

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

1st Floor, WTC Building, FKCCI Complex, K. G. Road,
BANGLORE-560009

Regional Bench COURT-2

Customs Appeal No.22476 of 2014

[Arising out of the Order-in-Appeal No.12 & 13/2014 dated 16.04.2014 passed by
the Commissioner of Customs (Appeals), Bangalore.]

M/s. Mexus Education Pvt. Ltd.,
Type A-2, Shed No.11, Phase-I
GIDC, Vapi,
Gujarat – 592 001

.....Appellant

VERSUS

Commissioner of Customs,
C.R.Building, Queens Road,
P.B.No. 5400,
Bangalore – 560001

.....Respondent

WITH

(i) Customs Appeal No.20164 of 2015 (M/s. Mexus Education Pvt.Ltd.

[Arising out of the Order-in-Appeal No.463/2014 dated 21.11.2014 passed
by the Commissioner of Customs (Appeals), Bengaluru.]

(ii) Customs Appeal No.20157 of 2015 (Shri Senthil Kumar Head)

[Arising out of the Order-in-Appeal No.331 to 334/2014 dated 14.10.2014
passed by the Commissioner of Customs (Appeals), Bangalore.]

(iii) Customs Appeal No.20163 of 2015 (Shri Yogindra Singh M.D.)

[Arising out of the Order-in-Appeal No.328 -330/2014 dated 14.10.2014
passed by the Commissioner of Customs (Appeals), Bangalore.]

(iv) Customs Appeal No.20165 of 2015(M/s. Faxonics Technologies Pvt Ltd.,)

[Arising out of the Order-in-Appeal No.331 to 334/2014 dated 14.10.2014
passed by the Commissioner of Customs (Appeals), Bangalore.]

(v) Customs Appeal No.20166 of 2015 (M/s. Faxonics Technologies Pvt., Ltd.,)

[Arising out of the Order-in-Appeal No.328 -330/2014 dated 14.10.2014
passed by the Commissioner of Customs (Appeals), Bangalore.]

(vi) Customs Appeal No.20167 of 2015 (Shri Yogindra Singh M.D.)

[Arising out of the Order-in-Appeal No.331 to 334/2014 dated 14.10.2014
passed by the Commissioner of Customs (Appeals), Bangalore.]

(vii) Customs Appeal No.20168 of 2015 (Shri Sentil Kumar Head)

[Arising out of the Order-in-Appeal No.328-330/2014 dated 14.10.2014 passed by the Commissioner of Customs (Appeals), Bangalore.]

(viii) Customs Appeal No.21234 of 2015 (Shri Sentil Kumar Head)

[Arising out of the Order-in-Appeal No.09/2015 dated 07.01.2015 passed by the Commissioner of Customs (Appeals), Bangalore.]

Appearance:

Mr. B. Venugopal, Advocate Appeared for Appellant

Mr. K.A. Jathin, Authorized Representative for Respondent

Mr. Rajesh Shastry, Authorized Representative for Respondent

Coram:

Hon'ble Mr. P.A. Augustian, Member (Judicial)

Hon'ble Mr. Pullela Nageswara Rao, Member (Technical)

Final Order Nos. 20922-20930 of 2024

Date of Hearing: 07.03.2024

Date of Decision: 05.09.2024

Per: P.A. Augustian

The issue in the present appeals is whether the 'Projectors' imported by the appellants can be classified under Customs Tariff Item entry 85286100 of the Customs Tariff Act, 1975 and are eligible for benefit of exemption of Basic Customs Duty (BCD) under Notification No.24/2005-Cus. dated 01.03.2005 or they are classifiable under Customs Tariff Item entry 85286900 as 'Other projectors' as held by the Respondents.

2. The brief facts are the appellants had imported the 'Data Projectors' (ES-550 DLP model of Optoma brand of Data Projectors) and classified the goods under Customs Tariff Item entry 8528 61 00 of the Customs Tariff Act, 1975. In the case of M/s faxonics Technologies Pvt., Ltd., Model EX 550-DLP was also imported. However, alleging that on examination of the

features of the goods as described in the product catalogue and brochures, they are projectors with compatibility for video and cinema projection apart from data projection, and it is being marketed as multimedia projector, further it is alleged that since the goods are having compatibilities viz., Analog Video connectivity, Composite RCA, Video Compatibility, PAL, SECAM 576i/p, NTSC 480i/p, HDTV 720p, 1080i, 1080p, etc., adjudicating authority held that it is classifiable under Customs Tariff Item entry 8528 69 00 has 'other projectors' and confirmed the duty. Aggrieved by said order, appeal was filed before the Commissioner (Appeals), who dismissed the appeal on the ground that the claim of the appellant that the impugned projectors are used principally in a ADPS (Automatic Data Processing System) is factually wrong and contrary to the claims of the manufacture, who claimed such goods as 'all purposes projectors'. Aggrieved by said order, present appeal is filed. Since the issue involved in all the above appeals is similar, they are being disposed by this common order.

3. When the matter came up for hearing, learned counsel for the appellant submits that prior to 01.01.2007, the projectors, which were units of ADP machines were undisputedly classified under Customs Tariff Sub-heading (CTSH) 847130 and were eligible for the benefit of exemption under unamended Notification No. 24/2005-Cus.dated 01.03.2005. Consequent to the amendments to Customs Tariff following the amendments to the HSN w.e.f. 01.01.2007, the projectors were classified under chapter heading 8528 with a sub-classification under sub-heading (CTSH) 852861 for projectors, which are units of ADP (now described as of a kind solely and principally used in an ADPS of heading 8471) and another sub-heading was provided to all other kinds of

projectors under the residuary classification 'other'. The period of dispute in all the above appeals is during 2012-13.

4. Learned counsel further submits that the issue is settled by the decision of the Tribunal in large number of cases including the following:-

- (i) Mauri Yeast India Pvt. Ltd. Vs. State of U.P. – 2008 (225) ELT 400(SC).**
- (ii) Commr. Of Cus. (I), ACC, Mumbai Vs. Vardhaman Technology Pvt. Ltd. – 2014 (301) E.L.T. 427 (Tri.-Mumbai)**
- (iii) Commissioner of Customs, Chennai Vs. Celetronix India Pvt. Ltd. – 2016 (335) E.L.T. 582 (S.C.)**
- (iv) Epson India Pvt. Ltd. Vs. Commissioner of Cusoms, Chennai – 9 (366) E.L.T. 847 (Tri. – Chennai)**
- (v) Sony India Pvt. Ltd. Vs. Commissioner of Cus., C.Ex., New Delhi – 2019 (370) E.L.T.1774 (Tri.-Del.)**
- (vi) Onkyo Sight & Sound India Pvt. Ltd. Vs. Commr. Of Cus., Chennai – 2019 (368) E.L.T. 683 (Tri.-Chennai)**

5. Learned Authorized Representative (AR) reiterated the findings and submitted that there is no dispute regarding the fact that these machines are capable of carrying out different functions and thus classifiable under Customs Tariff Item entry 8528 69 00 as 'other projectors' as held by the Adjudication authority. Learned AR also drew our attention to the findings given by the adjudicating authority and as per the impugned order, after detail investigation only, it is found that the product catalogue claimed to have video has prominent feature as opposed to data projection from computer, the projector is compatible with video projection. The input ports VGA port and S-video ports are used for video and stereo audio transmission, while the port RS-232 is used for data transmission from

computer to the projector is also present. The catalogue claims to have video projection as predominant feature as opposed to data projection from computers, the manufacturer claims that the projector as an all-purpose projector, while the appellant has claimed the goods for classification as those used 'solely nor principally for use with an ADP' , which is contrary to the claim of the manufacturer; the purchase order had required that the projector should be compatible with video, PAL, BECAM, NTSC, HD TV and other ports; the impugned projectors in question can, therefore, be said to be neither 'solely nor principally for use with an ADP' and should merit classification under Customs Tariff Item entry 85286900 as 'other projectors' instead of under Customs Tariff Item entry 85286100 applicable to projectors of a kind 'used solely or principally with an ADP'. Thus, goods are ineligible for benefit of exemption under Notification No.24/2005-Cus and other attendant notifications.

6. Heard both sides and perused the records.

7. We find that the issue is regarding classification of the goods, which was settled by this Tribunal way back in 2010 and as per the Final Order No. 1500/2010 in Appeal No. C/1233/2010, this Tribunal categorically held that the very same product has been classified under Customs Tariff Item entry 85286100 granting exemption under Notification No. 24/2005-Cus. dated 01.03.2005, there cannot be any different view in this appellant's case. Further, the issue is considered by Tribunal in large number of decisions and squarely covered in the matter of **Acer India Pvt. Ltd. Vs. CC, Bangalore and Vardhaman Technology Pvt., Ltd. (supra)**. Further in the matter of **Commr. of Customs (I), ACC, Mumbai Vs. Vardhaman Technology P. Ltd. (supra)**, it is held that:-

"6. We have carefully considered the submission and perused the record. The department has contended that only those kinds of projectors can be classified under CTH 8528 61.00 which are solely or principally for use in an automatic data processing system of heading 8471. Since these projectors are having additional feature like composite Video Port, S-Video Port, HDMI RCA Audio Stereo besides VGA, DVI, USB ports, they cannot be said to be meant for use solely or principally in an automatic data processing system of heading 8471. We find that it is not in dispute that they are used in automatic data processing system of heading 8471. The only dispute is that they are having additional features which make them not classifiable under 8528 61 00. We find from the records of the case that the product combines the computing power of a computer with large screen display provided by an inbuilt projection system to deliver powerful outcomes through the use of technology for large screen projection to a wider audience. The projection system cannot be used in isolation but replaces the functionality of a monitor. The projectors merely having additional function cannot be a ground for classifying it other than 8528 61 00. This issue was before the Tribunal in the case of Aveco Viscomm Pvt., Ltd. (supra) and Celetronics India Pvt., Ltd. (supra), wherein the cases were decided in favour of the importer/assessee."

8. Thus, we find that the impugned imported projectors are classifiable under Customs Tariff Item entry 8528 6100 of the Customs Tariff Act, 1975 and eligible for the benefit of exemption for Basic Customs Duty (BCD) under Notification No.24/2005-Cus. dated 01.03.2005. Since mis-declaration is the sole reason for rendering the goods liable for

confiscation under the Customs Act, 1962, confiscation as ordered by lower authority and penalty imposed on the Appellants are also unsustainable.

9. In view of the above discussion and the decisions of the Tribunal, we find that the goods are to be classified under Customs Tariff Item entry 8528 6100 of the Customs Tarff Act, 1975 as declared by the appellant. Hence, we find that the appeals are sustainable and deserves to be upheld.

10. Accordingly, the appeals are allowed with consequential relief, if any in accordance with law.

(Order Pronounced in Open court on 05.09.2024)

(P.A. Augustian)
Member (Judicial)

(Pullela Nageswara Rao)
Member (Technical)

Ganesh