

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

REGIONAL BENCH - COURT NO. 1

Customs Appeal No. 20557 of 2018

(Arising out of Order-in-Original No. 1/2017-18 Commissioner dated
24.01.2018 passed by the Commissioner of Customs, Airport and Air
Cargo Complex, Bangalore.)

M/s. BenQ India Pvt. Ltd.

9B Building, Third Floor,
DLF Cyber City, DLF Phase III,
Gurgaon – 122 022.

Appellant(s)

VERSUS

Commissioner of Customs

Airport and Air Cargo Complex,
Air India Stats Airfreight Terminal,
Kempegowda International Airport,
Bangalore – 560 030.

Respondent(s)

APPEARANCE:

Ms. Shradha Pandey, Advocate for the Appellant.

Mr. K.A. Jathin, Deputy Commissioner (AR) for the Respondent.

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

FINAL ORDER NO. 21618 /2024

DATE OF HEARING: 26.11.2024

DATE OF DECISION: 26.11.2024

PER: R. BHAGYA DEVI

This is an appeal filed by the appellant M/s. BenQ India Pvt. Ltd. against Order-in-Original No. 1/2017-18 dated 24.01.2018 passed by the Commissioner of Customs, Airport and Air Cargo Complex, Bangalore.

2. The appellant M/s. BenQ India Pvt. Ltd. imported various models of projectors classifying them under CTH 8528 6100 as data projectors 'solely and principally used with Automatic Data Processing (ADP) machines' by claiming exemption under Notification No.24/2005-Cus. dated 01.03.2005. On examination of the 8 Bills of Entry filed by the appellant and on verification of the user manual pertaining to the projector models MX815 PST, the Revenue found that the imported models were compatible with HDMI, Composite Video and S-Video and designed to accept input from devices such as DVD players other than ADP machines, hence, they are rightly classifiable under CTH 8528 6900. Accordingly, the Commissioner in the impugned order classified the projectors under CTH 8528 6900 denying the benefit of the exemption under Notification No.69/2004-Cus. (Sl. No.11E) dated 09.07.2004, Notification No. 24/2005-Cus. (Sl. No.17) dated 01.03.2005, Notification No.28/2007-Cus. dated 01.03.2007 and Notification No.21/2012 (Sl.No.2) dated 17.03.2012. In view of the above, the impugned order confirmed demand of customs duty to the extent of Rs.1,12,86,872/- under Section 28 along with the interest and imposed equivalent penalty under Section 114A of the Customs Act, 1962. Hence, the present appeal.

3. The learned counsel submitted that the appellant is a wholly owned subsidiary of BenQ Corporation, Taiwan. The above projectors are nothing but data projectors used by educational institutions for making presentations in classroom teachings etc., and placed copies of sales invoices to the educational institutions in proof of the same. It is further submitted that the issue is no longer *res integra* as the same has been decided in favour of the appellant in large number of cases classifying the said data projectors under CTH 8528 6100. Relied on the following decisions:

- **CC, Bangalore V. M/s. Antrax Technologies Pvt. Ltd and M/s. Acer India Pvt. Ltd.: Final Order No. 20881-20882/2024 dated 17.09.2024**

- **M/s. BenQ India Pvt. Ltd. V. ADG(Adjudication), New Delhi: 2022 (9) TMI 690 – CESTAT New Delhi**
- **Epson India Pvt. Ltd. V. CC, Chennai: 2019 (366) ELT 847 (Tri.-Chennai)** affirmed by the Hon'ble Supreme Court in **2019 (366) ELT A173 (SC)**

4. The Learned Authorized Representative submitted that the impugned goods are rightly classifiable under CTH 8528 6900 as these projectors are capable of accepting signals not only from the Central Processing Unit of an Automatic Data Processing Unit but also from other devices such as DVD players etc. The projectors are not of a kind 'solely or principally used in ADP machines' and therefore, Commissioner has rightly classified under CTH 8528 6900. Having knowingly mis-declared and wrongly classified the products for claiming the benefit of the Notifications, the Commissioner was justified in imposing penalty under Section 114A of the Customs Act, 1962.

5. Heard both sides. The core dispute in this appeal is classification of the imported projectors and eligibility of the exemption notifications. The matter is no longer *res integra* as the issue of classification already stands settled in the appellant's own case in the case of **M/s. BenQ India Pvt. Ltd. vs. ADG (Adjudication), New Delhi** (supra), wherein the Tribunal observed as follows:

"In Commissioner of Customs (I), ACC, Mumbai v. Vardhaman Technology P. Ltd. 14, this issue was again examined and the Tribunal held, after following the aforesaid decision of the Tribunal in Aveco Viscomm, that the data projectors would be classified under CTI 8528 61 00. The relevant portion of the decision is reproduced below:

"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. 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 replace the functionality of a monitor. The projectors merely having additional function cannot be a ground for classifying it other than 852861 00. This issue was before the Tribunal in the case of Aveco Viscomm Pvt. Ltd. (supra) and Celetronics Inda P. Ltd. (supra) wherein the cases were decided in favour of the importer/assessee."

26. The Additional Director has confirmed the demand in the present case on the ground that the presence of multiple connectivity/interface options like USB-B, USB-A, S-Video, HDMI shows that principal function of goods is not to be used with a computer and, therefore, it is not possible to ascertain the primary/principal function of projectors. Consequently, classification under CTI 8528 69 00 was found to be appropriate.

27. The addition of multiple ports in the goods will not take away the basic nature of the goods, which is to work in conjunction with ADPS. This would continue to remain the principal function of the goods. The presence of such ports is only to ensure their use with laptops and ADPS. Therefore, even post 01.07.2017, goods would be classifiable under CTI 8528 62 00 and the decisions of the Tribunal rendered for the period prior to 01.07.2017 will continue to apply to projectors imported w.e.f. 01.01.2007.

28. It is also seen that for the period prior to 01.01.2017, all good falling under CTS 8528 41, 8528 51 or 8528 61 were unconditionally exempt from payment of BCD under Serial No. 17 of the exemption notification. Post 01.01.2017, Serial. No. 17 of the notification exempts all goods falling under CTS 8528 42, 8528 52 or 8528 62 if they are of a kind solely or principally used in an automatic data processing machine of heading 8471. The goods imported by the appellant satisfy the description of the goods in the exemption notification for both the periods and are, therefore, eligible for exemption".

6. Similarly, in the case of **CC, Bangalore vs. M/s. Antrax Technologies Pvt. Ltd and M/s. Acer India Pvt. Ltd.,**(supra) this Tribunal in a similar set of facts observed as follows:

"4. We find that the case of M/s. Acer India Private Limited vs. Commissioner of Customs, Chennai: 2010-TIOL-401-CESTATMAD, the Tribunal after considering similar set of facts held as under:

"3. *After hearing both sides and perusal of case records, we find that as per Chapter Note 5 (C) and (D) to Chapter 84 the monitors and projectors, not incorporating television reception apparatus are to be excluded from being classified under Heading 8471 even though they are of the kind solely or principally used in an automatic data processing system. We also find that projectors of a kind solely or principally used in an automatic data processing system of Heading 8471 are classified under sub-heading 8528.61. In fact, the impugned goods have been classified by the original authority in respect of 12 out of 13 cases under Heading 8528.61. Only in one case the same has been classified by the original authority in the residual category 8528.69. The impugned exemption Notification No. 24/2005 dated 1.3.2005 as amended during the relevant period exempts all goods falling under sub-heading 8528.61. The description under the sub-heading 8528.61 uses the expression of a kind solely or principally used. From the arguments advanced before us as well as from the details furnished, we find that the impugned projectors are principally used for data projection by being connected to either a laptop or a desktop computer. DVDs can also be played from the DVD drive of a laptop and desktop computer through the projector apart from projecting power point presentations, word files, excel charts etc. It seems to have weighed with the lower appellate authority that the projectors also had video compatibility as mentioned in the relevant catalogue. But such video compatibility does not come in the way of the impugned goods being classified under SH 8528.61 so long as the principal use of all such projectors with laptop and desktop computer systems is not doubted and as the sub-heading covers both 'sole use' as well as 'principal use'. Looking at the features of the Impugned data projectors imported by the appellants, we have no doubt in our mind that the same merit classification under SH 8528.61 and automatically become entitled to exemption under Notification No. 24/2005 as the same exempts all goods under the said sub-heading. Hence, we set aside the Impugned order and allow all the 13 appeals."*

We find that this view has also been followed by this Tribunal in the case of Epson India Pvt. Ltd. vs. CC, Chennai: 2019 (366) E.L.T. 847 (Tri. – Chennai) which has been affirmed by Hon'ble Supreme Court as reported at 2019 (366) E.L.T A173 (S.C.). We also find that the said judgment has been followed subsequently by this Tribunal in one of the respondent's own case i.e., M/s. Acer India Pvt. Ltd. vs. CC, Chennai: 224 (1) TMI 147– CESTAT CHENNAI, wherein the benefit of the Notification No.24/2005-Cus. dated 01.03.2005 has been extended to the imported DLP Data Projectors classified under CTH 8528 6100.

5. In view of the consistent opinion of this Tribunal, we are of the view that merely because the imported products have additional facility like attachment of Video Port, S-Video Port, HDMI, etc., the impugned goods cannot be classifiable under CTH 8528 6900. In the result, the impugned orders are upheld and appeals filed by the Revenue are dismissed".

7. In view of the above decisions and other large number of cases where the classification has already been settled in favour of the appellant classifying the impugned projectors under CTH 8528 6100, we do not find any reason to disagree with the above classification. Hence, we set aside the impugned order and allow the appeal.

8. The appeal is allowed with consequential relief, if any, as per law.

(Operative portion of the order was pronounced
in open court on conclusion of hearing.)

(D.M. MISRA)
MEMBER (JUDICIAL)

(R. BHAGYA DEVI)
MEMBER (TECHNICAL)

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