CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH - COURT NO. 1

CUSTOMS APPEAL NO. 50708 OF 2021

(Arising out of Order-in-Appeal No. CC(A)/CUS/D-II/Import/ICD/TKD/1922/2020-21 dated 16.03.2021 passed by the Commissioner(Appeal), New Delhi)

M/s. Ingram Micro India Private Limited .... **Appellant**
5th Floor, Building 'A', Empire Plaza,
Lal Bahadur Shastri Marg, Chandan Nagar,
Vikhroli (West), Mumbai-400083

VERSUS

Principal Commissioner of Customs (Import), ...**Respondent**
ICD Tughlakabad, New Delhi

With

CUSTOMS APPEAL NO. 50709 OF 2021

(Arising out of Order-in-Appeal No. CC(A)/CUS/D-II/Import/ICD/TKD/1906/2020-21 dated 11.03.2021 passed by the Commissioner (Appeal), New Delhi)

M/s. Ingram Micro India Private Limited .... **Appellant**
5th Floor, Building 'A', Empire Plaza,
Lal Bahadur Shastri Marg, Chandan Nagar,
Vikhroli (West), Mumbai-400083

VERSUS

Principal Commissioner of Customs (Import), ...**Respondent**
ICD Tughlakabad, New Delhi

APPEARANCE:

Shri Amit Jain, Advocate for the Appellant
Shri Sunil Kumar, Authorized Representative for the Department

CORAM:

HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT
HON'BLE MR. P. V. SUBBA RAO, MEMBER (TECHNICAL)

FINAL ORDER NO.50076-50077/2022

Date of Hearing: 02.11.2021
Date of Decision: 02.02.2022

JUSTICE DILIP GUPTA:

Customs Appeal No. 50708 of 2021 has been filed by M/s. Ingram Micro India Private Limited[1] to assail the order dated 16.03.2021 passed by the Commissioner of Customs (Appeals)[2] by which the assessment made by the Deputy Commissioner in respect of Bill of Entry no. 6587002 dated 22.01.2020 and Bill of Entry No. 6775077 dated 06.02.2020 has been upheld and the appeal has been dismissed.

2. **Customs Appeal No. 50709 of 2021** has been filed by the appellant to assail the order dated 11.03.2021 passed by the Commissioner (Appeals) by which the assessment dated 27.06.2020 made by the Deputy Commissioner in respect of Bill of Entry No. 6337994 dated 03.01.2020 has been upheld and the appeal has been dismissed.

3. The issue in both the appeals is regarding classification of the goods namely **(i) (ViewBoard)** ViewSonic IFP6550-2/65" Interactive Display System; and **(ii) (ViewBoard)**-ViewSonic-IFP7550-2/75" Interactive Display System. The appellant claims that the classification would be under Customs Tariff Item[3] 8471 41 90, though, earlier at the time of self-assessment, the appellant had claimed it to be under CTI 8471 90 00. The Department claims that it should be under CTI 8528 52 00. The Deputy Commissioner rejected the self-assessment done by the appellant under CTI 8471 90 00 and ordered for re-assessment of the goods under CTI 8528 52 00. The

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1. the appellant
2. the Commissioner (Appeals)
3. CTI

case set up by the appellant at the time of assessment was that the goods were Automatic Data Processing Machines[4] and not Monitors and, therefore, classifiable under CTI 8471 90 00 and not under CTI 8528 52 00. At the appellate stage, the appellant contended, on a re-consideration of the matter, that the goods were more specifically and correctly classifiable under CTI 8471 41 90.

4. In order to appreciate the issue involved in this appeal, it would be necessary to examine the technical nature of the product. The appellant has stated that the goods are Interactive Flat Panel Display[5], which are used in the classrooms for teaching and in companies for presentations, meetings, etc. These are available in different sizes ranging from 24 inches to 98 inches, depending upon the requirement of the customer. The goods have an in-built Central Processing Unit[6] with specification ARM Cortex A73 dual-core 1.2 GHz', 2 GB RAM for execution of programs, internal storage capacity of 16 GB and a pre-installed operating system, namely, Android 7.0. The goods also have an Open Pluggable Specification Slot[7], with the use of which the user can download and operate other operating systems such as Windows on the IFP. The goods also have slots for HDMI, VGA, LAN, USB, RS232 and audio. Internet can be accessed on IFP by connecting it to a dongle via USB port or by the use of a LAN cable. These IFP can also be connected to laptops and input can be given either from the IFP to the laptop or vice versa. The goods allow the user to download and install new programmes according to

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4. ADPM
5. IFP
6. CPU
7. OPS Slot

requirements. The goods also permit the user to record lectures and share the lectures/notes/presentations via e-mail or QR codes. Since these IFP are cloud enabled, the user can also upload the notes on pre-set cloud storage.

5. It would also be necessary, at this stage, to reproduce the relevant Customs Tariff Items contained in Chapters 84 and 85 of the Customs Tariff Act, 1975[8] and they are as follows:

Chapter 84

Tariff Item	Description of goods	Unit	Rate of Duty	
			Standard	Preferential Areas
(1)	(2)	(3)	(4)	(5)
8471	**Automatic Data Processing Machines and Units thereof; Magnetic 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	- Portable automatic data processing machines, weighing not more than 10 kg, consisting of at least a central processing unit, a keyboard and a display:			
8471 30 10	--- Personal computer	u	Free	-
8471 30 90	--- Other	u	Free	-
	- Other automatic data processing machines :			
8471 41	- Comprising in the same housing at least a central processing unit and an input and output unit, whether or not combined :			
8471 41 10	--- Micro computer	u	Free	-
8471 41 20	--- Large or main frame computer	u	Free	-
8471 41 90	**--- Other**	u	Free	-
8471 49 00	-- Presented in the form of systems	u	Free	-
8471 50 00	- Processing units other than those of sub-headings 8471 41 or 8471 49, whether or not containing in the same housing one or two of the following types of unit: storage units, input units, output units	u	Free	-
8471 60	- Input or output units, whether or not containing storage units in the same housing :			
8471 60 10	--- Combined input or output units	u	Free	-
	--- Printer :			

8. the Tariff Act

8471 60 24	---- Graphic printer	u	Free	-
8471 60 25	---- Plotter	u	Free	-
8471 60 29	---- Other	u	Free	-
8471 60 40	--- Keyboard	u	Free	-
8471 60 50	--- Scanners	u	Free	-
8471 60 60	--- Mouse	u	Free	-
8471 60 90	--- Other	u	Free	-
8471 70	- Storage units :			
8471 70 10	--- Floppy disc drives	u	Free	-
8471 70 20	--- Hard disc drives	u	Free	-
8471 70 30	--- Removable or exchangeable disc drives	u	Free	-
8471 70 40	--- Magnetic tape drives	u	Free	-
8471 70 50	--- Cartridge tape drive	u	Free	-
8471 70 60	--- CD-ROM drive	u	Free	-
8471 70 70	--- Digital video disc drive	u	Free	-
8471 70 90	--- Other	u	Free	-
8471 80 00	- Other units of automatic data processing machines	u u	Free Free	- -
8471 90 00	**- Other**	u	Free	-

Chapter 85

Tariff Item	Description of goods	Unit	Rate of Duty	
			Standard	Preferential Areas
(1)	(2)	(3)	(4)	(5)
8528	**Monitors and Projectors, not incorporating television reception apparatus, reception apparatus for television, whether or not incorporating radio-broadcast receivers or sound or video recording or reproducing apparatus**			
	- Cathode-ray tube monitors:			
8528 42 00	-- Capable of directly connecting to and designed for use with an automatic data processing machine of heading 8471	u	10%	-
8528 49 00	-- Other	u	10%	-
	- Other monitors:			
8528 52 00	**-- Capable of directly connecting to and designed for use with an automatic data processing machine of heading 8471**	u	10%	-

(emphasis supplied)

6. The discussion and the conclusion arrived at by the Deputy Commissioner and the Commissioner (Appeals) are identical in both the appeals. Reference would, therefore, be made to the orders passed by the Deputy Commissioner and the Commissioner (Appeals) contained in Customs Appeal No. 50709 of 2021. While analysing CTI

8471 90 00, (claimed by the appellant at the stage of assessment) the Deputy Commissioner observed as follows:

> "5.2 **From the perusal of the technical specification of the product, it appears that the said product contains that automatic data processing machine** (i.e. processor), storage devices (i.e. hard disk, RAM), input devices (i.e. Touch screen) and output devices (i.e. Display) all embedded in one unit. **Thus it appears that goods may be classified under tariff item 8471 50 00.** Going further, the technical specifications of the product also reveal that this product has connectivity ports such as HDMI port, VGA ports etc. which clearly indicate that this product can act as standalone display monitor and can be used in conjunction with any other ADP machine. **It remains undisputed that this product can act as standalone monitor also. Given large size of the display, it appears that product is suitable for viewing of the screen by a large number of persons which indicate that this product is primarily meant for display purposes.**
>
> 5.3 **As per information available in the website and catalogue of the product, the merchandise under consideration are designed to be used in classroom or business setting as an interactive whiteboard either in a standalone configuration or in conjunction with the consumer's existing automatic data processing (ADP) machine.** The interactive display panels come in varying LED screen sizes. These machines are equipped with a capacitive touch overlay that allow users to manipulate display data, type and input/manipulate data as well as control the functions of the installed applications to manipulate display data, type, and input/manipulate data as well as control the functions of the installed applications. **There are numerous input and output connection ports to include USB, HIDMI, VGA, RS232, CVBS and PC Slot that are accessible on the side of the unit. These machines processes applications compatible with the Android operating system (OS)/Windows Operating System, joins wired or wireless networks, accesses and manipulates folders and files, and performs general computing tasks such as internet browsing, email, and editing office documents."**
>
> **(emphasis supplied)**

7. In regard to CTI 8528 52 00, the Deputy Commissioner observed as follows:

> "From perusal of the terms of the above tariff headings, it appears statute has described three types of monitors.
>
> A. Monitors solely or principally used with ADP machines of heading 8471.
> B. Other Monitors
> C. Television monitors
>
> As per explanatory notes to tariff heading 8528, the monitors having TV tuner card are classifiable under the category of Television. The impugned goods do not have any TV tuner cards, hence same cannot be classified as Televisions. Since the product is not a CRT monitor therefore, it cannot be classified under 8528 42 00/8528 49 00. **From perusal of the technical specification of the product, it is noticed that this product is having VGA connectivity slots, HDMI connectivity slots, which provide it can be inferred that product can be directly connected with ADP machine of heading 8471 and thus the products appears classifiable under 85285200."**
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> **(emphasis supplied)**

8. Thereafter, the Deputy Commissioner proceeded to determine the classification of the goods and the relevant paragraphs are reproduced below:

> "5.4 **Now the primary question arises whether goods are to be classified as ADP machine meriting classification under 8471 or Display monitors under 8528. In the instant case, the product description as per the catalogue for the impugned goods submitted by the importer indicates that goods are being used for business and educational purposes.**
>
> *********
>
> 5.6 Further, it is also evident that large screens are convenient to be used for display purpose in comparison to using the same as automatic data processing machines for analysis since as the screen size increases, the display becomes more prominent. From the perusal of above description, it is

clear that as the size of the goods increases, the display becomes more prominent which can cater to the large number of audiences. **Thus the goods are primarily used for Display purposes and are intended for use with ADP machines of heading 8471. Further the technical specifications of the goods indicate that the products are equipped with following ports for making connections:**

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Presence of ports such as VGA, HDMI, USB, RS 232 etc. make these goods capable of directly connecting to and designed for use with an automatic data processing machine of heading 8471. **Therefore, it appears that goods are correctly classifiable as monitors for use solely or principally with ADP machines of heading 8471.**

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In the instant case, one may argue that due to presence of processor, the principal function of the product is the function of automatic data processing. However, it may also be argued that owing to large size of the display, the principle function of the machine appears to be to cater to Display requirement to a large gathering. This fact is further buttressed by the description of the product given on the website of the importer which states: "Featuring 4K Ultra HD resolution and an immersive 20-point touch screen, the ViewSonic® VicewBoard®) IFP7550/IFP6550 delivers incredible collaborative capabilities for 21st century boardrooms and classrooms.

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Since, in the instant matter, it is not possible to determine the principal function objectively, the classification shall be decided as per GIR 3(c).

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In the instant matter, the classification dispute is whether goods are to be classified as ADP machine meriting classification under 8471 or Display monitors under 8528. Since both the headings equally merit consideration, after applying Rule 3(c) of GRI, the impugned goods merit classification under 8528 52 00."

(emphasis supplied)

9. As noticed above, before the Commissioner (Appeals) the appellant contended that the goods would appropriately merit classification under CTI 8471 41 90. The Commissioner (Appeals), after examining the relevant Customs Tariff Items and Chapter Note 5 of Chapter 84, observed as follows:

> "5.3 **It is the contention of the appellant that impugned goods are "Automatic Data Processing Machines"** per se. Further, they have heavily relied upon the similar consignment with same classification being cleared at Mumbai Customs without any objection.
>
> 5.4 **However, I do not find any force in the said contentions of the appellant.** Trade Parlance is a legally accepted principle in matters of classification. Going by the description on catalogue, website descriptions and general awareness of such technological devices, **I am of the considered view that buyers intending to purchase Computer will not select the impugned goods as it is not known in market as such. In trade parlance and common parlance, computer is known and used in different manner. The Assessing Authority has correctly made note of Large size of display on the instant case- 65" and 75"- and thus has inferred that same are meant for display purpose to large gathering. Thus, as per Note5(E) of Chapter Note 84, the impugned goods merit classification as per their specific use.**
>
> Further, perusal of bill of entry cleared at Mumbai Customs reveals that there is no speaking order in the said clearance and so the basis on which, the officers have accepted the said classification is not clear. Whereas, in the instant case, a Speaking Order has been passed giving due reasoning for changing for changing the classification.
>
> 5.5 **As far as principle use of the impugned goods is concerned, the Assessing Authority has discussed the same in impugned A.O.** Further, it is widely known that the technological advancement is leading to "Convergence"- whereby different features and functions are being clubbed in newer devices. However, that does not dilute the concept of legally enshrined concept of "Principal use". **I note that the**

Assessing Authority has acknowledged the fact of impugned goods capable of being used as APDP-considering its features. However, he has correctly made recourse to GIR 3I and out of heading 8471 (ADP machines) and 8528 (Display monitors), as heading 8528 occurs last in numerical order, the heading 85285200 was correctly applicable. Thus, burden of proof has been sufficiently discharged by the department in the instant case and due reasoning has been afforded for changing the classification of impugned goods.

5.6 **Thus, I note that the impugned goods are not ADPM per se but capable of being connected to ADPM falling under 8471 and used accordingly. Thus they merit classification under CTH 85285200."**

(emphasis supplied)

10. Shri Amit Jain learned counsel for the appellant made the following submissions:

(i) The goods are appropriately classifiable under CTI 8471 41 90. Chapter Note 5(A) to Chapter 84 and the Harmonized Commodity Description and Coding System[9] Explanatory Notes define what constitutes an ADPM. The Chapter Note states that ADPM is a machine which is capable of storing a processing program; is freely programmable; performs arithmetical computations; and can execute a processing program by logical decision during the processing without intervention of humans. The goods fulfill the criteria laid down in Note 5A to Chapter 84.The HSN Explanatory Notes also provide that ADPM must have a CPU, an input and output unit. These requirements are also satisfied by the goods and, therefore, they would qualify as ADPM;

9. HSN

(ii) The Deputy Commissioner in paragraphs 5.2 and 5.3 also admitted that the goods contain ADPM (i.e. a processor), storage devices (i.e. hard disk, RAM), input devices (i.e. touch screen) and output devices (i.e. display) which are all embedded in one unit and, therefore, classifiable under CTI 8471 50 00 and can act as a standalone display monitor and can also be used in conjunction with another ADPM. Thus, the goods are capable of not only working as ADPM on a standalone basis, but can also be used in conjunction with another ADPM;

(iii) In any view of the matter, the goods do not perform any function other than data processing. The large size display is only a feature/specification of the goods and this cannot be construed to be its function, much less its principal function, as held by the Commissioner (Appeals);

(iv) The goods have also been classified under CTH 8471 in the US Customs Cross Ruling and WCO Classification Ruling;

(v) The goods would not merit classification under CTH 8528 since this Heading covers monitors which are capable of receiving and displaying the signals when attached to any of the devices like ADPM, video camera or recorder and these monitors do not have capability of functioning independently or through two-way communication. They are also not capable of processing any data on their own, nor are they capable of storing any data;

(vi) The goods, on the other hand, have an in-built CPU, 2GB RAM for executing program, 16 GB storage capacity and are also loaded with Android 7.0 operating software. Thus, the goods can perform a plethora of functions beyond being used as a traditional whiteboard in the classrooms. The goods are not merely used for display of the information or presentation but are also capable of complex operations and can function independently on standalone basis. The goods are, therefore, much more than mere display devices and would not merit classification under CTH 8528 as "monitors";

(vii) The size of the goods, namely, 65 inches and 75 inches and capability of being operated by means of a remote control are also features not usually found in monitors, as per HSN Explanatory Notes to Chapter 85;

(viii) When the classification of the goods is determined by application of Chapter Notes and GRI 1, there is no occasion for invocation of GRI 3(c). In this connection reliance has been placed on the judgment of the Supreme Court in **Commissioner of Central Excise, Nagpur** vs. **Simplex Mills Co. Ltd.**[10];

(ix) Trade parlance meaning should not be relied upon when the goods are defined statutorily. In this connection reliance has been placed on the judgment of the Supreme

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10. 2005 (181) E.L.T. 345 (S.C.)

Court in **Akbar Badruddin Jiwani** vs. **Collector of Customs**[11];

(x) Similar goods imported by the appellant have been permitted clearance by the Customs at Air Cargo Complex, Mumbai, Chennai Port, Nhava Sheva Port & ICD Dadri, under CTH 8471 and, therefore, the goods should not have been classified differently at a different port. In this connection reliance has been placed on the judgment of the Calcutta High Court in **Opal Exports Pvt. Ltd.** vs. **Collector of Customs**[12]; and

(xi) Differential duty of Rs. 13,37,043/- paid by the appellant under protest on 28.01.2020 is liable to be refunded with interest.

11. Shri Sunil Kumar, learned authorized representative appearing for the Department, however, supported the impugned order and made the following submissions:

(i) The goods are appropriately classifiable under CTI 8528 52 00 since not only is the description of the goods as "interactive flat panel display", but display is also the primary function on the basis of which both the Deputy Commissioner and the Commissioner (Appeals) determined the classification under the said classification;

(ii) The classification of goods is determined based on its functional character providing the article its identity and

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11. 1990 (47) E.L.T. 161 (S.C.)
12. 1992 (60) E.L.T. 232 (Cal.)

when a consumer buys an article, he buys it because it performs a specific function for him. A perusal of the product literature would indicate that the primary function of the goods is display and not automatic data processing. In support of this contention reliance has been placed on the decisions of the Supreme Court in **Atul Glass Industries Ltd.** vs. **Collector of Central Excise**[13] and **Real Optical Co.** vs. **Appellate Collector of Customs**[14];

(iii) It is no doubt true that the goods imported by the appellant have enabled ADPM but what is required to be seen is whether presence of such ADPM and its auxiliary function of data processing can outweigh the display function, which is the primary function of the goods. In support of this contention reliance has been placed on the decision of the Supreme Court in **Xerox India Ltd.** vs. **Commissioner of Customs, Mumbai**[15] as also the decision of the Bangalore Tribunal in **Logic India Trading Co.** vs. **Commissioner of Customs, Cochin**[16], the appeal against which was dismissed by the Supreme Court on 30.09.2016 and the judgment is reported in **Commissioner** vs. **Logic India Trading Co.**[17];

(iv) Reliance upon HSN Explanatory Notes by the appellant to suggest that since the size of goods do not exceed 30

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13. 1986 (25) E.L.T. 473 (S.C.)
14. 2001 (129) E.L.T. 7 (S.C.)
15. 2010 (260) E.L.T. 161 (S.C.)
16. 2016 (337) E.L.T. 65 (Tri. – Bang.)
17. 2016 (342) E.L.T. A34 (S.C.)

inches and are usually not operated by remote control they would not be monitors, is misconceived as these are not mandatory conditions. In this connection reliance has been placed on the decision of the Tribunal in **Commissioner of Cus. (Port-Import), Chennai-I** vs. **Omni Agate Systems**[18];

(v) The appellant is not correct in asserting that since the Deputy Commissioner had classified the goods under CTI 8471 50 00 by application of GRI 1, he should have refrained from applying GRI 3;

(vi) Rule 1 of GRI envisages that if a Heading does not require the exclusion of the other rules, the other rules must also be applied for determining the classification of an article. Therefore, all the relevant rules of interpretation in the Import Tariff come into play in the process of classification. Concluding sentence of HSN Explanatory Notes to Rule 1 as well as the decision of the Supreme Court in **Khandelwal Metal & Engineering Works**[19] support this contention;

(vii) The assessment order of other Custom Houses do not have any binding affect, more particularly when speaking orders have not been passed. Cross Ruling of US Customs and the WCO Classification Ruling would also not come to the aid of

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18. 2018 (363) E.L.T. 252 (Tri. – Chennai)
19. 1985 (20) E.L.T. 222 (S.C.)

the appellant as classification is required to be determined by application of GRI; and

(viii) Classification of a similar product, namely, interactive electronic whiteboard under CTH 8528 has been upheld by the Principal Bench of the Tribunal in **Commr. of Cus. (Import & General), New Delhi** vs. **Integral Computer Ltd.**[20]

12. The submissions advanced by the learned counsel for the appellant and the learned authorized representative appearing for the Department have been considered.

13. It is not in dispute that the product has an in-built CPU having a dual-core 1.2 GHz', 2 GB RAM for execution of programs, internal storage capacity of 16 GB and a pre-installed operating system, namely, Android 7.0. The goods also have an Open Pluggable Specification Slot with the use of which a user can download and operate other operating systems such as windows on the IFPs. The product also has slots for HDMI, VGA, LAN, USB, RS232 and audio ports. Internet can also be accessed by connecting the product to a dongle via USB port or by the use of a LAN cable. The product can also be connected to laptops, and input can be given either from the product to the laptop or vice versa. New programs can be downloaded and installed according to the requirements of the user. The user can record lectures and share lectures/notes/presentations via e-mail or QR codes. As the product is cloud enabled, a user can also upload the notes on a pre-set cloud storage.

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20. 2016 (337) E.L.T. 580 (Tri. –Del.)

14. These facts have also been noted by the Deputy Commissioner in the assessment order for addressing the issue as to whether the goods should be classified as ADPM for classification under CTH 8471 or as display monitors for classification under CTH 8528. What, however, prevailed with the Deputy Commissioner to hold that the goods would merit classification under CTH 8528 is that large screens (since the goods are of 65 inches and 75 inches) are convenient for display purpose in comparison to using the same as ADPM since the display become more apparent as the screen size increases. This observation led the Deputy Commissioner to hold that the goods are primarily used for display purposes and are intended for use with ADPM of Heading 8471. In coming to this conclusion, the Deputy Commissioner also noted that the presence of ports enable the goods to directly connect to ADPM of CTH 8471.

15. The Commissioner (Appeals) accepted the view taken by the Deputy Commissioner that because of the large size goods are meant for display purpose to cater to a large gathering and, therefore, as per Note 5(E) to Chapter Note 84, the goods would merit classification as per the specific use. What also prevailed with the Commissioner (Appeals) is the fact that the buyers intending to purchase a computer will not select the goods in issue as it is not known in the market as such. The Commissioner (Appeals) also noted that the goods were capable of being used as ADPM, but agreed with the Deputy Commissioner that in such a situation GRI 3(c) should be resorted, as a result of which the goods would merit classification under CTH 8528 since this entry is after CTH 8471.

16. As references have been made to the General Rules for the Interpretation of Import Tariff and Notes to Chapter 84 as also the HSN Explanatory Notes to Chapter Heading 8471, it is necessary to reproduce the relevant portions:

2. The General Rules for the Interpretation of Import Tariff

Classification of goods in this Schedule shall be governed by the following principles:

1. The titles of Sections, Chapters and sub-chapters are provided for ease of reference only; for legal purposes, classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes and, provided such headings or Notes do not otherwise require, according to the following provisions:

2. (a) Any reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, as presented, the incomplete or unfinished articles has the essential character of the complete or finished article. It shall also be taken to include a reference to that article complete or finished (or falling to be classified as complete or finished by virtue of this rule), presented unassembled or disassembled.

(b) Any reference in a heading to a material or substance shall be taken to include a reference to mixtures or combinations of that material or substance with other materials or substances. Any reference to goods of a given material or substance shall be taken to include a reference to goods consisting wholly or partly of such material or substance. The classification of goods consisting of more than one material or substance shall be according to the principles of rule 3.

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.

4. Goods which cannot be classified in accordance with the above rules shall be classified under the heading appropriate to the goods to which they are most akin.

5. In addition to the foregoing provisions, the following rules shall apply in respect of the goods referred to therein:

(a) Camera cases, musical instrument cases, gun cases, drawing instrument cases, necklace cases and similar containers, specially shaped or fitted to contain a specific article or set of articles, suitable for long-term use and presented with the articles for which they are intended, shall be classified with such articles when of a kind normally sold therewith. This rule does not, however, apply to containers which give the whole its essential character;

(b) Subject to the provisions of (a) above, packing materials and packing containers presented with the goods therein shall be classified with the goods if they are of a kind normally used for packing such goods. However, this provisions does not apply when such packing materials or packing containers are clearly suitable for repetitive use.

6. For legal purposes, the classification of goods in the sub-headings of a heading shall be determined according to the terms of those sub headings and any related sub headings Notes and, mutatis mutandis, to the above rules, on the understanding that only sub headings at the same level are comparable. For the purposes of this rule the relative Section and Chapter Notes also apply, unless the context otherwise requires.

Chapter 84 Notes

1. *****
2. *****
3. *****
4. *****

5.(A) **For the purposes of heading 8471, the expression "automatic data processing machines" means machines 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 program which** requires them to modify their execution, by logical decision during the processing run.

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(E) Machines incorporating or working in conjunction with an automatic data processing machine and performing a specific function other than data processing are to be classified in the headings appropriate to their respective functions or, failing that, in residual headings."

HSN Explanatory Notes 84.71

(1) Automatic Data Processing Machines and Units thereof

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(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 program or programs and at least the data immediately necessary for the execution of the program;

(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 program 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, arc excluded even though the user may be able to choose between a number of such fixed programs.

These machines have storage capability and also stored programs which can be changed from job to job.

Automatic data processing machines process data in coded form. A code consists of a finite set of characters (binary code, standard six bit ISO code, etc.).

The data input is usually automatic, by the use of data media such as magnetic tapes, or by direct reading of original documents, etc. There may also be arrangements for manual input by means of keyboards or the input may be furnished directly by certain instruments (e.g. measuring instruments).

The input data are converted by the input units into signals which can be used by the machine, and stored in the storage units.

Part of the data and program or programs may be temporarily stored in auxiliary storage units such as those using magnetic discs, magnetic tapes, etc. But these automatic data processing machines must have a main storage capability which is directly accessible for the execution of a particular program and which has a capacity at least sufficient to store those parts of the processing and translating programs and the data immediately necessary for the current processing run.

Automatic data processing machines may comprise in the same housing, the central processing unit, an input unit (e.g., a keyboard or a scanner) and an output unit (e.g., a visual display unit), or may consist of a number of interconnected separate units. In the latter case, the units form a "system" when it comprises at least the central processing unit, an input unit and an output unit (see Subheading Note 2 to this Chapter). The interconnections may be made by wired or wireless means.

A complete automatic data processing system must comprise, at least:

(1) **A central processing** unit which generally incorporates the main storage, the arithmetical and logical elements and the control elements; in some cases, however, these elements may be in the form of separate units.

(2) **An input unit** which receives input data and converts them into signals which can be processed by the machine.

(3) **An output unit** which converts the signals provided by the machine into an intelligible form (printed text, graphs, displays, etc.) or into coded data for further use (processing.
control, etc.).

Two of these units (input and output units, for example) may be combined in one single unit.

A complete automatic data processing system is classified in this heading, even though one or more units may be classified elsewhere when presented separately (see Part (B) Separately presented units, below).

These systems may include remote input or output units in the form of data terminals.
Such systems may also include units, apart from the input or output units, designed to increase the capacity of the system for instance, by expanding one or more of the functions of the central unit (see Part (B) below). Such units are inserted between the input or output units (start and end

of the system), although adapting and converting units (channel adaptors and signal converters) may occasionally be connected before the input unit or after the output unit.

Automatic data processing machines and systems are put to many uses, for example, in industry, in trade, in scientific research and in public or private administrations. (See Part (E) of the General Explanatory Note to Chapter 84 with respect to the classification of machines incorporating or working in conjunction with an automatic data processing machine and performing a specific function (Note 5 (E) to this Chapter)).

HSN Explanatory Notes 85.28

(A) Monitors capable of directly connecting to and designed for use with an Automatic Data Processing Machine of Heading 84.71

This group includes monitors which are capable of accepting a signal from the central processing unit of an automatic data processing machine und provide a graphical presentation of the data processed. These monitors are distinguishable from other types of monitors (see (B) below) and from television receivers.

The monitors of this group may be characterised by the following features:

(i) They usually display signals of graphics adaptors (monochrome or colour) which are integrated in the central processing unit of the automatic data processing machine;

(ii) They do not incorporate a channel selector or video tuner;

(iii) They are fitted will connectors characteristic of data processing systems (e.g., RS-232C interface, DIN, D-SUB, VGA, DVI, HDMI or DP (display port) connectors);

(iv) The viewable image size of these monitors does not generally exceed 76 cm (30 inches);

(v) They have a display pitch size (usually smaller than 0.3 mm) suitable for close proximity Viewing:

(vi) They may have an audio circuit and built-in speakers (generally, 2 watts or less in total);

(vii) They usually have control buttons situated in the front panel;

(viii) They usually cannot be operated by a remote control;

(ix) They may incorporate tilt, swivel and height adjusting mechanisms, glare-free surfaces, flicker-free display, and other ergonomic design characteristics to facilitate prolonged periods of viewing at close proximity to the monitor;

(x) They may utilize wireless communication protocol to display data from an automatic data processing machine of heading 84.71.

(emphasis supplied)

17. It would be seen from the aforesaid that Chapter Note 5(A) and the HSN Explanatory Notes to CTH 84.71 provide what should constitute an ADPM. According to the aforesaid Chapter Note 5(A), ADPM would be a machine which is capable of storing a processing program; is freely programmable; performs arithmetical computations; and can execute a processing program by logical decision during the processing without human intervention.

18. The impugned goods are IFP having an in-built CPU (ARM Cortex A.73 dual-core 1.2GHz Processor), a 2GB RAM and Android 7.0 Operating software. In addition, they also have an internal storage capacity of 16GB. Thus, goods are machines which are capable of storing data or programmes for the execution of programmes and satisfy condition no. (i) of Chapter Note 5(A) to Chapter 84.

19. The goods come with a pre-installed operating system, namely, Android 7.0. The said Android version is a customized operating system for these IFP. Further, the goods also have an OPS slot. With

the use of the OPS Slot, additional hardware can be connected to the goods and the OPS Slot can also be used for installing other operating software such as Windows, etc. on the goods. Thus, the goods are machines on which the user is able to load and execute a program. In other words, the goods are capable of executing any application/ program which is stored on its memory. A user can, with the use of either Android or other operating systems, download and install new programmes in accordance with their needs and usage. Thus, goods are machines which can be freely programmed in accordance with the need of the user and hence, satisfy condition (ii) of Chapter Note 5(A) to Chapter 84.

20. The goods are capable of performing arithmetical computations depending on the input provided by the user. The goods are equipped with a calculator to perform arithmetical computations. It has also been admitted by the Deputy Commissioner in paragraph 5.3 of the Assessment Order that these machines perform general computing tasks. Thus, the goods meet the requirements of condition (iii) of Chapter Note 5(A) to Chapter 84.

21. A user can give a command to the goods and the same would be executed without any further intervention of the user. The CPU along with the operating system executes the command so given by the user by taking logical decisions during the processing run. Thus, condition no. (iv) is also satisfied.

22. As all the four essential conditions contained in Note 5(A) to Chapter Note 84 are satisfied, the goods qualify as ADPM classifiable under CTH 8471.

23. The goods also have an in-built processing unit, an input unit and an output or may have separate processing, input and output unit interconnected with each other and so the requirements set out in the HSN Explanatory Notes to CTH 8471 also stand satisfied.

24. The goods are capable of working as an ADPM on a standalone basis and can also be used in conjunction with other ADPM, but this would not mean that the goods would cease to be ADMP in their own right, capable of working on a standalone basis. The large size display (65 inches and 75 inches) is only a feature/specification of the product and this cannot be construed to be its function, much less its principal function. The Deputy Commissioner and the Commissioner (Appeals), therefore, committed an error in holding that the large size of display would mean that the goods are meant for display purpose to a large gathering and, therefore, in terms of Note 5(E) of Chapter Note 84, the goods would merit classification as per the specific use.

25. The Commissioner (Appeals) committed an error in rejecting the contention of the appellant that the goods were ADPM by taking recourse to trade parlance, namely, that buyers intending to purchase a computer will not select the goods because of the large size display and, therefore, the goods should be specified according to the use. The Commissioner (Appeals) also committed an error in holding that even if the goods are capable of being used as ADPM considering their features, they would still merit classification under CTH 8528 in view of the provisions of GRI (3)(c). There was no occasion for the Commissioner (Appeals) to apply the provisions of GRI (3) (c) as the

relative Chapter Notes left no manner of doubt that the goods would merit classification under ADPM.

26. In terms of CTI contained in Chapter 85 and the HSN Explanatory Notes to CTH 8528, it is more than apparent that CTH 8528 would cover monitors which are capable of receiving and displaying the signals when attached to any of the devices like ADPM, video camera or recorder. Such monitors do not have the capability of functioning independently or through two way communication. They are also not capable of processing any data on their own, nor are they capable of storing any data.

27. It also needs to be noted that the Mumbai Bench of the Tribunal in **Cloudwalker Streaming Technologies Pvt. Ltd.** vs. **Commissioner of Customs (NS-V)**[21] examined the appropriate classification of "interactive intelligent panel model–cloudtouch". The Department assessed the goods as "monitors/projectors" and not ADPM. The Tribunal, however, observed that though the goods may appear to have some characteristics of "monitors" but it was abundantly clear that they do contain a central processing unit and operate on software and function on their own. Therefore, the goods cannot be said to be merely projectors or monitors and recourse could not be taken to CTH 8528 for classification of the goods since they would be classifiable under CTI 8471 41 90, as claimed by the assessee. The relevant portions of the decision are reproduced below:

> "********** **The dispute in this appeal of M/s Cloudwalker Streaming Technologies Pvt Ltd is on the appropriate classification of 'interactive intelligent panel (automatic data processing machine) model –**

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21. Customs Appeal No. 86896 of 2021 decided on 03.12.2021

cloudtouch' imported by the appellant from M/s Shenzhen Konika E-Display Co Ltd, China. Bill of entry no. 3843844/ 06.05.2021, for 90 nos of this item comprising varying configurations with value of ₹76,24,692/-, and bill of entry no. 3846255/06.05.2021, for 6 nos of the item in knocked down (SKD) condition **with declared value ₹ 6,13,482/-, were claimed for assessment at the rate of duty corresponding to tariff item 8471 4190 of First Schedule to Customs Tariff Act, 1975** with attendant exemption from basic customs duty, under notification no. 24/2005-Cus dated 1st March 2005, available to all goods covered by heading 8471 of First Schedule to Customs Tariff Act, 1975. The **original authority ordered assessment to duty at 10% ad valorem corresponding to tariff item 8528 5900 of First Schedule to Customs Tariff Act, 1975.** The impugned proceedings, vide order-in-appeal no. 851(Gr.V)/2021(JNCH)/2021 dated 8th October 2021 of Commissioner of Customs (Appeals), Nhava Sheva, Mumbai – II, upheld the re-classification leading to this appeal.

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8. **The heading deployed by customs authorities pertains to 'monitors and projector' and, while the impugned goods may appear to have some of the characteristics of 'monitors', it is abundantly clear from the descriptions in the catalogue that these do contain a central processing unit and does operate on software that requires an input device which, though not be different from that for computers and other automatic data processing machines, functions on its own. Therefore, the goods in question cannot be said to be merely projectors or monitor and, thereby, renders recourse to heading 8528 of the** First Schedule to the Customs Tariff Act, 1975 to be inconsistent with the General Rules for Interpretation of the Import Tariff. In accordance with the judicial decisions on discharge of the onus devolving on the assessing authority, and without going into the conformity of the description adopted in the bill of entry, it can safely be held that the revised classification does not bear the authority of law. Furthermore, as it is not controverted that the said exemption notification is available to all goods classified under heading 8471 of the First Schedule to the Customs Tariff Act, 1974, we are, without

examining the appropriateness of the tariff item, enabled to hold that the duty liability discharged by the appellant suffices for the purpose of levy. Accordingly, the impugned order is set aside and appeal is allowed."

(emphasis supplied)

28. The goods in dispute, on the other hand, are much more than mere display devices and, therefore, cannot be classified under CTH 8528 as monitors. The HSN Explanatory Notes to CTH 8528 also mention that the viewable image sizes of the monitors do not generally exceed 30 inches and that they usually cannot be operated by a remote control. The goods, in the present case, are of 65 inches and 75 inches and do have a remote control. The goods, therefore, would not merit classification under CTH 8528.

29. What also needs to be noted is that classification of a product is determined according to the terms of the Headings and any relative section or Chapter Note. GRI (1) also provides that titles of Sections, Chapters and sub-chapters are provided for ease of reference only; for legal purposes, classification is determined according to the terms of the Headings and any relative Section or Chapter Notes. It is only when such Headings or Notes do not otherwise require that the provisions (2),(3),(4),(5) and (6) of GRI would apply. The subsequent rules can be resorted to only when no clear picture emerges by application of rule (1). This is what was observed by the Supreme Court in **Simplex Mills Co. Ltd.** and the relevant portion is reproduced below:

"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 section 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.** The appellants have relied upon Rule 3. Rule 3 must be understood only in the context of sub-rule (b) of Rule 2 which says inter alia that the classification of goods consisting of more than one material or substance shall be according to the principles contained in Rule 3. Therefore when goods are prima facie, classifiable under two or more headings, classification shall be effected according to sub-rules (a), (b) and (c) of Rule 3 and in that order. The sub-rules are quoted :-

"(a) The heading which provides the most specific description shall be preferred to heading 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, 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, 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, insofar 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 the numerical order among those which equally merit consideration."

(emphasis supplied)

30. This is also what was observed by the Tribunal in **Hindustan Packaging Co. Ltd.** vs. **Collector of C. Excise, Vadodara**[22] and the relevant portion of the decision is reproduced below:

> "12A.As discussed above the disputed product consisting of aluminium foil reinforced with plastic material (polyethylene) and backed with paper/ paper board is treatable as `aluminium foil' classifiable under Heading 76.06 in terms of the definition in Note 1(viii) of Chapter 76 and will be excluded from the purview of Chapter 48 of the Central Excise Tariff since the classification of the product in question is determinable as provided in Rule 1 of the Rules of Interpretation of the Central Excise Tariff in terms of the relevant headings of the tariff and the relevant Section or Chapter Notes, the other Rules of Interpretation cannot come into play."

31. It is also important to note that Rules of Interpretation as contained in Chapter Notes prevail over the General Rules of Interpretation as was observed by the Supreme Court in **Commissioner of Central Excise, Pondicherry** vs. **Acer India Ltd.**[23] :

> "60. **Rule 1 of the Rules for the Interpretation of the First Schedule states that the titles of Sections and Chapters are provided for ease of reference only** which having regard to Chapter 84 providing for nuclear reactors, boilers, machinery and mechanical appliances; parts thereof are required to be referred to for reference only**. However, for legal purposes, the classification is to be determined according to the terms of the headings. The subject matter of the heading is important. Once a particular subject matter falls within the specified classification, the determination of valuation for the purpose imposition of duty must be done according to the terms of the heading and any relative Section or Chapter Notes unless such headings or Notes otherwise do not require.** For our purpose, therefore, the rule of interpretation as

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22. 1995 (75) E.L.T. 313 (Tribunal)
23. 2004 (172) E.L.T. 289 (S.C.)

contained in Chapter Notes would be given effect to for the purpose of classification in preference to the general rules of interpretation.

61. Rule 3, on the other hand, refers to a situation where any reference in a heading to a material or substance includes a reference to mixtures or combinations of that material or substance with other materials or substances, as a result whereof the goods are prima facie classifiable under two or more headings. Only in that event, the different rules of interpretation specified in Rule 3 may be taken recourse to.

62. **Rule 3 pre-supposes three conditions under which goods classifiable under two or more headings may be classified under one heading or the other. Such conditions are not applicable in the instant case.** Rules 3 of the Rules for interpretation shall not be applicable whereas Rule 1 does.

63. In the instant case having regard to the Chapter Note, the legal text contained in Rule 1 will apply and not Rule 3."

(emphasis supplied)

32. In **Salora International Ltd.** vs. **Commissioner of C. Ex., New Delhi**[24], the Supreme Court observed as follows:

"20. Therefore, as clearly specified by the above rule, resort must first be had only to the particular tariff entries, along with the relevant Section and Chapter Notes, to see whether a clear picture emerges. It is only in the absence of such a picture emerging, that recourse can be made to the Rules for Interpretation.

21. In the matter at hand, the entire case of the Revenue is based on an application of Rule 2(a) of the Rules for Interpretation to the goods produced by the appellant, however, the applicability of this Rule cannot be established unless the classification is first tested against the relevant Section and Chapter Notes."

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24. **2012 (284) E.L.T. 3 (S.C.)**

33. In view of the aforesaid, there is no manner of doubt that the goods would merit classification under CTI 8471 41 90 as claimed by the appellant and not under CTI 8528 52 00 as claimed by the Department.

34. The order dated 16.03.2021 challenged in Customs Appeal No. 50708 of 2021 and the order dated 11.03.2021 challenged in Customs Appeal No. 50709 of 2021 are, accordingly, set aside and the appeals are allowed. The differential duty of Rs. 13,37,043/- paid by the appellant by challan dated 28.01.2020 shall be refunded to the appellant with applicable rate of interest**.**

(Order Pronounced on **02.02.2022**)

(JUSTICE DILIP GUPTA)
PRESIDENT

(P. V. SUBBA RAO)
MEMBER (TECHNICAL)

Shreya