CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH
BANGALORE

Appeal(s) Involved:

C/21706/2014-DB, C/21707/2014-DB, C/21917/2014-DB, C/21930/2014-DB

[Arising out of Order-in-Original No. 03/2014 dated 26/02/2014 passed by the Commissioner of Customs, Bangalore-I]

[Arising out of Order-in-Original No. 04/2014 dated 11/03/2014 passed by the Commissioner of Customs, Bangalore]

Dell India Pvt. Ltd. Divyashree Greens, Ground Floor, # 12/1, 12/2A, 13/1A, Challaghatta Village, Varthur Hobli Bangalore Karnataka	**Appellant(s)**
B S Anantha No.47, Akashdeep, 5th Cross, CPV Block, Ganganagar Bangalore Karnataka	**Appellant(s)**
Acer India Pvt. Ltd. No.13, Embassy Heights, VI Floor, Magrath Road Bangalore – 560 025	**Appellant(s)**
K Murali, Manager Traffic M/s. Acer India Pvt. Ltd., Embassy Heights, VI Floor, No. 13, M.C Grath Road Bangalore – 560 025	**Appellant(s)**

Versus

Commissioner of Customs and Service Tax, Bangalore C.R. Building, Queens Road, P.B. No. 5400, Bangalore – 560 001 Karnataka	**Respondent(s)**

Commissioner of Central Excise ,
Customs and Service Tax
Bangalore-I
Post Box No. 5400, C.R Buildings,
Bangalore - 560 001
Karnataka

Respondent(s)

Appearance:

Mr. G. Shivadass, Advocate
World Trade Centre, No.404-406, 4th
Floor, South Wing Brigade Gateway
Campus, No.26/1,
Dr. Rajkumar Road,
Bangalore - 560 055
Karnataka

For the Appellant

For the Respondent

Date of Hearing: 16/02/2018
Date of Decision: 16/02/2018

CORAM:
HON'BLE MR. S.S GARG, JUDICIAL MEMBER
HON'BLE MR. V. PADMANABHAN, TECHNICAL MEMBER

Final Order Nos. 20562 - 20565 /2018

Per : V. PADMANABHAN

The present appeals are against the Order-in-Original Nos. 03/2014 dated 26/02/2014 and 04/2014 dated 11/03/2014. The dispute pertains to the import of projectors by the appellant during the period April 2009 to April 2013. The appellants claimed classification of the imported goods under CTH 85286100 as "Projectors solely or principally used with Automatic Data Processing Machines". They claimed the benefit of customs duty exemption under Notification No. 24/2005 Cus. dated 01.03.2005 as well as successor Notifications 69/2004-Cus. dated 09.07.2004 and 28/2007-Cus. dated 01.03.2007. In addition, some of the projectors imported by the two appellants were meant for supply to Educational Institutions (in the case of

M/s. Acer India Pvt. Ltd.) and has warranty replacements (in the case of Dell India Pvt. Ltd.). In respect of such goods, Revenue was of the view that the CVD is required to be paid on the basis of Section 4A of the Central Excise Act 1944, on the basis of the MRP at which such goods are sold. The appellants had *inter alia* cleared such goods on payment of CVD on transaction value. The Special Additional Duty of Customs was also required to be paid. The Department was of the view that the imported goods have features which are in addition to those which are normally found in goods covered under 85286100 and accordingly ordered classification of the goods under 85286900 and denied the benefit of the exemption notifications claimed by the appellant. This resulted in demand for basic Customs duty during the disputed period. Aggrieved by the decision, the present appeals have been filed.

2. With the above background we have heard Mr. Shivadass, learned advocate appearing for the appellant as well as Dr. Ezhilmathi, representing the Revenue.

3. The arguments of the learned counsel for the appellants are summarized below:

i. The impugned goods, even though they are having additional features are principally merits to be used with Automatic Data Processing System. In spite of the additional features the machine is rightly classifiable under 85286100 and will be entitled to the benefit of the customs duty exemption notifications claimed by the appellant.

ii. The Revenue has wrongly taken the view that since the projectors are capable of being used in laptops/computers as well as with various other devices such as DVD players, digital camera etc. the goods do not merit classification under 85286100. The learned counsel submitted that the technical specifications of the goods under import clearly indicate that the goods are meant principally to be connected and used with ADP machines. In this connection, he specifically brought to our notice the following:

a) *The projectors have a native resolution of 1024x768*

b) *The Contrast ratio of the goods under import is 2000:4000 which is different from that of video projectors which has high contrast ratio upto 40,000:1*

c) *The aspect ratio of the projector are 4:3 as against the native aspect ratio of 16:9 for other video projectors*

3.1. Learned counsel argued that the classification of identical products was decided by the Tribunal in various cases to be under 85286100 as claimed by the appellant. He specifically referred to the following decisions:

a. *Acer India Pvt. Ltd. V. Commissioner of Customs, Chennai – 2010-TIOL-401-CESTAT-MAD.*

b. *Acer India Pvt. Ltd. v. Commissioner of Customs, Bangalore - 2011-TIOL-359-CESTAT-BANG.*

c. *Casio India Co. Pvt. Ltd. V. CC, New Delhi 2016-VIL-914-CESTAT-DEL-CU* *d. Aveco Technologies Pvt. Ltd. V. Commissioner of Customs, Hyderabad vide Final Order A/30108/2018 dated 31.01.2018.*

3.2. He specifically submitted that since the issue is decided in favour of the appellant, the impugned order may be set aside.

3.3. In respect of the projectors supplied to the Educational Institutions (in the case of Acer India Pvt. Ltd.), the learned counsel submitted that such goods will be outside the purview of the Standards of Weights and Measures (Packaged Commodities) Rules 1977 and the succeeding Rules of 2011). The goods supplied to Educational Institutions will cover within the exclusion in Rule 2A of the above Rules wherein exclusion has been provided to institutional consumers. Goods supplied as warranty replacements (in respect of M/s. Dell India Pvt. Ltd.) also will not fall within the purview of Standards of Weights and Measures Rules as per Rule 3 ibid in which the provisions of the chapter has been made applicable only to packages in India for retail sale. The learned counsel further submitted that in respect of goods imported for supply as warranty replacements, there is no sale involved in the transaction and hence there will be no requirement of either affixing MRP or payment of CVD under Section 4A. In respect of such goods also the CVD on transaction value stands paid already. In this connection, he also relied on the decision of the Tribunal in the case of ***Bharti Telemedia Ltd. Vs. CC, Nhava Sheva reported in 2016 (331) E.L.T. 138 (Tri.-Mum.).***

4. The learned DR justified the impugned order. She submitted that since the goods are not solely meant for use in an Automatic Data Processing System, the classification adopted by Revenue under 85286900 may be sustained.

5. After hearing both sides and perusal of record, we note that the classification of identical goods have been the subject matter before the Tribunal in several cases. In the case of **Casio India Co. Pvt. Ltd**. (supra) the Delhi Bench of the Tribunal has considered the various features of the projectors similar to the ones imposed by the appellant. We have also considered various other decisions on identical products and after coming to the decision with the classification of the goods are to be made under 85286100 as claimed by the appellant. it is further been held that the appellant will be entitled to the various notifications as far as benefit of basic customs duty is concerned, the observations of the Tribunal are as follows:

> *"6. Competing classifications for the subject goods are Customs Tariff Headings – 85286100 and 85296900. The appellant prefers the classification 85286100 with the claim for exemption Notification No. 24/2005-Cus (Supra) against entry at S. No. 17 of the table annexed with it. But the Department wants to classify the said goods under Chapter hearing 85286900 where rate of duty is 10% and no benefit of exemption notification No. 24/2005-Cus (supra) is available.*
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> *6.1. The main contention of the appellant is that item imported is principally used in Automatic Data Processing system of the Heading 8471 and item normally is not for television or for 'video playing*

company' engaged in entertaining business. The appellant also emphasizes that aspect ratio of their import goods namely Data Projector is 4:3 whereas aspect ratio of video projector is 16:9; the contrast ratio for their import goods namely Data Projector is 2000:1, whereas the contrast ratio of video projector is 40000:1; and the Luminosity of their import goods namely data projector is between 2500 to 3000 lumes whereas video projectors have the luminosity of 1600 lumes.

6.2. From the literature produced, it appears that the specifications of the imported goods are for the projectors which are meant for use as data projectors and not as video projectors; therefore, goods would be covered by the description – Projectors – of a kind solely or principally used in an automatic data processing system of heading 8471, which is the description of the Customs Tariff Heading 85286100 for which the benefit of Notification No. 24/2005-CUS (supra) under its entry No. 17 would be available. The subject issue is covered by the CESTAT, Chennai decision in the case of Acer India Pvt. Ltd. Vs. CC, Chennai reported in 2010-TIOL-401-CESTAT-MAD. In this regard, the CESTAT's observations given in para 3 in the said decision are as under:-

"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 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 residual category8528.69. The impugned exemption Notification No. 24/2005 dated 01.03.2005 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 principally used for data projection by being connected to either a laptop or a 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 852861 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."

6.3. Similar view has been expressed by the CESTAT Mumbai in the case of CC (I), ACC, Mumbai Vs. Vardhman Technology P. Ltd. reported in 2014 (301) E.L.T. 427 (Tri.-Mumbai), where it was held *that the item in question is to be classified under Chapter Heading 85286100 for which the benefit of Notification No. 24/2005-Cus (supra) under its entry No. 17 is admissible.*

7. In view of above, the impugned order is set aside and the appeal is allowed with consequential relief to the appellant."

Further we note that the Commissioner of Customs (Appeals) in the appellant's own case vide Order-in-Appeal No. 457/2013 dated 26.03.2013 has allowed the classification of the goods imported by the appellant under 85286100 as claimed by them and the Department accepted the decision of the Commissioner (Appeals).

5.1. Next we turn to the issue regarding payment of CVD. In the case of supply of goods meant for Educational Institutions, the Department has taken the view that the goods even in such cases are required to be charged with CVD on the basis of MRP. The adjudicating authority in para 35.4 has taken the view that the RSP has to be declared not only on the packages which are for sale but also those packages which are for distribution or delivery.

We note that in the Bills of Entry filed by both the appellants M/s. Dell India Pvt. Ltd. for clearance of projectors as warranty replacement, it has been specifically declared that such goods are not meant for sale but are meant for such supply. In respect of such goods which are not sold there is no requirement under the Standards of Weights and Measures Rules or the successor Rules of 2011 which makes it necessary to declare the MRP. Further in the case of **Bharti Telemedia** (supra) the Tribunal had occasion to consider a similar issue in respect of set of boxes meant for supply to be customs as part of the service. The Tribunal observed as follows:

> *"9.1 Another argument put forth by Revenue is that because the transaction between the service provider and the customer has a warranty clause, therefore it can be said that the goods have been sold and the property does not remain with the service provider. This argument does not appeal to us because warranty is normally provided in the delivery of services too and not in the delivery of goods alone. And in the present case what is provided is delivery of service. The allegation by Revenue that the cost of STBs is recovered through service charges is belied by the fact that the duty paid in terms of Section 4 of the Central Excise Act would be more than the duty payable under Section 4A considering that, in the latter case, refund of SAD would be admissible. The counsels submitted calculation charts to evidence this point and Revenue does not counter the same*."

In the present case also we note that the projectors meant used as warranty replacements are not sold and hence there will be no requirement of either affixing the MRP or payment of duty under Section 4A of the Central Excise Act. Such consignments are required to be cleared only on payment of CVD on the basis of transaction value. The SAD also will be required to be paid in such cases. The adjudicating authority is directed to verify whether the CVD as well as SAD has been paid as per the above requirement.

5.2. In respect of M/s. Acer India Pvt. Ltd., we note that the Bills of Entry have been separately filed for clearance of goods meant for Educational Institutions. Such supply also will not fall within the requirements of Legal

Metrology inasmuch as it falls within the exclusion provided to institutional consumers. Even in such cases there will be no requirement to pay CVD on the basis of MRP, but is required to be paid only on the transaction value along with SAD. In view of the above discussions, we find no justification in the demand of differential duty made on account of charging CVD on MRP basis.

6. In view of above discussions, we set aside all the impugned orders demanding differential duty as well as imposing penalties. All the appeals are allowed.

(Operative portion of the Order was pronounced
in Open Court on **16/02/2018**)

(V. PADMANABHAN)
TECHNICAL MEMBER

(S.S GARG)
JUDICIAL MEMBER

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