a complete or finished article presented unassembled or disassembled. The terminology of the Rule is wide enough to cover the goods transported by the appellant, and we are not convinced that the processes required to be carried out at the satellite units are so vital to the manufacture of the Television Receivers so as to render the goods transported by the appellant lacking the essential character of Television Receivers. Rule 2(a) of the Rules for Interpretation has been couched in wide terms, and in terms of this Rule, it is our view that the goods produced by the appellant do in fact possess the essential character of Television Receivers....."

The law declared by the Hon'ble Supreme Court in its above quoted Para clearly lays down that if the process undertaken at the satellite units (OEMs in this case) is not so vital to the manufacture the manufacture of the Television Receivers so as to render the supplied goods as lacking 'essential character' of Television Receivers, then the same cannot be classified as 'parts'. The Apex Court held that the terminology of the Rule laid down in this regard is wide enough to cover such goods as Television Receivers. I have no doubt that the Apex Court here refers to and also affirms the statutory position as laid down under the Section Notes/ Chapter Notes read with the Rules for Interpretation

discussed supra and applies it to the case where no vital manufacturing process is undertaken at the end of satellite units (OEMs). In the instant case of the party 1 find that complete kits of CTV (assembly, sub-assembly and bought out CPTs) are supplied to the OEMs which are just put together the kits of CTV in assembled form. The instant case of the party was remanded back with the case of M/s Super Cassettes Industries Ltd., C-5, Phase-II, Noida by the Hon'ble CESTAT. I find that in that case, the amount charged & paid to OEMs for same activity is just between Rs. 50/- to Rs. 150/- per set which includes all their expenses of establishment / overheads and the process done over the goods received by them from the party. It does not convinces me that such meager amount can be the cost of any vital manufacturing process which can be conceived as having been performed at the OEMs end. This in fact shows that no vital manufacturing activity was undertaken over the goods received by OEMs and the same were complete kits of CTVs and hence they cannot be classified as 'parts' under Chapter heading 8529 of CETA, 1985 as claimed by the party. I do not find that the case of the party is different from the case of Salora International and the ratio of the judgment of the Apex Court squarely apply in the present case too.

In view of the above discussions, I therefore, find that as per the law declared by the Hon'ble Supreme Court in the case of Salora International Limited, the items manufactured and supplied by the party in the instant case merit classification under Chapter heading 8528 and liable to be charged to Central Excise duty as applicable to CTV sets."

4.5 From the above impugned orders it is evident that the impugned orders considered the facts in the light of the decision of the Hon'ble Supreme Court in the case of Salora International Ltd. (supra) and have concluded that all the part components were being shipped out by the Appellant to the OEM (Original

Equipment Manufacturer) or their sister concerned at Mohali for being fitted together to form the complete TV. However the distinct feature which the Hon'ble Supreme Court has observed in the case of Salora was that before the clearance of the sub assemblies and components of the CTV the same were being assembled together and tested. Thereafter they were disassembled and cleared to the satellite manufactures in form of subassemblies and component to be reassembled as CTV and cleared by the satellite manufacture. We do not find that the same is the true in the present proceedings. Not even an iota of finding has been recorded to this effect that these subassemblies and components were ever assembled at the premises of Appellant into complete TV for testing or any other purpose and then disassembled before being cleared to the OEM's etc. The facts in the present case are more akin to the case of Sony India, which has been distinguished by the Hon'ble Supreme Court on this ground only.

4.6 Such issue came for consideration by the Tribunal in the case of M/s L.G. Electronics India Pvt. Ltd. V/s Commissioner, Central Excise, Noida-II in Excise Appeal No.70677 to 70679 of 2016 having Final Order Nos. 70138-70140/2022 dated 18.08.2022 and after considering the issue Tribunal concluded as under:-

"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*

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.

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.

**** ** ***

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 disassembled 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 pertinent 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. v. Commissioner of Customs, Central Excise & Central GST, Noida Excise Appeal Nos. 70745 of 2016, decided on 28-3-2022 [[2023 \(384\) E.L.T. 82](#) (Tri. - All) = [\(2023\) 2 Centax 284](#) (Tri. - All.)]* 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."

4.7 Appeal filed by the Revenue against this decision has been dismissed by the Hon'ble Supreme Court vide order dated 10.04.2023 in Civil Appeal Diary No.8150/2023.

4.8 Thus in light of the above decisions the only issue that needs to be decided is whether the Appellant was clearing all the parts after first assembling then CTV test and then disassembling them into parts to clear them after classification as parts. There is no evidences available to show that these parts were first assembled in CTV, tested and then cleared to the OEM and the satellite manufacturing units of the Appellant.

4.9 The basic difference which has been observed by the Tribunal in case of LG Electronics India Pvt. Ltd. (supra) was that in case of Salora International Ltd. (supra) the parts were assembled, dismantled and then cleared. Similar distinction was drawn by the Hon'ble Supreme Court in the case of **Sony India Ltd. reported as 2008 (231) E.L.T. 385 (S.C.)** wherein the Hon'ble Supreme Court observed as follows:-

"14. We have already held that in this case the goods brought were not having the essential character of CTVs. We do not find anything to take a view that the goods were in unassembled or dis-assembled condition and they should be taken to be the complete CTVs, particularly when there is no finding recorded anywhere on facts that all these goods could make 1500 CTVs. However, we accept the argument that the goods brought in different consignments separately on the basis of valid import licences would not attract the import duty as if they were the finished goods. We have already referred to this aspect vis-a-vis the facts in Phoenix International's case where the goods were brought in one and the single consignment and they were all brought

together though they were imported by two companies, i.e., PIND and PIL fraudulently.

15. *Shri Lakshmikumaran, learned counsel for the respondent also drew our attention to the HSN Explanatory Notes as it stood prior to 1997 which is as under :*

"(VII) For the purpose of this Rule, articles presented unassembled or disassembled means articles the components of which are to be assembled either by means of simple fixing devices (screws, nuts, bolt, etc.) or by riveting or welding, for example, provided only simple assembly operations are involved."

Learned counsel further points out that in a decision in CCE v. Woodcraft [(1995) 3 SCC 454] this Court took the view that HSN Explanatory Notes should be referred to for understanding the true scope and meaning of expressions used in the Customs Tariff. He further points out that the Revenue did not dispute the fact that complicated processing of imported parts had to be done before they could be fit in the assembly of CTVs. Shri Vikas Singh, learned ASG also did not dispute this fact during the debate before us that a complicated process had to be exercised before these components could be brought in use for CTVs. There is also a specific finding by the Tribunal on this issue. In that view since the concerned Explanatory Note was applicable, there would be no question of treating these notes to be in unassembled or disassembled condition since a complicated process had to be exercised and then before it could be used for the assembly of the CTVs. Ofcourse this Explanatory Note was further amended by adding the words "no account is to be taken in that regard of the complexity of the assembly method. However, the components would not be subjected to any further working operation for completion into the finished stage". It is an admitted position that this amendment was not there and therefore,

the complexity of the assembly method would have to be taken into consideration atleast in case of the present goods since the concerned period is pre 1997 period. The Tribunal has correctly held that the HSN Explanatory Notes to Rule 2(a) had to be applied while considering the relevant Tariff Entry. It has also correctly held after considering the whole process that the process involved in the user of the components is the complex manufacturing process during which many components are subjected to working operation requiring sophisticated machinery and skilled operators. Further it has correctly assessed the effect of the amendment of HSN Explanatory Notes which came on 14-3-1997. We approve of the finding given by the Tribunal in para 25 of its order which takes into account the fact that there was no amendment to Clause (v) while this is amended to the effect that complexity of the assembly method was made irrelevant. However, it was made clear that the components would not be subjected to any further working operation for completion in the finished state. The Tribunal has referred in details to the manufacturing process to show that some of the components require further working operation for completing the manufacturing process and further that CTV is not a machine which is presented in assembly for the sake of convenience of packing, handling or transport. We are, therefore, in agreement with the finding that even applying the amended HSN Explanatory Notes the position would be no different.

16. *Our attention was invited to a very interesting decision reported in Modi Xerox Ltd. v. CCE, New Delhi [[1998 \(103\) E.L.T. 619](#)] which was confirmed by this Court in [2001 \(133\) E.L.T. A91](#) (it must be noted that the decisions in Woodcraft Products is specifically confirmed in this decision). In this case, the Tribunal had relied on Tara Chand's case as also the CC v. Mitsun Electronics Works [[1987 \(30\) E.L.T. 345](#) (Cal. HC)] which we have made*

reference in the earlier part of this judgment. The Tribunal had held that the fax machine in completely knocked down condition imported by the appellant being not a fax machine but part thereof, the benefit of exemption under Notification No. 59/88/Cus., dated 1-3-1988 would not be available. Very interestingly, it was claimed by the importer that it had imported the fax machine and not the components obviously because the duty payable on the components was more. The Tribunal came to the conclusion that in view of Section Note 2 to Section XVI Rule 2(a) would not apply and confirmed the import of goods as components. While interpreting Explanatory Note to Rule 2(a), the Tribunal had held that this Rule would apply only when the imported articles presented in unassembled or disassembled can be put together by means of simple fixing device or riveting or welding. It came to the conclusion that fax machines were not the type of goods which were normally traded or transported in knocked down condition and therefore, the imports were that of the components and not of fax machines. Shri Lakshmikumaran also invites our attention to the fact that Chapter 64 dealing with footwear does not have a note similar to Note 2 in Section XVI. Thus this position would render support to the proposition that Rule 2(a) would apply only when the imported articles presented unassembled or disassembled can be put together by means of simple fixing device or by riveting or welding. We have already pointed out in the earlier part of our judgment that the complicated process would be required for the user of those parts.

17. *Lastly, we must take stock of the argument of Shri Lakshmikumaran that Section Interpretative Rule 2(a) would not be applicable at all in this case. For this he invited our attention to Rule 1 of Interpretative Rules as also to the decision in *Simplex Mills v. Union of India* [[2005 \(181\)](#)*

[E.L.T. 345](#) (S.C.)] wherein this Court had held in para 11 as under :

"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 sector 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."

Relying on this the further contention of the counsel is that Section Note 2 of Section XVI provides mandate for classification of the parts of machines falling under Section XVI. In terms of Rule 1 of Interpretative Rules, invocation of Rule 2(a) for certain categories of goods covered in Section XVI like the goods of CTVs are prohibited. For this the learned counsel relied on the decision in Modi Xerox (supra). In that view the learned counsel says that Rule 2(a) would not be applicable at all. This question needs no consideration here particularly in view of the interpretation that we have given to Rule 2(a). On facts, we have already found that Rule 2(a) would not be applicable to the present case since there is no question of the goods having the essential character of CTVs. In that view, the question of applicability of Section 2(a) on this account need not be gone into in this judgment.

18. *We also approve of the reliance by the Tribunal on the reported decision in Susha Electronics Industries v. CC*

*[[1989 \(39\) E.L.T. 585](#)], Trident Television Pvt. Ltd. v. CC
[[\(1990\) 45 E.L.T. 24](#)], Vishal Electronics Pvt. Ltd. v. CC,
Bombay [[1998 \(102\) E.L.T. 188](#)], Sharp Business Machines
(supra) and the judgment of the Calcutta High Court in HCL
Ltd. (supra).”*

4.10 In view of the decision rendered in the case of Commissioner of Customs, New Delhi V/s Sony India Ltd. (Supra) wherein the Hon’ble Supreme Court concluded that the parts of CTVs even after imported in bulk cannot be said to have essential character of CTV sets. We do not find any merits in the impugned order confirming the demand of duty on this account against appellant 1.

4.11 As we are setting aside the demand of duty itself the penalties imposed on the appellants, under various provisions of the Central Excise Act, 1944 and rules made thereunder are also set aside.

5.1 Appeals are allowed.

(Pronounced in open court on 16.10.2025)

Sd/-
(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

Sd/-
(ANGAD PRASAD)
MEMBER (JUDICIAL)

Nihal