

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI**

REGIONAL BENCH – COURT NO. I

Customs Appeal No. 42563 of 2018

(Arising out of Order-in-Appeal C.Cus. I No. 46/2018 dated 28.03.2018 passed by the Commissioner of Customs (Appeals-I), No. 60, Rajaji Salai, Custom House, Chennai – 600 001)

M/s. Asus India Private Limited

: Appellant

402, Supreme Chambers,
17/18, Shah Industrial Estate,
Veera Desai Road, Andheri (W),
Mumbai – 400 053

VERSUS

Commissioner of Customs

: Respondent

Chennai-VII Commissionerate,
Air Cargo Complex, New Custom House, Meenambakkam,
Chennai – 600 027

APPEARANCE:

Shri S. Murugappan, Advocate for the Appellant

Shri R. Rajaraman, Assistant Commissioner for the Respondent

CORAM:

HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)

HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)

FINAL ORDER NO. 40645 / 2023

DATE OF HEARING: 15.06.2023

DATE OF DECISION: 03.08.2023

Order : [Per Hon'ble Mr. Vasa Seshagiri Rao]

M/s. Asus India Private Limited, 402, Supreme Chambers, 17/18, Shah Industrial Estate, Veera Desai Road, Andheri (W), Mumbai – 400 053, have filed this appeal challenging the Order-in-Appeal C.Cus. I No. 46/2018 dated 28.03.2018 passed by the Commissioner of Customs (Appeals-I), Custom House, Chennai.

2.1 Brief facts of the appeal are that the appellant had filed four Bills-of-Entry for import of goods declared as "Computer System Desktop", as per the details given below: -

Sl. No.	B/E No. & Date	CTH claimed	CTH assessed	Differential duty (INR)
1	9352601 / 18.04.2017	84713090	95045000	60,609/-
2	9421848 / 24.04.2017			1,42,765/-
3	9456919 / 26.04.2017			66,798/-
4	9456942 / 26.04.2017			1,42,765/-

2.2 Upon examination, the goods were found to be personal computers with accessories like mouse, power adapter and gaming console, and as per the website of the supplier, it was ascertained that the goods were specially designed for gaming purposes. As their principal function was gaming, the goods were re-classified under CTH 9504 5000 by the Revenue.

2.3 During the course of adjudication, the appellant had submitted that the imported goods are not "Electronic Games (Console)", but a personal computer, which is a multi-tasking device including computing capability, internet surfing, multimedia playing and editing, word processing, etc.; personal computer is a general purpose computer whose size, capabilities and original sale price make it useful for individuals and are intended to be operated by an end user with no intervening computer operator whereas an "Electronic Game (Console)" such as PS4, XBOX, etc., one can play games only. It was also put forth that the term "video game console" is used to distinguish a console machine primarily designed for consumers to use for playing video games in contrast to arcade machines or home computers, but includes home video game consoles, handheld consoles, micro consoles

and dedicated consoles; the impugned goods under import are neither video game consoles from which an image is reproduced on a television receiver, monitor or other external screen or surface nor video game machines having self-contained video screen, whether or not portable; that the issue was settled in Jawaharlal Nehru Custom House (JNCH), Mumbai in Bill-of-Entry No. 8852316 dated 08.04.2015 where identical goods were classified under Tariff Item No. 8471 3090 and not under Tariff Item No. 9504 5000; the Department had never raised any objection against the description of the impugned goods and had accepted their declaration, which proved that the impugned goods are personal computers and could not be classified under CTH 9504, which covers only video game consoles and not personal computers.

2.4 During the hearing before the lower appellate authority, it was contended that though the impugned goods contain graphic cards, still are classifiable as personal computers under Heading 8471.

3.1 The Ld. appellate authority has observed that as per the HSN, CTH 8471 is for classification of goods such as automatic data processing machines and units thereof, which can be put to use in many places such as industry, trade, scientific research and public or private administration; automatic data processing machines classifiable under CTH 8471 shall be multi-purpose machines capable of performing various jobs of computing for various uses, whereas the goods classifiable under CTH 9504 are video game consoles and machines whose objective, characteristics and principal function are such that they are used for entertainment purposes, whether or not they fulfil the conditions of Chapter Note 5(A) of Chapter 84 regarding automatic data processing machines.

3.2 He has also observed therein that the impugned goods are specially designed for gaming purpose only, and as their principal function is gaming, they are classifiable

under CTH 9504 as game consoles. Scrutiny of the product catalogue indicated that the impugned goods are listed and categorized under the 'ROG' series i.e., "Republic of Gamers series" and the product overview indicated that "ROG G20 is a 9.5-liter gaming PC designed to dominate the small-form-factor gaming desktop segment"; it is powered by latest 7th Generation Intel® Core™ i7 processor and the latest nVidia® GeForce® GTX 1080 graphics – giving it the punch required to run the latest AAA gaming titles at their highest graphics settings. The G20 features ASUS Aura lighting effects, an ESS SABRE HiFi audio headphone DAC and amplifier, and ROG-exclusive gaming software including Aegis III. An advanced heat management design ensures cooling for stable performance during marathon gaming sessions. On top of that, it runs silently at just 22dB at idle.

3.3 The lower appellate authority, considering the above information and details, has concluded that the impugned goods are high-end computers which are specially designed for playing games, observing that although the product satisfied the condition of the Notes for CTH 8471 and do multi-tasking, but as mentioned in the HSN Explanatory Note 2 to Chapter 9504, "video games and machines whose objective, characteristic and principal function are such that they are intended for entertainment purposes (game-playing) remain classified in this heading, whether or not they fulfil the conditions of Note 5(A) to Chapter 84 regarding automatic data processing machines." Thus, he has held that Chapter Heading 9504 includes machines besides video game consoles, which can be automatic data processing machines and by applying Rule 3 of the General Rules for the Interpretation of Import Tariff, it would be correct to classify the impugned goods marketed under 'ROG' brand name (including personal computers, laptops or any other machine which fall under the purview of the Note 2 to Chapter 9504 in the Explanatory Notes) as game consoles under CTH 9504 as

they are specially designed for entertainment purposes including playing games; in terms of Rule 3(a) of the General Rules for the Interpretation of Import Tariff, where the goods are classifiable under two or more headings, the heading which provides the most specific description shall be preferred over the headings providing a more general description and even if classification is not possible by reference to Rule 3(a) or (b), in accordance with Rule 3(c), the heading which occurs last in numerical order among those which merit classification shall be followed.

3.4 Applying the above Rules, he has held that the impugned goods merited classification under CTH 9504 as their objective, character and principal feature is playing games only.

4.1 Ld. Advocate Shri S. Murugappan, representing the appellant, has made the following submissions: -

(i) The impugned goods have features which make them useful for gaming. However, the lower appellate authority has completely misread the essential provisions with regard to classification of such goods under Chapter Heading 9504.

(ii) Sl. No. 2 of the Explanatory Notes to Heading 9504 to the HSN reads as under: -

"(2) Video game consoles and machines as defined in Subheading Note 1 to this Chapter.

Video game consoles and machines whose objective characteristics and principal function are such that they are intended for entertainment purposes (game-playing) remain classified in this heading, whether or not they fulfil the conditions of Note 5(A) to Chapter 84 regarding automatic data processing machines.

(iii) Essentially what is to be seen is that whether the goods under reference can be treated as video game consoles and machines as defined in

Subheading Note 1 to Chapter 95. The lower appellate authority has failed to look into this Subheading Note, as a result of which a patently wrong conclusion was arrived at by him.

- (iv) Subheading Note 1 to Chapter 95 reads as follows: -

"1.-Subheading 9504.50 covers:

(a) Video game consoles from which the image is reproduced on a television receiver, a monitor or other external screen or surface; or

(b) Video game machines having a self-contained video screen, whether or not portable.

This subheading does not cover video game consoles or machines operated by coins, banknotes, bank cards, tokens or by any other means of payment (subheading 9504.30)".

- (v) The above Subheading Note clearly shows that there itself, video game consoles and video game machines are treated as two different categories of products. While Subheading Note 1(b) requires video game machines to have a self-contained video screen, whether or not portable alone, to be covered under 9504, in respect of video game consoles, Note 1(a) provides that an image can be reproduced on a television receiver, a monitor or other external screen or surface. As far as the present import is concerned, there are no inbuilt monitor or screen and these are only desktops with CPU, RAM, Graphic Card, etc.

- (vi) One has to see whether the product can get covered under Subheading Note 1(a) as video game consoles. Video Game consoles are totally different type of products, though based on automatic data processing. In fact, they are cheaper versions and permit more than one player to play the games. In

the commercial and industry parlance, video game consoles and gaming laptop / gaming computers as such are not treated as one and the same.

(vii) It has to be noted that a computer system, which has additional features for playing games, continue to be computer systems and can be used for general purposes. Technically and based on the product specifications for the goods covered by the subject Bills-of-Entry, it is to be noted that these systems have, in fact, multiple uses and the observation made by the lower appellate authority in this regard is contrary to the factual position.

(viii) The distinction between "gaming console" and "gaming computer" is that: Video game consoles are typically powered by operating systems and CPUs that differ from desktop computers. The consoles are under the control of their respective manufacturers and the software is geared to the machine's capabilities. Games are not interchangeable with other game consoles or desktop computers, although software publishers may develop games for more than one platform.

(ix) As per information from <https://www.gov.uk/>:

"Computers are machines that must be capable of all the following operations:

- 1. Storing the processing programs that run on them – and at least the data that is needed to run a program.*
- 2. Being freely programmed in accordance with the requirements of the user.*
- 3. Performing arithmetical computations specified by the user.*

4. *Executing without human intervention, a processing program for which they need to modify their execution by making logical decisions throughout the process."*

(x) Games of gaming console are not interchangeable with other game consoles or desktop computers while the games of desktop computers are interchangeable with other desktops.

(xi) To appreciate the understanding of video game consoles in commercial parlance, reference was made to the www.pcmag.com which defines video game console as mentioned below:

"A specialized desktop computer used to play video games. The two most popular consoles are Sony's PlayStation and Microsoft's Xbox. Nintendo's Wii is also a contender that simulates physical participation in activities such as bowling and playing tennis (See [Wii](#)).

Game software is available on CDs or DVDs, although earlier game machines used cartridges containing only read only memory (ROM) chips. Video game consoles require a TV or monitor for display"

(xii) www.techopedia.com defines video game console as mentioned below:

"A video game console is a specialized computer system designed for interactive video game play and display. A video game console functions like a PC and is built with the same essential components, including a central processing unit (CPU), graphics processing unit (GPU) and random access memory (RAM). To offset costs, most video game console manufacturers use older CPU versions."

(xiii) electronics.howstuffworks.com defines video game console as mentioned below:

"At its core, a video game console is a highly specialized computer. In fact, most systems are based on the same central processing units (CPUs) used in many desktop

computers. To keep the cost of the video game system within reasonable limits, most manufacturers use a CPU that has been widely available for long enough to undergo a significant decrease in cost”.

(xiv) The above websites give various reasons why game consoles are better than a computer, namely:

- A video game console is less expensive than a tricked-out computer designed to run video games. Current generation consoles cost between \$200 to \$500 whereas a fully-loaded gaming computer can cost more than \$10,000.
- Consoles tend to load games faster than most PCs – expensive gaming rigs are the exception, of course.
- Video game systems are designed to be part of your entertainment system. This means that they are easy to connect to a TV and stereo.
- There are no compatibility issues, such as operating system, DirectX drivers, correct audio card, supported game controller, resolution and so on.
- Game developers know exactly what components are in each system, so games are written to take full advantage of the hardware.
- The degree of technical knowledge required to set up and use it is much lower. Most game consoles are truly “plug and play”.
- Most video game systems have games that allow multiple players. This is a difficult process with a typical home computer.

(xv) The desktops imported and covered by the subject Bills-of-Entry are not the type of video game consoles covered under Chapter Heading 9504.

These continue to be only 'desktop computer' with capabilities for being put to multiple uses as data processing machines. The presence of extra cooling system and graphics card enhance gaming options in the desktop, but the product continues to be only a desktop computer, which can be used for various applications.

(xvi) The goods imported, which were supplied from China, have been classified only under Chapter 84 when exported from China.

(xvii) In a similar import at Nhava Sheva Port, the appellant had provided clarification to the Customs officials and after taking into consideration such clarification, the Customs authorities had accepted the classification of these goods under Chapter Heading 8471 only. The law being the same for the entire country, there could not be different practices across Ports / Air Ports and the appellant should not be denied the benefit of proper classification.

(xviii) In view of the above, the impugned goods merit classification only under 8471 3090.

4.2 The Ld. Advocate has further submitted that same model of computers, including updated model of computers of the same category, have been cleared by various Custom Houses / Air Cargo Complex on the basis of classification under 8471 3010 / 8471 3090 in the subsequent periods and the imported systems have same / similar features to the systems under dispute in this appeal. He has enclosed copies of the relevant Bills-of-Entry and product specification sheets to support his contention that the impugned goods are classifiable under Heading 8471 of the Customs Tariff Act.

4.3.1 He has also contended that as per industry norm and commercial parlance, "video game consoles" have limited application and fall under a different category of goods. In this connection, he referred to an extract from 'ChatGPT' powered by Open Artificial Intelligence, which reads as under: -

"Video game consoles are called consoles because they are designed to be used with a television, and are typically placed in a central location in a room. They are typically used for gaming and entertainment, whereas a computer is a general-purpose device that can be used for a wide variety of tasks, including gaming, but also word processing, web browsing, and more. Additionally, consoles are often designed to be simpler and more user-friendly than computers, with fewer options and settings to adjust."

4.3.2 He also referred to the introductory paragraph of an article from Wikipedia on 'Console Game', tracing various console games and their development, which is extracted below: -

"A console game is a type of video game consisting of images and often sounds generated by a video game console, which are displayed on a television or similar audio-video system, and that can be manipulated by a player. This manipulation usually takes place using a handheld device connected to the console, called a controller. The controller generally contains several buttons and directional controls such as analogue joysticks, each of which has been assigned a purpose for interacting with and controlling the images on the screen. The display, speakers, console and controls of a console can also be incorporated into one small object known as a handheld game."

4.3.3 Further, he also drew reference to the following paragraphs in the aforesaid article: -

"Console games receive commands from the player through the use of an input device, commonly called a

controller. Unlike a PC which uses a keyboard and mouse or a mobile device that uses a touch interface, console games are limited in their control schemes by the hardware available for the console. They usually include a method to move the player character (joystick, d-pad or analogue stick) and a variation of buttons to perform other in-game actions such as jumping or interacting with the game world. The type of controller available to a game can fundamentally change the style of how a console game will or can be played.

The limitation of the amount of buttons compared to a PC keyboard or a custom arcade cabinet means that controller buttons will commonly perform multiple different actions. For example, The Witcher 3 Xbox One controls uses the same button, the "A" button, to interact with the world when pressed and sprint when held, whereas the PC control scheme can separate these functions into separate buttons. The limitation of input keys can allow developers to create a more refined and succinct control scheme that can be learned by the player more easily. Different games in the same genre tend to use similar control schemes, allowing players to easily adapt to new games."

... ..

While a PC is multi-functional and will be purchased to perform tasks other than gaming, a dedicated gaming console must have games available for it to be successful. A good library of games will give a consumer reason to purchase the console and in turn create opportunities for more games to be created for it. Console developers will lower their profit margins on devices to encourage sales of the games as more profit can be obtained from software royalties than the sale of the consoles themselves.

Games are frequently used to market a console and can do so either by exclusivity to a specific console or by using existing popular intellectual properties (IPs) that already have a strong following. Pac-Man for the Atari 2600 was already a well known arcade game and was expected to

help the sales of 2600 devices due to its popularity despite it being heavily criticized.

... ..

In comparison to PC and mobile games, console game developers must consider the limitations of the hardware their game is being developed for, as it is unlikely to have any major changes between the development phase and release. PC and mobile technology progresses quickly and there are many different configurations of their hardware and software. This is beneficial at the start of a console's life cycle, as the technology will be cutting edge, but as the console ages, developers are forced to work with ageing hardware until the next generation of consoles is released. Earlier consoles games could be developed to take advantage of the fixed limitations of the consoles they were developed for, such as the MegaDrive's capability of fast scrolling influencing design decisions made for Sonic the Hedgehog. Due to these hardware limitations the requirement of development kits and licenses required for development on a console is commonplace."

4.4 Thus, he contended that video game consoles and personal computers with gaming capability are two different types of products and a gaming PC will not qualify to be called as a video game console.

5. Ld. Departmental Representative Shri R. Rajaraman (Assistant Commissioner) has argued that the impugned goods are principally used for the purpose of gaming / entertainment and as such, they are classifiable under CTH 9504 as "video game consoles" though it has got the characteristics of automatic data processing machine. Thus, he supported the findings of the lower appellate authority.

6. We have heard the rival contentions and perused the records as available in this appeal.

7. The only issue that is required to be decided in this appeal is whether the imported goods are classifiable under Chapter Heading 8471 3090 as 'automatic data processing machines' or under Chapter Heading 9504 5000 as 'video game consoles'.

8. The appellant has filed four Bills-of-Entry during April 2017 describing the imported products as "Computer System Desktop" classifying them under CTH 8471 3090 whereas the Department re-assessed these Bills-of-Entry classifying the imported products under CTH 9504 5000 as "Electronic Games (Console)" as the product catalogue indicated that the imported goods are categorized as 'Republic of Gamers' (ROG) series and the product overview indicated that it was a 9.5-liter gaming PC configured with the 7th Generation Intel® Core™ i7 processor and the nVidia® GeForce® GTX 1080 graphics, including lighting effects, headphone DAC, amplifier, gaming software Aegis-III and an advanced heat management design / cooling system, typically running on a Windows 10 platform, basically relying on the HSN Explanatory Note (2) to Heading 95.04, which reads as follows:

"95.04 - Video game consoles and machines, articles for funfair, table or parlour games, including pintables, billiards, special tables for casino games and automatic bowling alley equipment (+).

9504.20 - Articles and accessories for billiards of all kinds

Other games, operated by coins,

9504.30 - *banknotes, bank cards, tokens or by any other means of payment, other than automatic bowling alley equipment.*

9504.40 - *Playing cards*

9504.50 - *Video game consoles and machines, other than those of subheading 9504.30*

9504.90 - *Other*

This heading includes:

(1)

(2) *Video game consoles and machines as defined in Subheading Note 1 to this Chapter.*

Video game consoles and machines whose objective characteristics and principal function are such that they are intended for entertainment purposes (game-playing) remain classified in this heading, whether or not they fulfil the conditions of Note 5(A) to Chapter 84 regarding automatic data processing machines.

The heading also includes parts and accessories of video game consoles and machines (for example cases, game cartridges, game controllers, steering wheels), provided they fulfil the conditions of Note 3 to this Chapter."

9. The relevant part of Chapter Heading 8471 of the Customs Tariff is extracted below: -

8471	Automatic data processing machines and units thereof; magnetic or optical readers, machines for transcribing data on to data media in coded form and machines for processing such data, not elsewhere specified or included
8471 30	- <i>Portable automatic data processing machines, weighing not more than 10 kg., consisting of at least a central processing unit, a keyboard and a display:</i>
8471 30 10	--- Personal computer u Free -
8471 30 90	--- Other u Free -
	- <i>Other automatic data processing machines :</i>

10. Chapter Note 5 (A) to Chapter 84 reads as under: -

"5. (A) For the purposes of heading 8471, the expression "automatic data processing machines" means machine capable of :

(i) storing the processing programme or programmes and at least the data immediately necessary for the execution of the programme;

(ii) being freely programmed in accordance with the requirements of the user;

(iii) performing arithmetical computations specified by the user; and

(iv) executing, without human intervention, a processing programme which requires them to modify their execution, by logical decision during the processing run;

11. The HSN Explanatory Notes to Chapter Heading 84.71 for 'Automatic Data Processing Machines' specifically explains as given below: -

" (A) AUTOMATIC DATA PROCESSING MACHINES

The automatic data processing machines of this heading must be capable of fulfilling simultaneously the conditions laid down in Note 5 (A) to this Chapter. That is to say, they must be capable of:

- (1) Storing the processing programme or programmes and at least the data immediately necessary for the execution of the programme;*
- (2) Being freely programmed in accordance with the requirements of the user;*
- (3) Performing arithmetical computations specified by the user; and*
- (4) Executing, without human intervention, a processing programme which requires them to modify their execution, by logical decision during the processing run;*

Thus, machines which operate only on fixed programs, i.e., programs which cannot be modified by the user, are excluded even though the user may be able to choose between a number of such fixed programs."

(Emphasis supplied)

12. The impugned products are automatic data processing machines, but the objective and characteristics indicate that they are intended for entertainment purposes (game-playing). According to the importer's website and also the product literature, it is seen that the impugned goods are designed for the purpose of playing games and reportedly, even has gaming software Aegis III pertaining to the ROG series.

13. The Ld. Advocate in his submissions has accepted that the imported goods have features for gaming, but has argued that a 'video game console' is an entirely different product and it cannot be compared to a Computer System Desktop as the latter is capable of carrying out multiple tasks including computing capabilities, internet surfing, multimedia playing, editing, word processing, etc., and it can be put to multiple uses in both business and industry, may be also for entertainment and gaming.

14. On the basis of the submissions made by the Ld. Advocate and also on going through the product literature as well as various records available in this appeal, the differences between 'Gaming Desktop Computer' and 'Video Game Console' are summarized below: -

S. No.	Criteria/Parameter	Gaming Desktop Computer	Video Game Console
1.	Multi-tasking	Automatic data processing machines/ Computers are capable of carrying out multiple tasks including computing capabilities, internet surfing, multimedia playing, editing, word processing, etc., including gaming.	Video Game Consoles cannot perform other functions; their output will be a video signal or image to display video games. Such machines are designed for playing video games alone., their principal function being for entertainment purposes.
2.	Programmability	Freely programmable in accordance with the requirements of the user.	Cannot be freely programmed as such.
3.	Technical skills	Requires an intermediate skill level for operation	Are usually plug-and-play devices and user-friendly. No build time or technical skills are needed.
4.	Budget	At identical specifications, a personal computer usually costs more than a video game console.	Usually cheaper than a personal computer at the given price-range.
5.	Compatibility	Supports backward compatibility i.e. ability to play games released for an earlier generation.	New consoles usually do not support older games.

6.	Upgrade/Customization	Hardware such as graphics card, RAM, etc., and other accessories can be upgraded as and when required – upgrades are extensive.	Usually not possible to completely alter hardware components/customize as compared to a personal computer.
7.	Input	Can be operated using keyboard, mouse, joysticks, controllers, etc.	Only supports controllers, which is a handheld device connected to the console generally containing several buttons and directional controls.
8.	Visuals/Output	Gaming computers are capable of running games at higher graphics settings, and are usually more expensive.	Due to hardware limitations, they usually offer a lower graphics output as compared to gaming personal computers.

15.1 An automatic data processing machine or personal computer is said to be capable, in terms of Chapter Note 5(A) to Chapter 84, of storing the processing programmes and is also freely programmable in accordance with the requirements of the user and capable of computing and executing without human intervention. Whereas video game consoles are simply plug and play devices, which are more user friendly, and meant purely for gaming or entertainment purposes and are not capable of computing, internet surfing, word processing, etc. Any Computer System which has got additional features for playing games, continues to be a Computer System and can also be used for general purposes other than as an entertainment device.

15.2 The impugned goods are freely programmable whereas video game consoles only operate on fixed programmes. As the impugned goods answer to the requirements of the HSN Explanatory Notes to Heading 84.71 as well as Chapter Note 5 (A) to Chapter 84, they are more appropriately classifiable under CTH 8471 as automatic data processing machines. Though the imported goods, declared as computer desktop systems, are known

in the market parlance as gaming computers, they are to be treated as computers / automatic data processing machines though many modifications have been brought out in the form of enhancements like inclusion of higher version of graphics cards, hardware for enhancement of audio and other gaming equipment.

16.1 The lower appellate authority has placed reliance on the HSN Explanatory Note (2) to Heading 95.04 to classify the impugned goods under CTH 9504 as video game consoles, which reads as under: -

*"(2) Video game consoles and machines **as defined in Subheading Note 1 to this Chapter.***

Video game consoles and machines whose objective characteristics and principal function are such that they are intended for entertainment purposes (game-playing) remain classified in this heading, whether or not they fulfil the conditions of Note 5(A) to Chapter 84 regarding automatic data processing machines."

(Emphasis supplied)

16.2 In this regard, it is necessary to examine the words "video game consoles and machines" in the proper perspective i.e., in terms of Subheading Note 1 to Chapter 95 of the Customs Tariff Act, wherein the terms "Video game consoles" and "Video game machines" have been categorically explained as under: -

"(a) Video game consoles from which the image is reproduced on a television receiver, a monitor or other external screen or surface; or

(b) Video game machines having a self-contained video screen, whether or not portable."

16.3 From the above, it is amply clear that such 'video game consoles' and 'video game machines' alone fall under the purview of HSN Explanatory Note (2), whether or not they satisfy the conditions of Note 5(A) to Chapter 84.

Thus, primarily, to fall within the ambit of the above Note, the goods necessarily have to be such video game consoles/machines as defined above. However, as differentiated by us elsewhere in this order, the impugned goods/Computer System Desktop are neither 'video game consoles' nor 'video game machines', but are an entirely different product which, though have gaming capabilities, are also having a wide array of functionalities such as internet surfing, multimedia playing, etc., and can be put to multiple uses in business and industry. Further, the finding of the lower authority that the term 'machines' in the above Note means "*machines besides video games which could be data processing machine too*" appears to be misconstrued, in the light of the explicit definition provided under Subheading Note 1 to Chapter 95. Therefore, the reliance on the HSN Explanatory Note (2) to Heading 95.04 by the lower appellate authority is misplaced.

17.1 The lower appellate authority has resorted to Rule 3 of the General Rules for the Interpretation of Import Tariff, concluding that Rule 3(c) is applicable in respect of the present appeal and classified the goods under the heading which occurred last in the numerical order among those which equally merit consideration.

17.2 Rule 3 for the classification of goods as per the General Rules for the Interpretation of Import tariff is extracted below: -

"3. When by application of rule 2(b) or for any other reason, goods are, prima facie, classifiable under two or more headings, classification shall be effected as follows:

(a) The heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those

goods, even if one of them gives a more complete or precise description of the goods.

(b) Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to (a), shall be classified as if they consisted of the material or component which gives them their essential character, in so far as this criterion is applicable.

(c) When goods cannot be classified by reference to (a) or (b), they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration."

17.3 Applying the above General Rules for the Interpretation of Import Tariff, a specific description of the goods has to be preferred over a general description. The imported product is described as a 'Computer System Desktop' and has got all the characteristics of personal desktop computers, though enhancements for the purpose of gaming are added to these machines. The impugned product, as long as it satisfies the requirements set forth in Chapter Note 5 (A) to Chapter 84 of the Customs Tariff Act, has to be classified as 'automatic data processing machine' though it is being marketed as a gaming PC that is capable of running graphic intensive gaming applications. The lower appellate authority has resorted to Rule 3(c) for classification of the imported product assuming that the description of the impugned goods is not specific. However, as the imported product satisfies the requirements of Chapter Note 5 (A), it shall continue to be an 'automatic data processing machine'.

18.1 We are persuaded more to agree with the contentions of the Ld. Advocate that video game consoles are typically powered by operating systems and CPUs that differ from desktop computers and the consoles are under

the control of their respective manufacturers and the software is geared to the machine's capabilities, with the games not being interchangeable with other game consoles or desktop computers.

18.2 We also take note of the fact that Computer Systems with modifications for enhancement of gaming, by inclusion of additional audio/video devices, are being classified under CTH 8471 as ADPs. In support of his contention, the Ld. Advocate has submitted many copies of Bills-of-Entry where similar products by the same manufacturer with the latest configuration in new series of machines have been classified under CTH 8471 in various Custom Houses and Air Cargo Complexes.

18.3 It is also to be noted that these are imported from China and at the time of export, these are classified as computers being classified under Chapter Heading 8471.

19. Considering the differences that exist between video game console, video game machine and the imported product, we hold that the imported 'Computer System Desktops' are classifiable under CTH 8471 as 'automatic data processing machines'. Consequently, we set aside the impugned order.

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

(Order pronounced in the open court on **03.08.2023**)

Sd/-
(VASA SESHAGIRI RAO)
MEMBER (TECHNICAL)

Sd/-
(P. DINESHA)
MEMBER (JUDICIAL)