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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
38,MG Marg Civil Lines,Old Red Building,Allahabad-211001
Regional Branch, Allahabad

Dated: 16/05/2017

To
Appellant as per address in table below
Respondent as per address in table below

Final Order No. C/A/70476/2017-CU[DB] dated 01/02/2017

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section 129-A(4) of the Customs Act, 1962.

Asstt. Registrar

Application	Appeal	Name and Address of Appellant
1	C/53347/2014	**Samsung India Electronics Private Limited** B-1, Sector-81, Phase-ii, NOIDA UP 201305
		Name and Address of Respondent
2		C.C. & C.E. & S.T.-Noida C-56/42...SECTOR 62, NOIDA, UTTAR PRADESH-201307

Copy To
3Advocate(s) / Consultant(s):

SHRI ATUL GUPTA (ADV.)
3/1A/3 OPP AUTO SALES,Above the Office Of Blue Dart/DHL Courier, COLVIN ROAD, LOHIA MARG ALLAHABAD-211001

25/5/17
ISSUED ON
SIGN. (DISPATCH SECTION)
CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
38, M. G. MARG, ALLAHABAD-211001.

4 Bar Association, CESTAT, Allahabad

5 Director Publications, Customs, Excise, I.P. Estate, Delhi

6 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, New Delhi-3

7 Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17

8 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005

9 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)

10 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070

11 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad – 38

12 The ICFAI society, 52, Nagarjuna Hill,Punjagutta Hyderabad.-500082

13 M/S Knowledge Processing Pvt. ltd.(taxmanagementindia.com),FF-19,1st Floor,Cross River Mall,CBD Ground,Near Karkardooma Court,Delhi-110032

14 C.D.R. 15 ~~Office~~ Copy 16 Guard File

Asstt. Registrar

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, REGIONAL BENCH : ALLAHABAD

Appeal No.C/53347/2014-EX[DB]

Arising out of Order-in-Appeal No.NOI/EXCUS/000/APPL/270/13 dated 27.12.2013 passed by Commissioner (Appeals) Customs, Central Excise & S. Tax, Noida.

M/s Samsung India Electronics Pvt. Ltd.

...APPELLANT(S)

VERSUS

Commissioner of Custom, Central Excise & S.T., Noida

...RESPONDENT (S)

APPEARANCE

Shri Atul Gupta, Advocate for the Appellant (s)
Shri Pawan Kumar Singh, Supdt. (A.R.) for the Department (s)

CORAM:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE MR. ANIL G. SHAKKARWAR, MEMBER (TECHNICAL)

DATE OF HEARING & PRONOUNCEMENT: 01.02.2017

FINAL ORDER NO.- 70476 /2017

Per Mr. Anil Choudhary :

This appeal is filed by appellant, M/s Samsung India Electronics Private Ltd, against Order-in-Appeal No.NOI/EXCUS/000/APPL/270/13 dated 27.12.2013 passed by the Commissioner (Appeals), Noida.

2. The issue in this appeal is the classification of Liquid Crystal Devices (LCDs) imported by the appellants. While the appellants sought classification of LCD under Heading 9013 80 10, the Revenue classified them under CTH 8529 9090 on the ground that these are parts suitable for use solely or principally with LCD TV of CTH 8528.

AG

3. Heard the parties.

4. We find that the issue herein is squarely covered by the precedent order of this Tribunal being Final Order dated 10.06.2015 between these very parties reported at 2015 (326) E.L.T. 161 (Tri. – Del.) This Tribunal have held as follows:

" ***5.*** *We have considered the contentions of both sides. It is a fact that goods imported are not merely liquid crystal panels but articles comprising liquid crystal panel, driver, circuit, backlight unit, circuitry PCB and inverter etc. all in a metal casing. The Revenue calls these articles 'LCD modules'. Therefore there is force in the contention of Revenue that the judgment in the case of Videocon Industries Ltd. (supra), cited by the appellant may not be applicable to the present case as in that case the goods were Liquid Crystal Panels. Nevertheless the first relevant question to answer in this case is whether the goods which the Revenue calls "LCD modules" are Liquid Crystal Devices (LCDs). According to Google, device means "a thing made or adapted for a particular purpose, specially a piece of mechanical or electronic equipment". There is no doubt that the impugned goods (which have liquid crystal panels along with several other components) are made for a particular purpose (for LCD TV) and therefore they are clearly covered under the scope of the expression "liquid crystal device" (LCD). Indeed even the components of the impugned goods like liquid crystal panel, driver, backlight unit, inverter etc. are nothing but devices in their own right and therefore a combination thereof would also be a device and as the impugned goods have liquid crystal panel as one of the components, the impugned goods are clearly liquid crystal devices (LCDs). That the impugned goods (which Revenue calls LCD modules) are LC devices is not seriously contested by Revenue also and therefore any elaboration on this point is shunned. The only issue which now remains to be decided is whether these LCDs are covered CTH 9013 or 8529. The relevant parts of CTH 9013, 8528 and 8529 are reproduced below for convenience :*

Chapter Heading	**Photographic, medical, measuring & etc. instruments**
9013	Liquid Crystal devices not constituting articles provided for more specifically in

A97

		other headings; lasers, other than laser diode; other optical appliances and instruments, not specified or included elsewhere in this Chapter.
9013.10	-	Telescopic sights for fitting to arms; periscopes; telescopes designed to form parts of machines appliances, instruments or apparatus of this chapter or Section XVI
9013.20.00	-	Lasers, other than laser diodes
9013.80	-	Other devices, appliances and instruments
9013.80.10	-	Liquid Crystal Devices (LCD)
9013.80.90	-	Other
8528		Monitors and projectors, not incorporating television reception apparatus; reception apparatus for television, whether or not incorporating radio-broadcast receivers or sound or video recording or reproducing apparatus
8529		Parts suitable for use solely or principally with the apparatus of Headings 8525 to 8528
8529.10	-	Aerials and aerial reflectors of all kinds; parts suitable for use therewith
8529.90	-	Other
8529.90.10	-	For communication jamming equipment
8529.90.20	-	For amateur radio communication equipment
8529.90.90	-	Other

It is evident that Liquid Crystal Devices (LCDs) are specifically mentioned in CTH 9013. Therefore CTH 9013 would cover them unless it can be demonstrated that they are more specifically provided for in other headings. The Revenue's contention is that CTH 85.29 covers them more specifically because the impugned LCDs are parts suitable for use solely or principally with LCD TV which is covered under Heading 8528. While there is no doubt that these LCDs are parts suitable for use solely or principally with LCD TVs covered under CTH 8528, it has to be determined whether description of CTH 8529 is more specific vis-à-

vis the description in CTH 9013 as far as the coverage of LCDs is concerned. CTH 9013 covers LCDs by name. Indeed its sub-heading 9013 80 10 exclusively covers only Liquid Crystal Devices (LCDs) and nothing else. However, there are Liquid Crystal Devices which are known by specific names, for example, LCD television, energy meters (having LCDs) which, though Liquid Crystal Devices, are more specifically covered under 85.28 and 90.28 respectively and therefore would get out of the scope of CTH 9013. Similarly even a watch can be a Liquid Crystal Device but is classified under CTH 9012 being more specifically covered there. Thus there are indeed a number of Liquid Crystal Devices which are provided for more specifically in other headings and are consequently not covered under CTH 9013. However, as stated earlier, CTH 90.13 covers LCDs by name and CTH 9013 80 10 is exclusively carved for LCDs. In contrast, the description of CTH 85.29, "parts suitable for use solely or principally with the apparatus of Heading 8525 to 8528" is general in nature. Thus, while LCDs are specifically mentioned in CTH 9013 which has a sub-heading exclusively for LCDs only, their coverage under CTH 85.29 can be only on the ground that the general description of CTH 8529 would cover LCDs as parts of LCD TV. It is thus obvious that between CTH 9013 and CTH 8529, the impugned LCDs are far more specifically provided for in CTH 9013 than under in CTH 85.29.

6. *The reference to Section Note 2(b) of Section XVI of Customs Tariff Schedule was made by Revenue in support of its contention. That Section Note (2) is reproduced below :*

"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 the articles of heading 8484, 8544, 8545, 8546 or 8547) 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 8409, 8448, 8466, 8473, 8487, 8503, 8522, 8529, 8538 and 8548) are in all cases to be classified in their respective headings;

(b) Other parts, if suitable for use solely or principally with a particular kind of machine or with a number of machines of the same heading (including a machine of heading 8479 or 8543) are to be classified with the machines of that kind or in heading 8409, 8431, 8448, 8466, 8473, 8503, 8522, 8529 or 8539 as appropriate. However, parts which are equally suitable for use principally with

the goods of headings 8517 and 8525 to 8528 are to be classified in heading 8517;

(c) All other parts are to be classified in heading 8409, 8431, 8448, 8466, 8473, 8503, 8522, 8529 or 8538 as appropriate or, failing that, in heading 8487 or 8548."

As is evident from the above quoted Section Note, this note deals with the classification of parts of certain machines but Section XVI covers only Chapters 84 and 85 of Customs Tariff and therefore Section Note 2 to Section XVI would not be applicable to Chapter 90. Consequently when it comes to deciding classification under Chapter 90, this Section Note is of no avail; more so because Note (1)(m) of Section XVI clearly states that Section XVI does not cover articles of Chapter 90. Indeed by virtue of this Section Note (1)(m) and in view of the fact that, as discussed earlier, the impugned LCDs are more specifically covered under 9013 80 10 vis-à-vis their general coverage under CTH 8529, they would get classified under CTH 9013 rather than CTH 8529.

7. In the case of M/s. Secure Meters Ltd. v. CC, New Delhi - 2015 (319) E.L.T. 565 (S.C.), the Supreme Court had an occasion to decide the classification of LCDs which were parts of energy meters. Declaring that those LCDs are covered under CTH 9013, the Supreme Court in paras 15, 16 & 19 observed as under :

15. Keeping in mind the aforesaid nature of product in question, we revert to the tariff entries. It cannot be disputed that LCDs are specifically provided in Tariff Item 9013. The only condition is that such LCDs should not constitute 'articles' provided more specifically in other headings. In the present case, it is also not in dispute that LCDs imported by the appellant did not constitute any such 'article' which is more specifically provided in other headings. On the contrary, the Revenue wants to include in the same Chapter, i.e., Chapter 90, though under Entry 9028.90.10 as "parts and accessories". The only reason for including the goods under Chapter Heading 9028 is that the LCDs were to be used in the electricity supply meters. However, Entry 9028 does not pertain to LCDs but gas, liquid, etc., and includes electricity supply meters as well. Merely because these LCDs are to be used as parts in the said electricity supply meters, can it be said that they are to be included in Entry 9028? Here, Note 2 of this Chapter Notes becomes important since LCDs are used in the electricity supply meters only as parts thereof.

Note 2(a) stipulates that parts and accessories which are goods included in the heading of the said Chapter, i.e., Chapter 90, are to be classified in their respective headings. Going by the plain reading of Note 2(a) it is clear that LCDs, which are goods and are used as parts in the final product mentioned in Chapter 90, namely, electricity supply meters, are to be classified in its respective heading. Respective heading, which is specifically provided, is 9013.

16. It was sought to be argued by Ms. Kiran Suri that as per Note 2(b), when these LCDs are used solely for particular instrument, namely, electricity supply meter, it has to be classified with the said meter and, therefore, Chapter Entry 9028 would get attracted. However, this argument loses sight of the fact that Note 2(b) relates to 'other parts and accessories', namely, it would apply to those parts and accessories for which Note 2(a) is inapplicable. Once we find that in the present case Note 2(a) squarely applies, the irresistible conclusion is that the goods will be classified in Tariff Item 9013, which is the specific heading for these goods.

....

19. This contains a general explanation to Chapter Note 2 and mentions that where parts or accessories identifiable as suitable for use solely or principally with the machines, appliances, etc., they are to be classified with those machines/appliances. However, what is important is that immediately thereafter it is clarified that this general rule would not apply in certain circumstances. Sub-para of the above takes things beyond the pale of any doubt by making it crystal clear that those parts and accessories which in themselves constitute 'article' falling in any particular heading of this Chapter, the general rule will not apply and said article would fall in that particular heading. To demonstrate this, examples which are given, eminently fit into the case at hand.

The Revenue has tried to distinguish this judgment of Supreme Court by stating that it referred to Note 2(a) of Chapter Note 90 while was applicable in that case as the energy meters also fell under Chapter 90 while in the present case LCD TVs fall under CTH 85.28. For the ease of reference Chapter Note 2(a) to Chapter 90 is reproduced below :

"2(a) Parts and accessories which are goods included in any of the headings of this chapter or of Chapter 84, 85 or 91 (Other than (other than Heading 8487, 8548 or 9033) are in all cases to be classified in their respective headings."

Thus parts and accessories which are goods included in any of the heading of this Chapter (i.e. Chapter 90) or Chapter 84, 85 or 91 (other than Heading 8487, 8548 or 9033) are in all cases to be classified in their respective headings. Chapter Note 2(a) also referred to Chapters 84, 85 and 91 apart from Chapter 90. Thus as per this Chapter Note [2(a)], the impugned LCDs being included in CTH 9013 will get classified there and the ratio of the Supreme Court's judgment in the case of Secure Meters (supra) is not distinguishable on the basis of that Chapter Note; indeed, quite to the contrary, it applies mutatis mutandis to the present case. By holding that LCDs suitable for use solely or principally with energy meters are more specifically covered under CTH 9013, the Supreme Court has, in effect, declared that CTH 9013 covers LCDs (for energy meters) more specifically than CTH 9028 90 10 which covers "parts and accessories" of energy meters. It clearly follows from the said Supreme Court judgment that the description "parts suitable for use solely or principally with LCD TV" does not cover LCDs for LCD TVs as specifically as the description of CTH 9013 which covers LCDs by name and devotes a sub-heading (9013 80 10) exclusively therefor.

8. *Revenue also referred to the decision of European Union (supra). Although the decisions of other Customs administrations can be a useful guide, they have no binding effect on India Customs. On the other hand, ratio of Supreme Court's decisions is binding. That apart, it is seen that, for example, U.K Customs description of CTH 8529 is as under :*

8529		Parts suitable for use solely or principally with the apparatus of Heading 8525 to 8528.
8529 10	-	Aerials and aerial reflectors to all kinds; parts suitable for use therewith
8529 90	-	Other
8529 90 90	-	Cabinets and cases
		Electronics assemblies
		Other
8529 90 92 15	-	LCD modules Solely consisting of one or more TFT glass or plastic cells, - not combined with touch screen facilities,

Aor

		- with one or more printed circuits boards with control electronics for pixel addressing only, - with or without backlight unit and - with or without inverters.

It is evident from the above that in the Customs Tariff of U.K. (which is part of EU) there exist sub-heading 8529 90 92 15 specifically covering LCD modules. No such sub-heading of under CTH 8529 (specifically covering LCDs) exists in Indian Customs Tariff.

9. *In the light of the analysis above, we hold that the impugned LCDs are classifiable under 9013 80 10 and therefore we allow the appeals."*

5. Accordingly, following the earlier ruling of this Tribunal, we find that the issue is squarely settled in favour of the appellant-assessee and LCD imported by them are classifiable under CTH 9013 80 10. Accordingly, we allow the appeal and set aside the impugned order. The appellant will be entitled to consequential benefits, if any.

(Dictated and Pronounced in the open Court)

-Sd/-
(ANIL G. SHAKKARWAR)
Member (TECHNICAL)

-Sd/-
(ANIL CHOUDHARY)
Member(JUDICIAL)

Mishra

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