

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

REGIONAL BENCH – COURT NO. III

CUSTOMS APPEAL No.40557 of 2016

[Arising out of Order-in-Appeal C.Cus II No.1135/2015 dated 14.12.2015 passed by Commissioner of Customs (Appeals II), No.60, Rajaji Salai, Custom House, Chennai-600 001)

M/S. Mitsubishi Electronic India Pvt. Ltd, **...Appellant**
No.29, Survey No.78/2B3, 78/21 AC, 78/2A2C,
Orakadu Road, Sholavaram,
Ponneri Taluk, Thiruvallur,
Chennai - 600 067.

Vs

The Commissioner of Customs, **...Respondent**
Chennai-II Commissionerate,
Custom House,
No.60, Rajaji Salai,
Chennai - 600 001.

APPEARANCE:

Mr. Ankit Sachdeva, Advocate
Mr. Neeladri Chakrabarti, Advocate
For the Appellant

Ms. K. Komathi, Additional Commissioner (A.R)
For the Respondent

CORAM:

Hon'ble Ms. Sulekha Beevi C.S., Member (Judicial)
Hon'ble Mr. M. Ajit Kumar, Member (Technical)

Date of Hearing : 25.04.2023
Date of Decision: 30.05.2023

FINAL ORDER No.40365/2023

Order : Per Hon'ble Ms. Sulekha Beevi C.S

Brief facts of the case are that appellant namely M/s.Mitsubishi Electric India Pvt. Ltd., Thiruvallur filed a Bill of Entry dated 28.04.2015 for clearance of various models of "Mitsubishi" brand Air Conditioner-Outdoor units and Air Conditioner-Indoor units of more than two ton capacity. The goods were supplied by M/s.Mitsubishi Electric Consumer Products (Thailand) Co. Ltd. The country of origin of goods were declared as "Thailand". The appellant classified the goods under CTH 84159000 as "parts of Air-conditioners" and claimed duty exemption from Basic Customs Duty (BCD) under FTA Notification No.46/2011 Sl.No.1103 (I). As per this FTA notification, all goods classifiable under CTH 841590 are exempted from whole of BCD. The Bill of Entry was forwarded to Assessing Groups for verification by the RMS. In the course of online verification of self- assessment, a query was raised to the appellant calling for all the documents and the certificate of origins issued to them. They were also requested to justify their self-assessment as to how the goods can be classified under CTH 841590 as "parts of Air-conditioners".

2. In response, the appellant/importer furnished documents and explained that the goods are 'parts of air-conditioners' and put forward the following submissions:

- The product they imported are **City Multi VRF (Variable Refrigerant Flow) Air-conditioning System.**
- **City Multi VRF Variable Refrigerant Flow (VRF)** is a multi and direct expansion type air conditioning system in which one outdoor unit is connected with multiple indoor units. The amount of refrigerant can be regulated according to the load on the indoor unit by inverter driven compressor in the outdoor unit. Individual indoor units can stop and start their operation as needed.
- Under City Multi VRF Air-conditioning System, there are various indoor units (i.e. Hiwall, Casette type, Ceiling concealed type and floor standing type) options available in order to suit various interior design needs of the Customer.
- The outdoor unit of City Multi VRF Air Conditioning System comprises of fan, heat exchanger, inverter driven compressor and control box. VRF Air-conditioning System has the capacity ranging from 3.2 Tr to 14.4 Tr.
- City Multi VRF Air-conditioning Systems are generally customized model and the requirement of indoor and outdoor unit is not known at the time of import. Consequently import of indoor and outdoor units which will form part of City Multi VRF Air-conditioning System will not be specified number of City Multi VRF Air-conditioning System. These indoor & outdoor units will be warehoused and will become complete Multi VRF Systems only after installation at project site.
- They are in two types ie. 1) having capability of both cooling and heating effect and 2) Having capability of cooling capacity only.
- In the present case, the indoor units and outdoor unit of aforesaid City Multi VRF Air-conditioning System intended to be imported by them will not qualify to be complete City Multi VRF Air-conditioning System or a split system. This is for the reason that indoor units and outdoor units to be installed in a City Multi VRF Air-conditioning System is not known at the time of importation of said indoor units and outdoor units. Further tonnage and combination of indoor units and outdoor units are not standard and is rather dependent on the customer requirements.
- Thus in their view, the indoor units and outdoor units would be classifiable under Tariff Heading 8415 90 00 as parts only.

3. The adjudicating authority observed that only when Outdoor unit / Indoor unit of Split Air-conditioner System classifiable under CTH 8415.10 are imported separately, they qualify to be

classified as 'parts of air-conditioners' under CTH 8415.90. In the instant case, the appellant has imported Split Air-conditioners of 2 tons and above capacity (with the reversible heat pump) classifiable under CTH 8415 8110 and Split Air-conditioners of 2 tons and above capacity (without reversible heat pump) classifiable under CTH 8415 8210. The adjudicating authority rejected the classification adopted by the appellant and determined the classification of Multi Split Air-conditioner-Outdoor unit of PUHY series (with reversible heat pump) under CTH 8415 8110, Multi Split Air conditioner-Outdoor units of PUCY series (without reversible heat pump) under CTH 8415 8210 and the Control Panels under CTH 8415 8110. The exemption benefit claimed under FTA Notification No.46/2011 Sl.No.1103 (I) was thus denied.

4. Aggrieved by such order, the appellant filed appeal before the Commissioner (Appeals) who vide order impugned herein dismissed the appeal upholding the classification arrived at by the adjudicating authority. Hence the appellants are now before the Tribunal.

5. Ld. Counsel Shri Ankit Sachdeva along with Shri Neeladri Chakrabarti, Advocate appeared and argued the matter. Ld. Counsel for the appellant submitted that in the instant case, though the show cause notice dated 27.04.2015 is issued by D.R.I, appellant do not intend to contest the issue as to whether show cause notice issued by D.R.I is proper and valid. The appellant has filed an affidavit to this effect that they are not contesting the said issue and would not pursue this issue in any proceedings further.

6. The Ld. Counsel thus confined arguments on the merits of the case. It is submitted by the Ld. Counsel that the appellant had self-assessed the Bill of Entry by classifying the goods under CTH 84159000 of the First Schedule to the Customs Tariff Act, 1975 as 'parts of multi split air-conditioner'. The appellant also claimed duty exemption from BCD vide Sl.No.1103(I) of FTA Notification No.46/2011- Cus. dated 1.6.2011. This Notification No.46/2011-Cus. provides for exemption from BCD for all goods classifiable under the heading 84159000. The Customs Tariff Schedule under CTH 8415 adverted to by the Ld. Counsel is extracted as below :-

Tariff Item		Description of goods	Unit	Rate of duty
8415		Air-conditioning machines, comprising a motor driven fan and elements for changing the temperature and humidity including those machines in which the humidity cannot be separately regulated		
8415 10	-	Window or wall types, self-contained or "split system":		
8415 10 10	---	Split System	U	10%
8415 10 90	---	Other	U	10%
8415 20	-	Of a kind used for persons in motor vehicles		
8415 20 10	---	For buses	U	10%
8415 20 90	---	Other	U	10%
	-	Other:		
8415 81	--	Incorporating a refrigerating unit and a valve for reversal of the cooling or heat cycle (reversible heat pumps):		
8415 81 10	---	Split air-conditioner two tones or above	U	10%
8415 81 90	---	Other	U	10%
8415 82	--	Other, incorporating a refrigerating unit:		
8415 82 10	---	Split air-conditioner two tones or above	U	10%

8415 82 90	---	Other	U	10%
8415 83	--	Not incorporating a refrigerating unit:		
8415 83 10	---	Split air-conditioning two tones or above	U	10%
8415 83 90	---	Other	U	10%
8415 90 00	-	Parts	Kg.	10%

7. The goods imported by the appellant are as under :

- (i) 304 nos. of Indoor units of PLFY series
- (ii) 38 nos. of Outdoor units of PUCY series (cooling only)
- (iii) 8 nos. of Outdoor units of PUHY series (cooling & heating)
- (iv) 8 nos. of Panel Assemblies.

8. The goods constitute parts of City Multi Variable Refrigerant Flow (CMVRF) Air Conditioning systems. The outdoor units and indoor units imported are not factory matched. The outdoor and indoor units would be matched depending on load requirements at the customer's premises. At the time of import, the appellants would not be able to know to which customer these outdoor and indoor units would be supplied. The outdoor and indoor units are kept in a warehouse and depending on the order requirements, the appellant would select outdoor and indoor units for installation at the customer's premises. Therefore, matching of all the Outdoor and Indoor units happen only after the order is placed by the customer and only at the time of installation at the customer's premises.

9. The features of the goods are explained as under :

- "i. CMVRF is a multi and direct expansion type air conditioning system in which one or more outdoor unit is connected with multiple indoor units. The amount of refrigerant can be

regulated freely according to the load on the indoor unit by inverter driven compressor in the outdoor unit. Individual indoor units can stop and start their operation as needed.

- ii. Under CMVRF, various options are available in indoor units (i.e., Hi Wall, Cassette Type, Ceiling concealed type and floor standing) in order to suit various interior design needs of the Customer.
- iii. The outdoor unit of the CMVRF comprises of a fan, heat exchanger, inverter driven compressor and control box. The outdoor units imported have capacity ranging between 6.37 TR to 12.79 TR. (TR –Ton refrigeration)
- iv. CMVRF air-conditioning systems are generally customized models and the requirement of number of indoor and outdoor unit is not known at the time of import. Consequently, import of indoor and outdoor units which will form part of CMVRF ACs will not be a specified number of outdoor and indoor units. These outdoor and indoor units will be imported separately and stored at the warehouses of the Appellant.
- v. Depending on the Project requirements the outdoor and indoor units would be selected and delivered to the project site along with other components required for completion of the system. The other components of the systems such as piping, Refnets, headers, controllers etc. Thus the outdoor and indoor units will become part of the complete systems only after their installation at project site.”

10. Though the appellant had produced the documents such as invoices, packing list, certificates of origin, catalogues etc. to explain that the goods imported are parts of air-conditioner, the department has erroneously rejected the classification as parts of air conditioners. The goods were then cleared by them on payment of duty under protest vide letter dated 11.05.2015.

11. The import of components of various types of air-conditioners by the appellant was also under investigation by D.R.I. On completion of investigation, show cause notice dated 27.04.2015 has been issued by DRI. In the SCN, it was averred that based on the catalogues produced by the appellant, the total capacity of the Indoor

unit is generally within 50% to 130% of the total capacity of Outdoor unit. This ratio is called 'diversity ratio' in trade parlance. In the light of this diversity ratio, show cause notice alleged that with regard to CMVRF within the normal diversity ratio of 50% to 130%, the classification will fall under CTH 841581/841582. The SCN in para 28.5 also stated that in case, the diversity ratio is under / above 50% - 130%, then the same is classifiable as parts under CTH 84159000.

12. The Commissioner (Appeals) has confirmed the view in the SCN and reclassified the goods within the diversity ratio of 50% - 130% under heading 84158110 and 84158210. On the other hand, the adjudicating authority had held that the impugned goods in excess of the diversity ratio after matching with the Outdoor units may be classified under CTH 84159000.

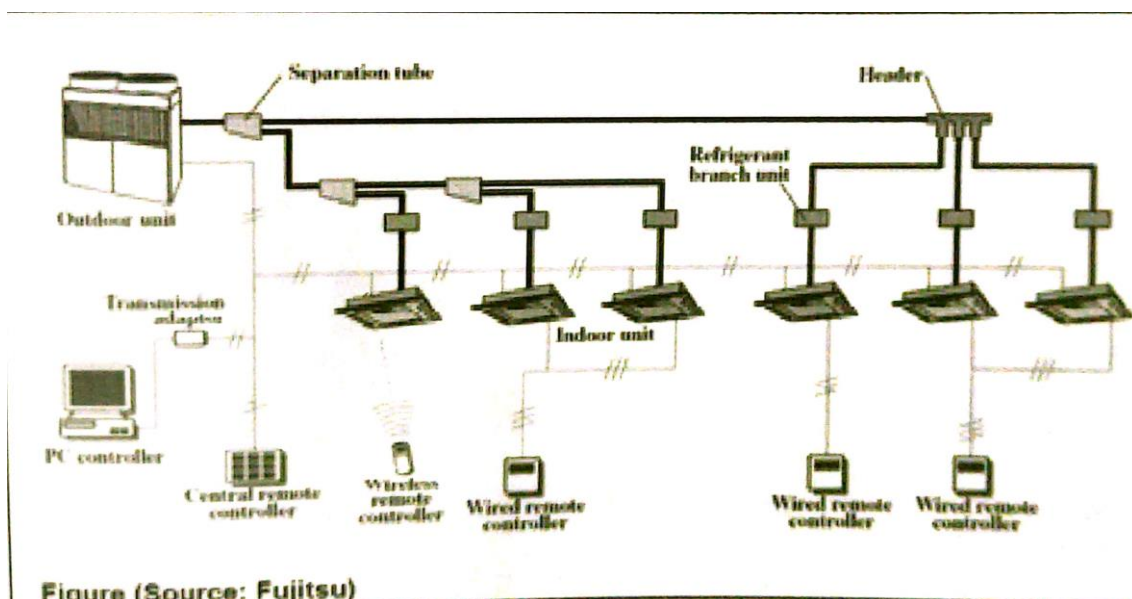
13. The Ld. Counsel explained that the Air-conditioning system imported by the appellant is known as the "Variable Refrigerant Flow (VRF) system" which is an air-conditioning system configuration with one outdoor condensing unit and multiple indoor units. VRF systems are inherently different from multi-split air conditioning systems. The multi-split systems are covered under CTH 841581 or 841582, as the case may be.

14. Ductless products are fundamentally different from ducted systems in which the heat is transferred to or from the space directly by circulating the refrigerant to evaporators located near or within the conditioned space. In contrast, the conventional systems transfer

heat from the space to the refrigerant by circulating air (inducted systems) or water (in chillers) throughout the building. VRF systems are larger capacity, more complex version of the ductless multi-split systems, with the additional capability of connecting ducted style fan coil units. They are inherently more sophisticated than multi-splits, with multiple compressors, many evaporators, and complex oil and refrigerant management and control systems. They do not provide ventilation and hence a separate ventilation system is necessary.

15. The term "variable refrigerant flow" refers to the ability of the system to control the amount of refrigerant flowing to each of the evaporators, enabling the use of many evaporators of differing capacities and configurations, individualized comfort control, simultaneous heating and cooling in different zones, and heavy recovery from one zone to another. VRF condensers use variable frequency drives to control the flow of refrigerant to the evaporators. Refrigerant flow control lies at the heart of VRF systems and is the major technical challenge as well as the source of many of the systems advantages. It is also important to note that multi-split products are often considered "factory-built systems" whereas the VRF systems are "engineered systems". The main difference between these two systems is that VRF systems are more advanced with the facility of zoning viz. simultaneous heating and cooling of individual zones which is not possible with multi-splits which require all the indoor units connected to the outdoor unit to have the same setting (either heating or cooling). This facility of 'zoning' is possible

only with VRF systems. In VRF systems outdoor unit can be connected to many indoor units. This capacity of the outdoor unit to be connected to the indoor units is described as the 'diversity ratio'. In the case of VRF systems in question, the diversity ratio is between 50% to 130%. Thus, one outdoor unit can be connected to anywhere between 1 to 43 indoor units depending on the load requirements of the customers. But such diversity ratio does not mean that outdoor unit has to be always or by design connected to the maximum capacity of 130% or 43 indoor units as wrongly assumed by the Commissioner (Appeals) in the impugned order. The pictorial depiction of the complete VRF system enclosed in the appeal memorandum is as under :



16. It is submitted by the Ld. Counsel that the impugned order has been passed without considering these aspects applicable to the VRF systems and also the essential differences between VRF systems and the multi-split systems. The VRF systems cannot be imported as

complete systems for the reason that they can be matched and assembled only at the site of the customers after taking into account the load requirements. Thus, the goods imported are parts of air-conditioner.

17. To support this contention, Ld. Counsel has referred to the HSN Explanatory Notes which reads as under :

“Alternatively, they may be in the form of “split systems” which operate when connected together, i.e., a condenser unit for external installation plus an evaporator for internal installation. These “split systems” are ductless and utilize a separate evaporator for each area to be air conditioned (e.g. each room).”

It is explained by the Ld. Counsel that from the above HSN Explanatory Notes, it can be seen that, split air-conditioning systems, which are to be classified under CTH 84151010, are those systems which (a) have a condenser and an evaporator connected together (b) are ductless and (c) use one evaporator for each room to be air-conditioned. In other words, the system is 'one to one' (which means one condenser to one evaporator).

18. Adverting to the Customs Tariff Heading 8415, Ld. Counsel submitted that Customs Tariff of India is fully aligned with the HS. The subheads 841510 and 841520 are at the single dash and these cover two different class of air-conditioners. While CTH 841510 covers the one-to-one split systems, CTH 841520 covers air-conditioners of the type used in motor vehicles. The CTH 841581, CTH 841582 and CTH 841583 are “two dash” (--) level

sub headings coming under the single dash level subhead “- Other”. Therefore, these three “two dash” level subheads would cover only those types of air-conditioners not covered by CTH 841510 and 841520. The interpretation notes to General Rules of Interpretation would establish the same. The observation of the Commissioner (Appeals) that CTH 84158110 and 84158210 would cover all split systems above 2 ton capacity is totally incorrect.

19. The Ld. Counsel urged that the authorities below have erred in holding that just because one outdoor unit can be made functional within its maximum diversity ratio 130% of its capacity, any outdoor unit could be matched with indoor units upto 130% of its capacity and can be classified as a split air condition (complete) and would fall under CTH 84158110 or 84158210, as the case may be. It is asserted by the Ld. Counsel that imported goods do not make a complete machine and can be considered only as ‘parts of air-conditioner’. It is submitted that each one of the models of the goods in issue imported has different capacities and may be connected to different numbers of indoor units. The diversity ratio of all indoor units imported by the appellant is actually beyond 130% limit prescribed for all the outdoor units put together as shown in the table below :

Outdoor Units					Indoor Units				
Model	Nos	Capacity		Total Capacity In TR	Model	Nos	Capacity		Total Capacity in TR
		BTU	TR				BTU	TR	
PUCY-P200YKA	2	76,400	6.37	12.74	PLFY-P32VBM-E	6	12,300	1.025	6.15
PUCY-P250YKA	8	95,500	7.96	63.68	PLFY-P50VBM-E	32	19,100	1.59	50.88
PUCY-P300YKA	4	1,14,300	9.525	38.1	PLFY-P63VBM-E	48	24,200	2.02	96.96
PUCY-P350YKA	8	1,36,500	11.38	91.04	PLFY-P80VBM-E	20	30,700	2.56	51.20
PUCY-P450YKA	16	1,63,800	13.65	218.4	PLFY-P100VBM-E	60	38,200	3.18	190.80
PUHY-P300YKA	4	1,14,300	9.525	38.1	PLFY-P125VBM-E	120	47,800	3.98	477.60
PUHY-P400YKA	4	1,53,500	12.79	51.16	PLFY-P25VCM-E2	8	9,600	0.8	6.40
					PLFY-P32VBM-E	6	12300	1.03	6.18
					PLFY-P40VBM-E2	10	15,400	1.28	12.8
Total No of units	46					304			
Total capacity of Outdoor Units				513.22	Total capacity of Indoor Units				898.97
13% of 513.22				667.186	Diversity ratio of the Indoor units imported				175%

20. It is thus submitted that total capacity of the outdoor units as per the above table is 513.22 TR, whereas the total capacity of indoor units is 892.97 TR, which is way above the maximum diversity ratio of 130%. The actual total capacity of indoor unit is 175% of the total outdoor units capacity and way beyond the maximum diversity ratio of 130% permitted. These aspects have not been considered by the Commissioner (Appeals).

21. Ld. Counsel submitted that the issue stands covered by the decision of the Tribunal in their own case vide Final Order No.A/85491-85498/2022 dated 28.02.2022. It is submitted that the very same goods were imported by the appellants and the issue was considered by the Tribunal wherein it was held that the goods imported have to be considered as 'parts of air-conditioners' and merit classification under CTH 84159000. Ld. Counsel prayed that the appeal may be allowed.

22. Ld. A.R Ms. K. Komathi appeared and argued for the Department.

23. It is submitted by Ld. A.R that appellant have imported 46 nos. of Mitsubishi Electric Brand Air Conditioner Outdoor Units of which, 8 nos. are of PUHY-P YHA models of 9.6/12.8 Ton capacity and 38 nos. are of PUCY-P YKA models with capacity ranging from 6.4 Ton to 14.4 Ton, 304 nos. of Mitsubishi Electric Brand Multi Split Air Conditioner's Indoor units of various PLFY-P-VBM & VCM series models with capacity ranging from 0.8 Ton to 4 Ton and 8 nos. of Panel Assembly. As per the catalogue produced by appellant, the imported air-conditioners are nothing but multiple indoor units of different capacities suitable for different size rooms can be connected to a single outdoor unit. The functioning of these multi split air conditioners is based on Variable Refrigerant Flow (VRF). The numbers of indoor units connectable to one out door unit is in the range of 1 to 43 depending upon capacity of the Outdoor units in Tonnage. From

this, it is evident that an outdoor unit can be made functional with one indoor unit and upto 43 depending upon parameters, like the capacity of outdoor units, the capacity of indoor units to be connected to an outdoor units, requirement for particular project etc. For example, one unit of outdoor unit with the cooling capacity of 4 Ton capacity can be connected to one unit of indoor unit of same capacity and in the same way one unit of outdoor unit with the cooling capacity of 14 Ton capacity can be connected to more than ten indoor units of around one ton cooling capacity. Thus, these are nothing but split air conditioners which are 'complete machine' and cannot be treated as 'parts of air-conditioner'. The Ld. A.R argued that appellants are not eligible for the benefit of the notification.

24. Heard both sides.

25. The show cause notice is issued by D.R.I. The appellant has filed an affidavit stating that the issue whether the SCN issued by D.R.I is proper and valid is not contested by the appellant before this Tribunal and do not intend to contest the said issue in any other forum in regard to this appeal. We therefore proceed to analyse the merits of the case.

26. The very same goods were imported by the appellant and the Tribunal vide Final Order No.A/85491-85498/2022 dated

28.02.2022 has considered the issue as to the classification of the impugned goods. The relevant paragraphs are noticed as under :

“4.13 On the issue of the goods declared as “parts” of CMVRF, claiming classification under heading 84151010 or 84159000, adjudicating authority has determined the classification under heading 84158110. For the period prior to 2013, appellants were importing the parts of CMVRF as complete unit, and claimed classification under the heading 84151010. Post 2013, appellant changed the practice, and started importing the goods as parts under different Bill of Entries. Thus post 2013, the impugned goods which were imported were never presented for assessment as complete CMVRF and according classified the impugned goods under heading 84159000 as parts. Adjudicating authority has without making any distinction between the manner of importation both pre and post 2013, classified these goods as complete unit under heading 84158110. We do not find ourselves in agreement with the decision of the adjudicating authority classifying these goods under heading 84158110 for the reasons sated by us in para 4.4 to 4.11.

4.14 Post 2013 appellants were importing these goods as parts and were filing the Bill of Entry declaring them as parts. Adjudicating authority has for the reasons stated by him in the impugned order, treated the imported goods as complete Unit by applying the “test of essential character”. However while doing so he has ignored the basic fact that at the time of importation and assessment these goods were never presented together as complete unit. Hence the classification arrived at by the adjudicating authority cannot be sustained. Hon’ble Supreme Court has in case of Sony India Pvt Ltd [2008 (231) ELT 385 (SC)] held as follows:

“14. We have already held that in this case the goods brought were not having the essential character of CTVs. We do not find anything to take a view that the goods were in unassembled or dis-assembled condition and they should be taken to be the complete CTVs, particularly when there is no finding recorded anywhere on facts that all these goods could make 1500 CTVs. However, we accept the argument that the goods brought in different consignments separately on the basis of valid import licences would not attract the import duty as if they were the finished goods. We have already

referred to this aspect vis-a-vis the facts in Phoenix International's case where the goods were brought in one and the single consignment and they were all brought together though they were imported by two companies, i.e., PIND and PIL fraudulently.

15. Shri Lakshmikumaran, learned counsel for the respondent also drew our attention to the HSN Explanatory Notes as it stood prior to 1997 which is as under:

“(VII) For the purpose of this Rule, articles presented unassembled or disassembled means articles the components of which are to be assembled either by means of simple fixing devices (screws, nuts, bolt, etc.) or by riveting or welding, for example, provided only simple assembly operations are involved.”

Learned counsel further points out that in a decision in CCE v. Woodcraft [(1995) 3 SCC 454] this Court took the view that HSN Explanatory Notes should be referred to for understanding the true scope and meaning of expressions used in the Customs Tariff. He further points out that the Revenue did not dispute the fact that complicated processing of imported parts had to be done before they could be fit in the assembly of CTVs. Shri Vikas Singh, learned ASG also did not dispute this fact during the debate before us that a complicated process had to be exercised before these components could be brought in use for CTVs. There is also a specific finding by the Tribunal on this issue. In that view since the concerned Explanatory Note was applicable, there would be no question of treating these notes to be in unassembled or disassembled condition since a complicated process had to be exercised and then before it could be used for the assembly of the CTVs. Of course this Explanatory Note was further amended by adding the words “no account is to be taken in that regard of the complexity of the assembly method. However, the components would not be subjected to any further working operation for completion into the finished stage”. It is an admitted position that this amendment was not there and therefore, the complexity of the assembly method would have to be taken into consideration at least in case of the present goods since the concerned period is pre 1997 period. The Tribunal has correctly held that the HSN Explanatory Notes to Rule 2(a) had to be applied while considering the relevant Tariff Entry. It has also correctly held after considering the whole process that the process involved in the user of the components is the complex manufacturing process during which many components are subjected to working operation requiring sophisticated machinery and skilled operators. Further it has correctly assessed the effect of the amendment of HSN Explanatory Notes which came on 14-3-1997. We approve of the finding given by the Tribunal in para 25 of its order which takes into account the fact that there was no amendment to Clause (v) while this is amended to the effect that complexity of the assembly method was made irrelevant. However, it was made clear that the components would not be subjected to any further working operation

for completion in the finished state. The Tribunal has referred in details to the manufacturing process to show that some of the components require further working operation for completing the manufacturing process and further that CTV is not a machine which is presented in assembly for the sake of convenience of packing, handling or transport. We are, therefore, in agreement with the finding that even applying the amended HSN Explanatory Notes the position would be no different.

16. Our attention was invited to a very interesting decision reported in Modi Xerox Ltd. v. CCE, New Delhi [1998 (103) E.L.T. 619] which was confirmed by this Court in 2001 (133) E.L.T. A91 (it must be noted that the decisions in Woodcraft Products is specifically confirmed in this decision). In this case, the Tribunal had relied on Tara Chand's case as also the CC v. Mitsunry Electronics Works [1987 (30) E.L.T. 345 (Cal. HC)] which we have made reference in the earlier part of this judgment. The Tribunal had held that the fax machine in completely knocked down condition imported by the appellant being not a fax machine but part thereof, the benefit of exemption under Notification No. 59/88/Cus., dated 1-3-1988 would not be available. Very interestingly, it was claimed by the importer that it had imported the fax machine and not the components obviously because the duty payable on the components was more. The Tribunal came to the conclusion that in view of Section Note 2 to Section XVI Rule 2(a) would not apply and confirmed the import of goods as components. While interpreting Explanatory Note to Rule 2(a), the Tribunal had held that this Rule would apply only when the imported articles presented in unassembled or disassembled can be put together by means of simple fixing device or riveting or welding. It came to the conclusion that fax machines were not the type of goods which were normally traded or transported in knocked down condition and therefore, the imports were that of the components and not of fax machines. Shri Lakshmikumaran also invites our attention to the fact that Chapter 64 dealing with footwear does not have a note similar to Note 2 in Section XVI. Thus this position would render support to the proposition that Rule 2(a) would apply only when the imported articles presented unassembled or disassembled can be put together by means of simple fixing device or by riveting or welding. We have already pointed out in the earlier part of our judgment that the complicated process would be required for the user of those parts.

17. Lastly, we must take stock of the argument of Shri Lakshmikumaran that Section Interpretative Rule 2(a) would not be applicable at all in this case. For this he invited our attention to Rule 1 of Interpretative Rules as also to the decision in Simplex Mills v. Union of India [2005 (181) E.L.T. 345 (S.C.)] wherein this Court had held in para 11 as under :

“11. The rules for the interpretation of the Schedule to the Central Excise Tariff Act, 1985 have been framed pursuant to the powers under Section 2 of that Act. According to Rule 1 titles of sections and chapters in the Schedule are provided for ease of reference only. But for legal purposes, classification “shall be determined according to the terms of the headings and any relevant sector or chapter Notes”. If neither the heading nor the notes suffice to clarify the scope of a heading, then it must be construed according to the other following provisions contained in the Rules. Rule-I gives primacy to the Section and Chapter Notes along with terms of the headings. They should be first applied. If no clear picture emerges then only can one resort to the subsequent rules.”

Relying on this the further contention of the counsel is that Section Note 2 of Section XVI provides mandate for classification of the parts of machines falling under Section XVI. In terms of Rule 1 of Interpretative Rules, invocation of Rule 2(a) for certain categories of goods covered in Section XVI like the goods of CTVs are prohibited. For this the learned counsel relied on the decision in Modi Xerox (supra). In that view the learned counsel says that Rule 2(a) would not be applicable at all. This question needs no consideration here particularly in view of the interpretation that we have given to Rule 2(a). On facts, we have already found that Rule 2(a) would not be applicable to the present case since there is no question of the goods having the essential character of CTVs. In that view, the question of applicability of Section 2(a) on this account need not be gone into in this judgment.

18. We also approve of the reliance by the Tribunal on the reported decision in Susha Electronics Industries v. CC [1989 (39) E.L.T. 585], Trident Television Pvt. Ltd. v. CC [(1990) 45 E.L.T. 24], Vishal Electronics Pvt. Ltd. v. CC, Bombay [1998 (102) E.L.T. 188], Sharp Business Machines (supra) and the judgment of the Calcutta High Court in HCL Ltd. (supra).”

4.15 Following the decision of the Hon’ble Apex Court as above we are of the view that CMVRF, when imported and presented together in unassembled/ disassembled condition on a single Bill of Entry for supply against a unique project would be classified under heading 84151010 (pre-2013) and when presented separately as part against different bill of entries filed over a period of time shall be classified as parts under heading 84159000. Accordingly the order of adjudicating authority to this extent is set aside.”

27. By judicial discipline, following the decision of the co-ordinate Bench of the Tribunal in appellant's own case cited supra, we hold that the impugned goods are classifiable under CTH 84159000 as "Parts of Air-Conditioners". The appellant is thus eligible for the benefit of Notification No.46/2011 Sl.No.1103 (I).

28. In the result, the impugned order is set aside. The appeal is allowed with consequential relief, if any, as per law.

(Pronounced in open court on 30.05.2023)

Sd/-
(M. AJIT KUMAR)
MEMBER (TECHNICAL)

Sd/-
(SULEKHA BEEVI C.S.)
MEMBER (JUDICIAL)