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

Appeal(s) Involved:

C/21668, 21670/2014-DB

[Arising out of Order-in-Original No. 02/2014 dated 18/02/2014 passed by Commissioner of CUSTOMS, BANGALORE.]

M/s. Epson India Pvt. Ltd.
XII Floor, Tower A.
The Millennia, No. 1,
Murphy Road,
BANGALORE - 560 008.
KARNATAKA

Shri Bhaskar Prasad
Manager (Commercial and Logistics)
XII Floor, Tower A,
The Millennia, No.1,
Murphy Road,
BANGALORE - 560 008.
KARNATAKA

Appellant(s)

Versus

Commissioner of Customs
Bangalore - Cus.
C.R. BUILDING, QUEENS ROAD,
P,B.NO. 5400,
BANGALORE - 560 001.
KARNATAKA

Respondent(s)

Appearance:

Mr. Harish Bindu Madhavan, Advocate
BMR & ASSOCIATES
LEVEL 3, PRESTIGE NEBULA,
1-8-12, CUBBON ROAD,
BANGALORE -560 001

For the Appellant

Mr. P. Gopakumar,
Jt. Commissioner (AR)

For the Respondent

Date of Hearing: 02/12/2019
Date of Decision: 20/03/2020

CO RAM

HON'BLE SHRI S.S GARG, JUDICIAL MEMBER
HON'BLE SHRI C.J. MATHEW, TECHNICAL MEMBER

Final Order No. 20341-20342/2020

PER: C J MATHEW

This dispute pertaining to Imports, effected by M/s Epson India Pvt Ltd against 113 bills of entry during 2010-11, rests on the claim for, and denial thereupon of, eligibility to exemption under notification no.24/2005-Cus. dated 1st March 2005 (at sl. no.70) of the goods described by Learned Counsel for the appellant as 'business projectors' that were classified under heading no. 8528 6100 of the First Schedule to the Customs Tariff Act, 1975. The exemption was available to all goods falling under heading no. 8528 41, 8528 51 or 8528 61 of the said Schedule to the Customs Tariff Act, 1975 with effect from 1st January 2007 through notification no.132/2006-Cus. dated 30th December 2006. It is seen from the said notification that 'ITA-bound goods' for which international agreements exist are eligible for the exemption. By cited notification, 'cathode ray tubes', 'monitors', 'other monitors and projector of a kind solely or principally used in automatic data processing system of heading 8471' are eligible for exemption. The alternates in each of these, i.e., 8528 4900, 8528 5900 and 8528 6900, are residuary heading for classification of all other types of monitors and projectors. The contention of the customs authorities, In proceedings initiated by notice of 4th September 2013 after clearance of the goods, is that these goods were not in conformity with the qualification of being 'solely or principally used' in 'automatic data processing system'.

2. The proceedings culminated with order for recovery of duty of Rs.93,25,291/- and penalty of like amount under section 114A of Customs Act, 1962 besides Imposition of penalty of Rs.45,00,000 on the Importer under section 114AA of the Customs Act, 1962 as well as on Shri Shaskar Prasad, Manager (Commercial and Logistics), under section 112 and section 114AA of Customs Act, 1962. It was held that the projectors had features that permitted its use with equipment other than automatic data processing system also. According to Learned Counsel for the appellant, the finding of the adjudicating authority that.

> *'27.4 In the present case, admittedly, the goods "Projectors of a kind solely or principally used in an automatic data processing system of heading 8471 are not defined In the Tariff. Therefore, the goods would have to be classified In accordance with the trade parlance.*

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> *27.6. The manner in which the seller presents his goods In the market Is a vet)' important Indicator In this regard. As brought out in the show cause notice, the Users Guide for each of the imported models gives separate Instructions of connecting these projectors to computes and to DVD players, with no indication whatsoever that the projectors are for use principally with the ADP system. The catalogues and brochures given by the*

supplier/manufacturers also do not claim the goods to be all purpose projectors. It is noteworthy that the Epson Projectors Users Guide (RUD-VI) specifically highlight that these projectors can be used for projecting JPEG images on a USB storage or a digital camera without using a computer. The Users Guide states that "By connecting a USB storage or a digital camera to the projector, you can project a slideshow of JPEG images, such as pictures taken with a digital camera. Images can be projected quickly and easily, with no need to connect a computer." (Emphasis supplied). The User Guide goes on to add that the Projectors are 'Equipped with HDMI port for a wide range of usage, such as watching movies and videos.' The Guide states that "You can project high-quality Images and music by connecting various digital RGB equipment to the HDMI port, such as a DVD player, Blu-ray disc player, games console, and needless to mention, a computer? Thus, it is dear that the imported projectors can be used for projecting JPEG images without computer; and for projecting high-quality Images and music with or without a computer.

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28.2.1. It is pertinent to note that the Customs Tariff has not recognized 'Business Projectors' and the 'Home Projectors' specifically and the classification is not based on such distinction. Hence, in the context of classification of goods, only examination that is required to be done is whether the projectors are 'of the kind principally used in the ADP System or not. Further, it is necessary to appreciate that current day Computers are compatible with a large number of electronic instruments like, cameras, camcorders, TVs and DVDs etc Conversely, these electronic instruments also have compatibility with the computers. To quote a few, fl/s with USO Ports, Will, TVs with keyboards for interactivity, Camcorders with USB ports, Computers with removable Memory slots for

Memory Chips used in Cameras, Mobile Phones and Ipods, etc. Flat panel TV monitors with computer compatibility are being used in business presentations. Hence with equipment's' multiple functional/ties, the identification of a particular type of instrument as conveyed by marketing documents become import in recognizing the goods of a particular class especially when there is a doubt regarding principal use. This is necessary *to identify the mental association of the seller with the product as a particular type of product.*

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28.2.3 The technical features elaborated by the notice, in their written submissions, seek to establish that the imported projectors are compatible with computers and are used in business and educational presentations. In this context, it is important to note that the principal function of computers is computing and manipulation of data. Computers are complex and function on algorithms known as software. Hence, the instruments used with computers have also to be compatible to encoding and decoding of data readable by the computers. Similarly, different video technologies require compatible technologies to be present in the equipment used with the instruments which work on these video technologies. NTSC, PAL, SECAM are such video technologies. The projectors imported by the notice are compatible with such video technologies. However, that, per se, does not make these projectors video projectors nor the principle functionality can be considered as video projection. Similarly, presence of technology, features and ports compatible for computer do not make the projectors as the ones principally used in computers. However, in the Instant case, the noticee claimed a classification which carries exemption based on compatibility to computer claiming that such compatibility amounts to mean that the projectors are of the kind principally used with

> *computers. It is settled law that exemption being an exception, the same should be examined and can be extended when it Is conclusively proven that the goods are covered by such exemption. In case of ambiguity, the benefit must go to the State.'*

is contrary to rulings in their own disputes, as well as those of others, in the past.

3. Besides drawing attention to the decision of the Tribunal in *Dell International India Pvt. Ltd v. Commissioner of Customs & Service Tax, Bangalore [2018 (5) 1741 1141 -CESTA T-BANG]* which, taking note of earlier decisions of the Tribunal, had come to the conclusion that the said goods are to be classified under heading no. 8528 6100 of the First Schedule to the Customs Tariff Act, 1975, it was also pointed out that almost Identical goods had been imported by them at Chennai and that, in *Epson India Pvt Ltd v. Commissioner of Customs, Chennai 12019 (366)* ELT 847 (Tri.-Chennai)], various technical aspects such as aspect, resolution, contrast and brightness had been examined and, by placing reliance on the decision In *Commissioner of Customs v. Vardhaman Technology Pvt Ltd (2014 (301) ELT 427 (Td.))* and other earlier decisions, It was concluded by the Tribunal that the goods could be classified only under heading no. 8528 6100 **or** the First Schedule to the Customs Tariff Act, 1975. He also points out that the Hon'ble High Court, while dismissing the appeal of the Revenue against the said order, had held that

We find no reason to deviate from the views expressed by the appellate Tribunal while following the earlier decisions on the matter in Issue, which had attained finality Including on account of dismissal of two appeals by this court.'

Our attention was also drawn to the decision or the Hon'ble *Tribunal in Casio India Co Pvt Ltd V. Commission of Customs, New Delhi (2016 (12) TMI 379 - CESTAT NEW DELHI)* in which It has been held that

'6.Competing classifications for the subject goods are Customs Tariff Headings 8528 6100 and 8529 6900. The appellant prefers the classification 8528 6100 with the claim for exemption Notification No.24/2005-Cus. (supra) against entry at SI. No.17 of the table annexed with It. But the Department wants to classify the said goods under Chapter Heading 85286900 where rate of duty is 10% and no benefit of exemption notification No.24/2005-Cus. (supra) is available.

6.1 The main contention of the appellant is that item Imported is principally used in Automatic Data Processing System of 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 of 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.

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> *6.3 Similar view has* been *expressed by the CESTAT Mumbai in the case of CC (I), ACC, Mumbai vs. Vardhaman 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 85286200 for which the benefit of Notification No. 24/2005-Cus. (supra) under its entry No.17 is admissible.'*

4. We have heard Learned Authorized Representative who reiterated the findings of the adjudicating authority.

5. Though identified as classification dispute, the issue pertains to the denial of exemption for which eligibility was claimed at the time of import on the ground that the impugned goods found use other than as attachments of computers. We are construed to take note of the actual dispute as it is not the heading or description in the schedule but the effective rate of duty that is the genesis of the dispute. In other words, it is not the propriety of the ascertainment of the most appropriate classification that has brought this dispute before us. It is seen that, in *re Casio India Co Pvt Ltd,* the Tribunal had examined the various technical specifications to arrive at the ratio that compatibility with automatic data processing machines' sufficed for classification under heading 8528 6100 of the First Schedule to the Customs Tariff Act, 1975. In view of the sewed decisions, we are only required to scrutinize the justification for the contrary position adopted by the adjudicating authority. The

Impugned order-In-original no.2/2014-Commr dated 18th February 2014 of Commissioner of Customs, Bangalore has gone on to examine the understanding of the product In the market and, having come to the conclusion that compatibility with video equipment substitutes principal functionality with co-functionality, and that dexterity in, application mandates denial of benefit. Furthermore, according to the order, the decision, in *Commissioner of Customs* & *Central Excise, Hyderabad II v. Aveco Viscomm Pvt Ltd [2010-TIOL-1516-CESTAT-BANG],* on the classification sought by customs authorities therein being 'residuary' naturally burdens the tax authorities with Justification for resort to the classification which is not so in the present dispute. Owing to this ambiguity, the precedent of *Commissioner of Customs, ACC, Mumbai v. Vardhaman Technology (P) Ltd (2013 (8) TM! 271 -CESTAT-MUMBAI)* and *Acer India Pvt Ltd v. Commissioner of Customs [2010-7IOL-401-CESTAT-MAD]* was adopted in the impugned order to recover the differential duty.

6. It would appear that the adjudicating authority has misdirected the precedents for classification. In circumstances of declared classification, denial by customs authorities shifts the burden on to them for Justifying the alternative classification and, in the absence of valid reasons, the declared classification Is to be restored. Implicit in the process is resort to physical examination and description or the goods, as presented, for fitment within the description of the heading or in the most

proximate one. Trade parlance is to be resorted to only when the commonly used phraseology describes the goods closely enough to the description of the sub-heading in the tariff. It would appear from the proceedings before the adjudicating authority that these principles have been observed in Its breach. It is seen that the adjudicating authority found trade parlance to be appropriate merely because the description in heading no. 8528 6100 of the First Schedule to the Customs Tariff Act, 1975 lacked definition therein, we fail to understand this particular line of logic: the expanded description in the tariff is Intended to obviate the need for separate definitions and there Is no mandate that customs authorities must look for definitions, not available therein, from elsewhere. The argument for reliance upon trade parlance rests on less than solid foundation. Beyond the attempt to classify In accordance to trade parlance, the adjudicating authority Insisted that the presentation of the goods by a seller in the domestic market, Instead of at the time of Import, should guide the classification. We fail to see the logic of this approach as availability of goods In the market at a stage subsequent to the import does not necessarily hold in every case. Trade parlance, used to disambiguate expressions that may be open to a technical definition, is founded on the premise that the tariff Is intended for the trade and not for academics with no scope for definitions to be read into or borrowed from elsewhere. Therefore, the reliance placed on the users' guide for each of the models, or any claim of having ascertained trade parlance, cannot guide classifications. For that, the General Rules of Interpretative Rules exists.

7. The purpose of this exemption notification is to align the tariff structure with international concordat, and more particularly, for Information technology products. Dichotomising of the products, with one intended solely, or principally, for use with automated data processing systems, is not intended to exclude the various other usages but to provide a context In which the intended product can be construed. To the extent that the Impugned goods are usable as 'projectors' of broadcast signals dues not detract from the usual operation with computer systems. Therefore, there is no requirement to move beyond the specific descriptions to which the impugned goods conform for classification under an alternate subheading.

8. In view of the above, and more particularly, following the decisions of the Tribunal In the catena of cases referred *supra,* we set aside the Impugned order and allow the appeals.

(Order was pronounced in Open Court on ***20/03/2020****)*

S S GARG
JUDICIAL MEMBER

C J MATHEW
TECHNICAL MEMBER

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