

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

REGIONAL BENCH - COURT NO. 1

Customs Appeal No. 20184 of 2016

(Arising out of Order-in-Appeal No.COC-CUSTOM-000-APP-274/2015-16 dated 12.11.2015 passed by the Commissioner of Customs (Appeals), Cochin.)

The Commissioner of Customs

Custom House
Cochin.

Appellant(s)

VERSUS

M/s. Amity Technopolis

Trichur Trade Centre,
3rd Floor, Kurupam Road,
Thrissur – 680 001.

Respondent(s)

APPEARANCE:

Shri K. A. Jathin, Authorised Representative for the Appellant.

None for the Respondent.

**CORAM: HON'BLE DR. D.M. MISRA, MEMBER (JUDICIAL)
HON'BLE MRS. R. BHAGYA DEVI, MEMBER
(TECHNICAL)**

Final Order No. 20284 /2024

DATE OF HEARING: 08.04.2024

DATE OF DECISION: 08.04.2024

PER : R. BHAGYA DEVI

M/s. Amity Technologies, Trichur, the respondent, imported ICON 82 Outdoor LCD with accessories vide Bill of Entry No.7449 dated 09.02.2009 and classified the same under Customs Tariff Heading (CTH) 9013 8010. But the department reclassified the imported goods under CTH 8528 7390. The Original Authority relying on the CBEC Circular No.33/2007 dated 10.09.2007 held that the subject goods are rightly classifiable under CTH 85287390. Aggrieved by the order of the original authority, respondent filed appeal before the

Commissioner (A), who held that CTH 8528 7390 is applicable to Television Sets and the impugned goods are not TV sets, but LCD panel and accessories used for outdoor display of advertisements and accordingly upheld the classification of the imported goods as claimed by the assessee under 9013 8010. Aggrieved by this order, Revenue is in appeal before us.

3. Learned Authorized Representative reiterated the findings of the original authority and referring to the Circular dated 10.09.2007 submitted that the outdoor LCD panels with accessories are rightly classifiable under Heading 8528 7390.

4. None appeared for the respondent. The respondent, however, has filed cross objections claiming that the items are rightly classifiable under CTH 9031 as held by the Commissioner (Appeals) in the impugned order. He also relies on the decision of the Tribunal in the case of **M/s. Samsung India Electronics Pvt. Ltd. Versus CC (Air) Chennai 2016 (3) TMI 252-CESTAT Chennai** and **M/s. Samsung India Electronics Pvt. Ltd. Versus CC (Air) Chennai, M/s Moser Baer India Versus Commissioner of Customs Noida 2015 326 ELT 161 (Tri. Del.)**.

5. The dispute in the present appeal is regarding the classification of Liquid Crystal Display (LCD) panels under Chapter Heading 8528 7390 as decided by the Revenue or under Chapter Heading 9013 8010 as claimed by the respondent.

6. The matter is no longer *res integra* as the issue has been settled by the Apex Court in the case of **CCE, Aurangabad vs. M/s. Videocon Industries Ltd.: 2023 (3) TMI – SC** interpreting the General Rules of Interpretation and the Section Notes and Chapter Notes observed as follows:

“25..... . Thus, the revenue’s contention that by virtue of Note 2 (b) to Chapter 85, the goods are to be classified based on their principal or sole use is insubstantial because of the clear mandate of Note 1 (m), which excludes Chapter 90 goods (which includes LCD panels). More importantly, note 2 opens with the expression “subject to Note

1". This subordinates the entire subject matter in Note 2; it is only where the article is a "part" which acts as an accessory that the enumerated portions of Chapter 85 come into play. Such an interpretation is plainly untenable....."

"28. It is, therefore, clear that when goods are excluded from a particular chapter, the "pull in" through a note has to be narrowly construed, as otherwise, the basis of exclusion would be defeated, and the earlier note (of exclusion) rendered redundant. Finally, Secure Meters (supra) is decisive on the question that LCDs are not articles provided "more specifically in other headings", i.e., other than 90.13. Furthermore, the fact that LCDs could be used for purposes other than television sets or audio sets is also concluded because, in that decision, its use in meters was in issue. This court held, pertinently, as follows:

"17. 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.

7. Following the above decision of the Supreme Court, this Tribunal in the case of **M/s. Xiaomi Technology India Limited**

Vs. The Commissioner of Customs vide Final Order No.20666 to 20672/2023 dated 7.7.2023 and Final Order No. 21000 - 21102/2023 dated 13.10.2023 had classified the LCD panels under Chapter Heading 9013.

8. The Appellant in his cross objections has relied on the decisions in the case of **Samsung India Electronics P. Ltd. vs. Commissioner of Customs, Noida** (supra) wherein the Tribunal held that:

"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”.

This decision was upheld by the Hon’ble Supreme Court as reported at **2023 (386) E.L.T. 641 (S.C.)**.

7. By following the ratio of the above decisions of the Hon’ble Supreme Court and the Tribunal, the LCD Panels are to be classified under Chapter Heading 9013 8010. Accordingly, we uphold the impugned order and dismiss the appeal filed by the Revenue.

(Operative portion of the Order was pronounced
in Open Court on conclusion of hearing.)

(D.M. MISRA)
MEMBER (JUDICIAL)

(R. BHAGYA DEVI)
MEMBER (TECHNICAL)