

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH – COURT NO. – IV

Customs Appeal No. 51482 of 2022 [DB]

[Arising out of Order-in-Original No. 06/2022/SG/Pr. Commr./ICD-Import/TKD dated 04.02.2022 passed by the Commissioner of Customs (Import), ICD, TKD, New Delhi]

M/s. Mittal Impex

Shop No. WZ-197, G Ground Floor,
Khayala Village, New Delhi - 110018

...Appellant

VERSUS

**Principal Commissioner of Customs-
New Delhi (ICD TKD)**

Inland Container Depot,
Tughlakabad, New Delhi - 110020

...Respondent

WITH

Customs Appeal No. 51457 of 2022 [DB]

[Arising out of Order-in-Original No. 06/2022/SG/Pr. Commr./ICD-Import/TKD dated 04.02.2022 passed by the Commissioner of Customs (Import), ICD, TKD, New Delhi]

Dinesh Kumar Verma

B-272, 3rd Floor Lok Vihar,
Pitampura, New Delhi – 110034

...Appellant

VERSUS

**Principal Commissioner of Customs-
New Delhi (ICD TKD)**

Inland Container Depot,
Tughlakabad, New Delhi – 110020

...Respondent

AND

Customs Appeal No. 52216 of 2022 [DB]

[Arising out of Order-in-Original No. 06/2022/SG/Pr. Commr./ICD-Import/TKD dated 04.02.2022 passed by the Commissioner of Customs (Import), ICD, TKD, New Delhi]

Shigura Devices & Systems Pvt. Ltd.

B-272, 3rd Floor Lok Vihar,
Pitampura, New Delhi - 110034

...Appellant

VERSUS

**Principal Commissioner of Customs-
New Delhi (ICD TKD)**

Inland Container Depot,
Tughlakabad, New Delhi - 110020

...Respondent

APPEARANCE:

Shri Vikas Sareen and Shri Akhil Krishan Maggu, Advocates for the Appellant
Shri S.K. Rahman, Authorized Representative for the Respondent

CORAM:

HON'BLE DR. RACHNA GUPTA, MEMBER (JUDICIAL)

HON'BLE MRS. HEMAMBIKA R. PRIYA, MEMBER (TECHNICAL)

DATE OF HEARING: 19.07.2024
DATE OF DECISION: **18.11.2024**

FINAL ORDER No. 59726-59728/2024

DR. RACHNA GUPTA

Present order disposes of three appeals arising out of the common Order-in-Original No. 06/2022 dated 04.02.2022 which has been assailed before this Tribunal. The facts in brief to the present adjudication are as follows:

1.1 Department had an intelligence about M/s. Mittal Impex to have been engaged in evasion of customs duty and other government taxes by way of mis-declaration with respect to brand of goods/description of goods and also through undervaluation in import of goods. Based thereupon the goods entered and declared in Bill of Entry No. 4747421 dated 10.01.2018 were examined. The goods were declared as 65" LED TV Panel unbranded with declared price of USD 225 per piece. During the course of examination, the goods were found to contain 65" curved LED TV Panels and the brand name 'Samsung' was found printed on the packing material

of goods as well as on the circuit board of the said goods. Both the observations were contrary to the declaration by the importer in the said Bill of Entry. Based on the said mis-declaration, the appellant had availed the benefit of Exemption Notification No. 50/2017 dated 30.06.2017 which was available only for parts and panels of LED TV and was not applicable while importing complete TV.

1.2 With these observations matter was further investigated. After recording various statements including that of the proprietors/Karta of the importing firms and from the scrutiny of the documents including the proforma invoices, department observed that the full TV sets in SKD conditions were ordered. The importers have been importing in past also complete TV sets in SKD condition classifiable under CTH 85287211, 85287212 and 85287213 but wrongly declaring them as the parts of TV wrongly classifying them under CTH 85299090 with the *mala fide* intent to avail the benefit of Notification No. 50/2017. The goods of Bill of Entry No. 4747421 dated 10.01.2018 were examined by the officers of SIIB, ICD-TKD, Delhi on 15.01.2018. The previous Bills of Entry No. 3792626 dated 28.10.2017 for 55" LED TV panels and Bill of Entry No. 3798724 dated 30.10.2017 for 55" LED TV parts with unit price for USD 170 and USD 11 respectively were looked into. The Bill of Entry of the Year 2016 bearing no. 7077471 dated 14.10.2016 pertaining to proforma invoice no. 16G028 dated 23.07.2016 were also looked into. From the comparison thereof and the physical examination, the department formed the opinion that the goods were ordered to be supplied as complete TV sets in

SKD form, however, those were deliberately unassembled into panels and parts and were shipped into different containers to take the inadmissible benefit of customs Notification No. 50/2017 by mis-declaring the goods as monitors with the *mala fide* intent to evade payment of appropriate customs duty. The respective Bill of Entry details vis-à-vis the recovered proforma invoices as tabled in the impugned show cause notice were also not being provided by the appellants.

1.3 In light of the above observations, department served a Show Cause Notice bearing No. 05/2018 dated 07.02.2020 on three of the present appellants alleging that M/s. Shigura Devices & Systems Pvt. Ltd. also imported LED TV sets in SKD condition/complete TV sets and adopted the same modus operandi and their activities were closely linked with M/s. Mittal Impex. The declared classification under CTH 85299090 of the goods imported under 28 Bills of Entry of M/s. Mittal Impex and under 9 Bills of Entry by M/s. Shigura Devices & Systems Pvt. Ltd. was proposed to be rejected and the benefit of Exemption Notification No. 50/2017 was proposed to be denied with the proposal of rejection of the respective declared value. The differential customs duty amounting to Rs.4,14,86,163/- in case of M/s. Mittal Impex and that of Rs.1,18,07,525/- in case of M/s. Shigura Devices and Systems Pvt. Ltd. was proposed to be recovered along with the interest from both these appellants. Penalties were also proposed to be imposed under Section 112, 114A and 114AA of the Customs Act, 1962. Penalty was also proposed to be imposed upon the third appellant

Shri Dinesh Kumar Verma, Director of M/s. Shigura Devices & Systems Pvt. Ltd. under Section 112 (a) and 114 AA of the Customs Act, 1962. The Bonds and Bank Guarantees submitted for provisional release of seized goods of M/s. Mittal Impex were proposed to not to be enforced against the impugned demand. The said proposal in totality has been confirmed by the departmental adjudicating authority vide the order under challenge. Being aggrieved the appellants are before this Tribunal.

2. We have heard Shri Vikas Sarren and Shri Akhil Krishan Maggu, learned Advocates for the appellant and Shri S.K. Rahman, learned Authorized Representative for the department.

3. Learned counsel for the appellant has submitted that the impugned show cause notice has falsely and malafidely incriminated the appellants without any iota of evidence to support the said incrimination. The allegations are based on one commercial invoice bearing No. 16G028 dated 09.09.2016 which was retrieved by the department. However, the said invoice was never found on record nor any copy thereof was provided to the appellant. The allegations of mis-declaration and undervaluation have been made against the appellant relating to the Bills of Entry of past dates. No live consignment has been saved by the department.

3.1 Learned counsel has impressed upon that appellant is importing only parts and panels vide the impugned Bills of Entry. The goods under these Bills of Entry are not at all sufficient to constitute a proper working television. The department has not

produced any chartered engineer report to support the allegations that the imported goods which were examined were sufficient and essential to be called as the complete TV set. Thus, there is no evidence to hold that the imported goods imported were the TV sets in SKD conditions. It is brought to notice that the appellants have also been locally procuring the remaining parts which are equally essential/crucial for a functional television like optical sheet, smart real engine, speed backlight engine, power board etc. The imported goods and locally procured goods are then assembled together by the appellant to manufacture the complete TV set.

3.2 It has also been mentioned that all imported goods were not meant for assembling a TV. The appellant was also engaged in trading of many of the imported goods/parts of TV. The invoices of sale of the parts in local market are impressed upon are on record. It is submitted that this response of the appellant has totally been ignored by the investigating officers to wrongly allege that number of imported parts is equal to number of TV panels imported. The sale of some of the imported goods falsifies the sole allegation that complete TV is SKD condition was imported. Thus it has wrongly been alleged that the appellants have misused the exemption benefit of Notification No. 50/2017. Admittedly, the benefit is available for importing of parts and panels of TV sets and the appellants have been importing the same and not the complete TV.

3.3 It is further mentioned that the said benefit has otherwise been availed on pre-approved basis. The appellants had duly

applied for the same and the department after verifying the documents annexed with the appellant's application like MSME Certificate, factory license, VIS registration, pollution certificate etc. has approved the appellants to claim the benefit of said notification. Once the department has given approval in favour of the appellant, it cannot allege the benefit taken by the appellant is illegal.

3.4 Learned counsel for appellants has also submitted that the department has wrongfully raised the demand for Bills of Entry for the period prior 2017 including those on which even the benefit of notification was not taken alleging that the past Bills of Entry were also imported complete TV sets. 20 old Bills of Entry out of 24 are either of the Year 2015 or Year 2016. The chartered engineer report for Bill of Entry No. 5131023 dated 03.05.2016 is impressed upon wherein the goods imported were found to be the parts of TV and the TV panels. No such report got obtained with respect to any other Bill of Entry nor even with respect to the live Bills of Entry of January 2018.

3.5 Another arguments advanced by the learned counsel is that the entire case is presumptive based on the documents retrieved as computer printouts but Section 138C of the Customs Act, 1962 has not been complied with by the department. Mere admission of Shri Harsh Mittal, the proprietor of M/s. Mittal Impex that all the printouts have been signed by him cannot prove the impugned allegation. The order under challenge reflects the complete arbitrariness on part of the department. The burden was of the

department to prove the allegations. The department has failed to bring on record the evidence even with respect to the contemporaneous imports. Though there have been allegations that the differential amount has been paid by the appellant through hawala channels but there is no evidence about any single person to whom the differential value amount would have been handed over nor any evidence about the mode of making payment of the differential amount.

3.6 Finally it is submitted that in the light of pre-approval by the department in favour of the appellant, the extended period of limitation while issuing the show cause notice in terms of Section 28(4) of Customs Act, 1962 has wrongly been invoked. To support his submissions, learned counsel has relied upon the following decisions:

(i) Commissioner of Customs, Calcutta Vs. South India Television (P) Ltd. reported as 2007 (214) ELT 3 (SC)

(ii) H.S. Chadha Vs. Commissioner of Customs (Preventive), New Delhi reported as 2021 (378) ELT 193 (Tri. Del.)

(iii) Commissioner of Customs- Nhava Sheva-III Vs. M/s. Granite India in Customs Appeal No. 50019 of 2020, CESTAT New Delhi

(iv) Aggarwal Distributors (P) Ltd. Vs. Commr. of Customs, New Delhi reported as 2000 (117) ELT 49 (Tri.)

(v) Television & Components Vs. Commissioner of C.Ex., Ahmedabad reported as 2003 (157) ELT 529 (Tri.-Mumbai)

(vi) Xing International Vs. Commr. of Cus., New Delhi (Import & General) reported as 2016 (339) ELT 283 (Tri.-Del.)

Accordingly, the order under challenge is prayed to be set aside and three of the appeals are prayed to be allowed.

4. While rebutting these submissions, learned Departmental Representative has mentioned that the show cause notice has been issued after the meticulous comparison of the proforma invoices recovered from Shri Harsh Mittal's computer and the documents annexed with the Bills of Entry. The comparison also revealed that the payment made by the appellants to their exporter corresponds to value mentioned in the proforma invoices. With respect to Bill of Entry No. 3569610 dated 10.10.2017 fabricated invoices and packing lists were found attached. The documents have clearly established that the goods were ordered to be supplied as TVs in SKD forms which were deliberately unassembled into panels and parts and were shipped into different containers to take the inadmissible benefit of S.No. 514 of Notification No. 50/2017 dated 30.06.2017 which is applicable only in respect of parts of TV. The appellant has mis-declared complete TV sets as monitors/parts and panels of TV with mala fide intent to evade the payment of customs duty. The values have also been grossly undervalues. Learned Departmental Representative in their written submission has tabulated the combination of various consignments and impressed upon that the comparison is sufficient to reveal that the appellant has imported 4436 + 13236 i.e. total number of 17672 sets of LED

TVs in SKD condition. The comparison also clarifies that total the number of imported LED TV panels are matching with total number of parts imported of LED TV of same size. It was stated that as import of consumer goods in SKD condition is restricted under the import policy, the same could not be imported.

4.1 Learned Departmental Representative has also impressed upon the General Rules for the Interpretation of the Harmonized System. Rule 2(a) thereof clarifies that the incomplete or unfinished article if has an essential complete character of complete or finished article, the same shall fall, for the purpose classification, under the CTH pertaining to the complete/finished article irrespective the goods were imported in unassembled or disassembled condition. To support his submissions, learned Departmental Representative has relied upon the following decisions:

(i) Salora International Ltd. Vs. Commissioner of C. Ex., New Delhi reported as 2012 (284) ELT 3 (SC) dated 07.09.2012

(ii) Thomson Consumer Electronics Vs. C.C., Chennai 2004 (164) ELT 292 (CESTAT) dated 28.10.2003

(iii) Varshatronics Vs. Commissioner of Customs, Chennai 1999 (106) ELT 89 (CEGAT) dated 27.11.1998

(iv) Hindustan Udyog Vs. Commissioner of C. Ex., Calcutta-III 2001 (133) ELT 405 (CEGAT) dated 20.11.2000

(v) Commissioner of Customs, Indore Vs. Hindustan Motors Ltd. reported as 2003 (156) ELT 155 (CESTAT) dated 30.06.2003

(vi) Banke Bihari Electronics Pvt. Ltd. Vs. Principal Commissioner of Customs (import), ICD-TKD, Delhi CESTAT Final Order No. 55814-55820/2024 dated 27.05.2024

(vii) Bird Retail Pvt. Ltd. Vs. Commissioner of Customs (Import), New Delhi reported as 2020 (373) ELT 267 (Tri.-Del.) dated 24.02.2020

(viii) Olympic Export Vs. C.C., New Delhi reported as 2018 (7) TMI 1803 CESTAT New Delhi dated 24.07.2018

With these submissions, learned Departmental Representative has prayed for the dismissal of the present appeal.

5. Having heard both the parties at length and perusing the entire records, we observe the moot controversy to be adjudicated in the present case is as follows:

(1) Whether the appellant had imported complete TV sets/TV sets in SKD condition or the imported goods were the parts and panels of the TV as different from the complete TV?

(2) Whether Rule 2(a) of General Interpretation Rules applies to given set of facts and circumstances?

(3) Whether the appellant is entitled for the exemption benefit of Notification No. 50/2017 dated 30.06.2017 entry at Sl.NO. 514?

(4) Whether appellant has undervalued the imported goods and has wrongly mentioned those as unbranded?

(5) Whether the extended period of limitation has rightly been invoked while issuing the impugned show cause notice?

6. **Issue No.1 & 2**

6.1 To adjudicate this issue, as can be seen from the facts that the appellants have declared the goods as parts/ components of Television and claimed classification under CTH 85299090 of Customs Tariff Act while the departmental authorities have proceeded to classify the goods as complete Television in complete knock down condition (CKD) under CTH 852872. Based on these facts department issued show cause notice dated 07.02.2020 to the appellants alleging that the items imported could constitute essential character of Television and should be assessed as such in terms of Rule 2(a) of Rules of interpretation of the Customs Tariff Schedule. Invoking the said rule, it was stated that an article which is incomplete or semi-finished, if has the essential character of complete or finished article then it has to be assessed as complete article for the purpose of classification of the goods under Customs Tariff.

6.2 Department has taken the plea that going by the language of Rule 2(a) the question whether parts or components are to be treated as article complete or finished, has to be considered at the time when those goods are presented unassembled or disassembled. As per appellant, when a dispute is raised regarding

the classification of the components as complete TV by applying Rule 2(a), it has to be solved with reference to HSN Explanatory Notes to Rule 2(a). According to HSN Notes, complete or finished articles are presented unassembled for reasons such as requirements or convenience of packing, handling and transport which is not department's case. Goods imported in completely knocked down (CKD) condition are complete goods or just a conglomeration of parts. Issues are two. First issue is if the goods in CKD/SKD condition are complete goods or not, when some parts are not there. Second, there are always exemptions for goods imported in CKD condition or as parts. The question arises about the applicability of exemption. The general principle that is applicable on these two issues is given in the statutory rules called General Rules for the Interpretation of this Schedule. The Schedule refers to both the Customs and Central Excise Schedules. The concerned Rule 2(a) says that when incomplete goods are presented before customs for clearance and they have the essential character of complete goods, they have to be classified as complete goods.

6.3 To adjudicate both these issues, we foremost perused Rule 2(a) of GRI. It reads as follows:

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 article 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) xxxxxxxxxxxxxxx

6.4 Larger Bench of this Tribunal in the case titled as **Bharat Heavy Electricals Limited vs Collector of Customs, Madras reported as 1987(28) E.L.T. 545 (Tri.LB)** has interpreted the said rule. In this case the Bench of five members had been constituted for the purpose of evolving, if possible, any general guidelines that would govern the application of the provisions of rule 2(a). It was in this connection that various earlier decisions were referred to. It was held that In order to classify the incomplete or unfinished product under the heading relevant to the complete product the condition to be fulfilled would be that as imported the incomplete or unfinished articles should have the essential character of the complete article. In page 2 of Vol. I of CCCN Explanatory notes it has been mentioned with reference to the provisions of rule 2(a) in the CCCN (which is the same as rule 2(a) in the first Schedules to Import Tariff of our Customs Tariff Act) that the provisions of that rule also apply to blanks, the term 'blank' being taken to mean an article, not ready for direct use, having the approximate shape or outline of the finished article or part, and which, other than in exceptional cases, can only be used for completion into the finished article or part. Therefore, in order to find out whether the incomplete article as imported has the essential character of the completed article the tests to be applied

would be whether the imported article has attained the approximate shape or outline of the finished article or part and whether it can only be used for completion into the particular finished article. The hon'ble bench held:

"We find that the words "essential character" have been used in rule 2(a). These words are again to be found in rule 3(b) also. In Vol.1 of the CCCN Explanatory Notes in dealing with this rule 3(b) of the CCCN [which is the same as our rule 3(b)] it has been observed that the factor which determines essential character will vary as between different kinds of goods and may be determined by the nature of the material or component, its bulk, quantity, weight or value or by the role of a constituent material in relation to the use of the goods. No doubt rule 3(b) dealt with mixture and composite goods and it was in that context that the words "essential character" had been construed in the manner mentioned above. But we feel that the test of essential character as mentioned in the CCCN under rule 3(b) would also be very relevant in construing the said words in rule 2(a) also.

It, therefore, appears that in order to apply the provisions of rule 2(a) it has to be seen (1) whether the imported product had attained the approximate shape or outline of the finished article; (2) whether the said imported article can only be used for completion into the finished article and (3) these would have to be determined with reference to the nature of the material, its bulk, quantity, weight or value. This very enumeration would therefore establish that no general principles can be laid down as to how and in what circumstances rule 2(a) could be pressed into service for assessment of the imported unfinished article. In each case the factors enumerated above would have to be taken into consideration individually, and then collectively, to determine whether the imported article had attained the approximate shape or outline of the finished article and could be used only for completion into the finished article.

In view of the above discussion we are of the view that no general and precise guidelines can be laid down regarding the considerations that should weigh as to when interpretative rule 2(a) would be applicable for assessment and when assessment will have to be done without reference to this interpretative rule 2(a) and a view has to be taken on the basis of facts of each case.”

6.5 The BSNL decision thus stipulates that if all the parts are presented in CKD condition and they have the essential character of the complete article, they have to be assessed as complete article. Goods imported separately cannot be clubbed together because they are not presented as one CKD pack at the time of import. If some non-essential items are not imported, the CKD pack can still become complete article. But if the parts missing are essential, the CKD pack cannot constitute a complete article. Issue arises which is essential and which is non-essential. This is a matter of fact and has to be decided in each case. Simply the essential parts do not make a complete article. This has also been clarified by the Board vide a Circular No.55/95-Cus dated 30.5.1995 (F. No.528/42/95-Cus.(TU)as extracted below:

**Circular No. 55/95-Cus.
dated 30/5/95**

F.No. 528/42/95 -CUS (TU)

Government of India
 Ministry of Finance
 Department of Revenue, New Delhi

Subject : Assessment of goods imported in CKD/ SKD condition.

The Board has had the occasion to examine the question of assessment of goods imported in unassembled form, particularly in the context of certain recent imports of cars in SKD kits form with the omission of a few parts like the batteries and tyres.

The question is not a new one, having been examined earlier at various levels, including the Supreme Court in the case of Sharp Business Machines v. Collector of Customs. The said Judgement was also taken note of by the Tariff Conference of 1991. A reading of rule 2 (a) of the Interpretative Rules to the First Schedule to the Customs Tariff Act, 1975, along with the Explanatory Note to this rule and the illustrations cited in the HSN

Explanatory. Notes makes it amply clear that even incomplete, unassembled articles should be assessed as complete articles, provided that when assembled the incomplete article has the essential character of a complete article. In the context of automobiles, the HSN Notes at page 1423 cites the cases of cars without batteries and tyres, or even the engines, as examples of such articles having the essential character of complete articles.

In his background, the Board once again desires the field formations to take due note of the provisions or rule 2(a) of the above said Interpretative Rules, while dealing with such cases.

Regarding import licence, the EXIM Policy restricts the imports of not only complete consumer articles but also these articles in SKD/ CKD condition or ready to assemble sets. Accordingly such imports require a specific import licence. However, in some cases it has been noticed that the various bodies of the Government like the Secretariat of Industrial Approvals, FIPB etc., have approved the projects for the manufacture of such articles, with permission to import SKD kits in the initial period. Though the import licence is a must in these cases also, still if by mistake the importers have not obtained the licence prior to the imports, they may be advised to obtain the same and the cases need not be adjudicated without giving this opportunity. In genuine cases, like in the cases of reputed manufacturers with a proper infrastructure for manufacturing activities in respect of the goods being imported and having industrial approvals for SKD imports, clearance of goods under ITC bonds may also be considered pending production of licences.

Sd/-
 (A.K. Raghunathan)
 Senior Technical Officer

6.6 Hon'ble Supreme Court in a decision in the case of **Procal Electronics India Ltd. v. Commissioner - 2005 (185) E.L.T. A58 (S.C.)**] has also held that if all the parts are presented in CKD condition and they have the essential character of a complete article, they have to be assessed as complete article. Here the Supreme Court agreed with the Tribunal and the Revenue holding that once the goods are imported in CKD condition and presented before Customs as such the goods are classifiable as complete electronic calculator. If some non-essential items are not present in the CKD pack, the latter can still become complete article as ruled in the case of **Galaxy Agencies vs.C.C.E-2009 (239) ELT 478 (Tri.)**. In the case of **Bayerische Motoren -2006 (193) E.L.T. 138 (A.A.R.)**, also it is held that Motor cars imported in CKD units without seats have to be treated as complete cars. The Tribunal in the case of **Wipro Ge Medical vs. CC, - 2006 (202) E.L.T. 141**

(Tri.) held that the CKD pack imported does not constitute a complete scanning machine because it did not contain essential parts like probes, monitor and keyboard assemblies. Simply few of the essential parts do not make a complete article. Thus the conclusion is that it has to be established that the goods together should be able to provide completeness to the main product, and such case has to be adjudged on its own facts.

6.7 In the present case, department has alleged that the goods imported along with TV panels essentially constitutes complete TV. On the ground that number of parts was equal to number of panels. The entire onus was on the department to prove the same. We do not find any evidence to that effect. The appellants have elaborated the total number of parts which constitute the complete TV i.e.:

- (1) Bezel
- (2) Crystal black panel (Cell)
- (3) Frame Middle Mold
- (4) Optical Sheet
- (5) LGP (Light Guide Plate)
- (6) LED
- (7) Bottom Chassis
- (8) Middle Cover
- (9) Rear Cover
- (10) Main Circuit Board (Main Board)
- (11) Smart Real Engine
- (12) Speed Backlight Engine
- (13) Tune/Jack
- (14) 3D Hyper Real Engine
- (15) Power Board
- (16) Ambient Light Censor
- (17) Bluetooth Module
- (18) Wifi Module
- (19) Speakers

- (20) Quad Stand
- (21) Operation Touch Button
- (22) Video Telephone Camera (MoIP)
- (23) Wall Mount
- (24) Qwerty Remote Control
- (25) 3D Glasses

It is also mentioned that following parts out of above mentioned parts have not been imported:

- (i) Optical Sheet
- (ii) LGP (Light Guide Plate)
- (iii) Smart Real Engine
- (iv) Speed Backlight Engine
- (v) Bluetooth Module
- (vi) Wifi Module

There appears no denial to this fact nor any evidence is produced by the department to prove that without these parts also, the imported goods were complete TV in CKD condition.

6.8 learned counsel for appellant also raised the point that Goods imported separately cannot be clubbed together as discussed in the following cases. The Tribunal in the case of **P.R. Trivedi vs. CC - 2005 (192) E.L.T. 801 (Tri. - Mumbai)** held that if the goods are imported and presented by different importers they cannot be allowed to be treated as complete car cassette player. Even if they are imported by the same importer but in different consignments, they still do not become complete article since they are not presented together as a complete article in CKD condition as was also held by the Hon'ble Supreme Court in the case of **C.C., Delhi vs. Sony India-2008 (231) ELT 385 (SC)**.

6.9 But we simultaneously observe that the core dispute as to whether the different parts imported under more than two/ several Bs/E spread over certain period can be combined together for the purpose of assessment by applying Rule 2(a), of the Interpretative Rules, has been considered by hon'ble Apex Court in the case of **Girdharilal Bansidhar v. Union of India - AIR 1964 (SC) 1519** wherein the Apex Court observed as follows :-

"..... We cannot accede to the position that it is the intention of the rule that importers are permitted to do indirectly what they are forbidden to do directly, and that it permits the importation separately of components which have no use other than as components of an article whose importation is prohibited, and that an importer is thereby enabled to assemble them here as a complete article though if they were assembled beyond the Customs Frontiers the importation of the assembled article into India is prohibited."

6.10 This decision when read with the decisions discussed above, we hold that the ultimate requirement for invoking Rule 2(a) of GRI is that the goods imported during the proximate time should include such number of parts as are sufficient to consider the goods as the complete article, as different from being mere parts.

6.11 Reverting to the facts of the present case, we observe that the show cause notice has alleged misdeclaration with respect to 24 consignments. Most of them (20) are pertaining to Year 2015 and 2016. Three pertains to Year 2017. The goods of Bill of Entry of 2018 dated 10.01.2018 were examined by the officers of SIIB, ICD,

TKD, Delhi. This perusal makes it clear that there is no proximity of time while importing different parts of TV and the LED TV panels. Otherwise also, the burden was on department to prove that the imported goods together constitute the complete TV. The Hon'ble Supreme Court in the case of **Commissioner of Customs, Calcutta Vs. South India Television (Pvt.) Ltd. reported as 2007 (214) ELT 3 SC** has held that; it is for the department to prove that what is apparent is not real. The import of parts/components of TV apparently in different consignments is alleged to be the import of complete TV in reality and department had to prove the alleged reality. The cogent evidence would have been the report of expert but the goods of live consignment admittedly not get examined by the expert (Chartered Engineer). Hence it stands unproved/unestablished that all the parts and components as have been imported by the appellant during the Year 2015, 2016, 2017 and in the Year 2018 are sufficient to have the essential character of TV. The department has merely proceeded based on the presumption that number of imported LED Panels is same as the number of other parts of the TV as have been imported by the appellant during the proximate time. The said allegation has been falsified by the sale invoices showing sale of few of the imported goods. There is no rebuttal of department to those invoices. Rather the invoices are sufficient to falsify the department's plea that the imported goods have same number of parts as that of the imported LED Panels which amounts to importing complete TV in SKD condition. We hold that due to lack

of this evidence, Rule 2(a) of General Rules of Interpretation has wrongly been invoked.

6.12 We also observe from the record that with respect to the Bill of Entry No. 5131023 dated 03.05.2016 the department had earlier got consignment of the appellant examined. The appellant had declared the consignment as LED monitors. The Chartered Engineer vide its report dated 11.05.2016 has made the following observations:

- 1. Valuation of above stated LED monitors has been checked from ZAUBA website for clearance of similar consignments of unbranded monitors at various ports in India. The valuation is in order*
- 2. These monitors can be used solely with automatic data processing system such as computers*
- 3. These monitors do not have any TV tuners in it and hence they can't be used as TELEVISION RECEPTION APPARATUS*
- 4. As regards HDMI slots in the back of LED DISPLAY monitors, they have been provided for PUBLIC ADDRESS system*
- 5. Difference between TV and computer monitor is that TV is set up to receive over the air broadcast signals and have inputs that work with cable or set top box or game consoles or DVD players while computer monitor is designed to work only with computer or automatic data processing system.*

6.13 The perusal of this report reveals that the TV is a complicated electron i.e. product and a product namely LED panel in itself is highly insufficient to be called as TV. There are many other parts and components which are collectively required to hold that the LED monitor has an essential character of being called as TV. As

already held department has not got the technical evaluation done about the impugned imported goods. We hold that there is no evidence produced by the department to prove the allegations.

6.14 For better appreciation of the facts, we also need to know as to what constitutes TV. As per the dictionary meaning, TV is an electronic system of transmitting transient images of fixed or moving objects together with sound over a wire or through space by apparatus that converts light and sound into electrical waves and reconverts them into invisible light and audible sounds. The Department of Electronics, Government of India vide their Letter No. 22(1)/93/Exp dated 10.08.1993 have clarified as to what constitutes a TV set. The letter explains that in an automatic assembly line of TV assembly, the components essentials are pre-programmed and it is difficult to eliminate few components. This literature has earlier been dealt with by this Tribunal, Mumbai Bench, in the decision titled as **Television and components Vs. Commissioner of Central Excise, Ahmedabad reported as 2003 (157) ELT 529**. In the said case, it was held that a TV set with hand held remote control unit will only constitute a complete TV set.

6.15 We have also perused the literature about smart TV; piece by piece as provided by the appellant. According to the said literature, complete TV set has as many as 25 main essential parts as already mentioned above. The decision in **Sony India (supra)** as quoted above has already appreciated about the technicality of the

manufacturing procedure of TV and the several number of parts required to give any monitor, the essential character of TV.

6.16 Similar allegations were leveled against the appellants in the Year 2016. But the report of expert (Chartered Engineer) falsified the allegations. Once no discrepancy was found in the consignment imported by the appellant on 03.05.2016, no question arises for any discrepancy when the same appellant has imported the same parts and components in subsequent year especially where there is no evidence to prove the allegations. The department has relied upon the decision of Hon'ble Supreme Court in the case **Salora International Ltd.** (supra) but we observe that the facts of that case are different from the present one. In the said case it was only TV receiver which was not imported along with the other parts of the TV including the LED panels. Those parts were otherwise complete parts of the TV except for TV receiver. Also in that case the appellant used to assemble all parts to the TV receiver to make the complete TV sets. The TV receivers were also upgraded in the manufacturing unit of the said appellant. The manufactured TV receivers after being completely manufactured were used to be disassembled along with the relevant material and the individual serial numbers to be sent to various satellite units where those receivers used to be reassembled. It is in the light of these facts that the Hon'ble Apex Court had concluded that the imported goods had the essential character of being called the TV receivers/TVs.

6.17 In the light of above discussion, we hold that the imported goods are the parts and components of the TV as different from the complete TV in SKD condition and Rule 2 of GRI cannot be invoked in such situations. Both the issues therefore stand decided in favour of the appellants.

7. **Issue No. 3**

Entry at Serial No. 514 of Notification No. 50/2017 dated 30.06.2017 reads as follows:

514	8529	LCD (Liquid Crystal Display), LED (Light Emmitting Diode) or OLED (organic LED) panels for manufacture of television.	Nil	-	9
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7.1 In light of the discussion at Issue No. 1 since it has been held that appellant has imported LED panels along with few of the parts of TV for manufacturing and few essential parts have not been imported. Also some of the imported goods have been sold by the appellants to other TV manufacturers. Hence the imported goods cannot be called as complete TV but the parts thereof. The above noted entry exempts the import of parts for manufacture of TV from payment of duty, hence, appellant is held entitled for the benefit of the said notification. With these observations, we decide this issue also in favour of the appellants-importers.

8. **Issue No. 4**

8.1 As apparent from show cause notice the allegations of undervaluation have been leveled based on the higher amount found mentioned in performa invoices as got retrieved by the proprietors of the importing firms from their e-mail IDS got opened by them in the Office of SIIB at the computer systems of the said office. Primarily the admissibility of computer print-outs has been objected by the appellant for want of certificate as required under Section 138C of the Customs Act which talks about the admissibility of micro films facsimile copies of documents and computer print outs as document and as evidence. The decision of Hon'ble Supreme Court in the case of **Anvar P.V. Vs. P.K. Basheer reported as 2017 (352) ELT 416 (SC)** as relied upon by the appellant is perused. It is observed that while dealing with Section 65B of the Evidence Act, 1872 (Pari materia to Section 138C of the Customs Act, 1962), Hon'ble court has held as under:

14. Any documentary evidence by way of an electronic record under the Evidence Act; in view of Sections 59 and 65A, can be proved only in accordance with the procedure prescribed under Section 65B.- Section 65B deals with the admissibility of the electronic record. The purpose of these provisions is to sanctify secondary evidence in electronic form, generated by a computer. It may be noted that the section starts with a non obstante clause. Thus, notwithstanding anything contained in the Evidence Act, any information contained in an electronic record which is printed on a paper, stored, recorded or copied in optical or magnetic media produced by a computer shall

be deemed to be a document only if the conditions mentioned under sub-section (2) are satisfied, without further proof or production of original.

15. Under Section 65B(4) of the Evidence Act, if it is desired to give a statement in any proceedings pertaining to an electronic record, it is permissible provided the following conditions are satisfied:

(a) There must be a certificate which identifies the electronic record containing the statement;

(b) The certificate must describe the manner in which the electronic record was produced;

(c) The certificate must furnish the particulars of the device involved in the production of that record;

(d) The certificate must deal with the applicable conditions mentioned under Section 65B (2) of the Evidence Act, and

(e) The certificate must be signed by a person occupying a responsible official position in relation to the operation of the relevant device.

16. It is further clarified that the person need only to state in the certificate that the same is to the best of his knowledge and belief. Most importantly, such a certificate must accompany the electronic record like computer printout, compact disc (CD), video compact disc (VCD), pen drive, etc., pertaining to which a statement is sought to be given in evidence, when the same is produced in evidence. All these safeguards are taken to ensure the source and authenticity, which are the two hallmarks pertaining to electronic record sought to be used as evidence. Electronic records being more susceptible to tampering, alteration, transposition, excision, etc., without such safeguards, the whole trial based on proof of electronic records can lead to travesty of justice.

17. Only if the electronic record, is duly produced in terms of Section 65B of the Evidence Act, would the question arise as to

the genuineness thereof and in that situation, resort can be made to Section 45A-opinion of Examiner of Electronic Evidence.

18. The Evidence Act does not contemplate or permit the proof of an electronic record by oral evidence if requirements under Section 65B of the Evidence Act are not complied with, as the law now stands in India.

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"22. The evidence relating to electronic record, as noted hereinbefore, being a special provision, the general law on secondary evidence under Section 63 read with Section 65 of the Evidence Act shall yield to the same. Generalia specialibus non derogant, special law will always prevail over the general law, it appears, the Court omitted to take note of Sections 59 and 65A dealing with the admissibility of electronic record, Sections 63 and 65 have no application in the case of secondary evidence by way of electronic record; the same is wholly governed by Sections 65A and 65B. To that extent, the statement of law on admissibility of secondary evidence pertaining to electronic record, as stated by this Court in Navjot Sandhu case, does not lay down the correct legal position. It requires to be overruled and we do so. An electronic record by way of secondary evidence shall not be admitted in evidence unless the requirements under Section 65B are satisfied. Thus, in the case of CD, VCD, chip, etc., the same shall be accompanied by the certificate in terms of Section 65B obtained at the time of taking the document, without which, the secondary evidence pertaining to that electronic record, is inadmissible.

8.2 The Hon'ble Supreme Court in the case of **Arjun Panditrao Khotkar Vs. Kailas Kishanrao Goratyal reported as 2020 SCC 1 SC** has upheld the above findings while agreeing with the finding that Section 65B is a complete code in itself for the admissibility of electronic evidence and shall not be affected by other provisions of

the Evidence Act. The Hon'ble Apex Court in **Anvar v. Basheer (supra)** also held that – "...if an electronic record as such is used as primary evidence under Section 62 of the Evidence Act, the same is admissible in evidence, without compliance with the conditions in Section 65 B of the Evidence Act." Justice Nariman clarified that this dictum should be read by omitting the words "under Section 62 of the Evidence Act." This is because Section 65B is a complete code for electronic evidence and shall supersede other provisions such as Section 62. Justice Nariman implies here that it is not necessary to refer to Section 62, as Section 65B(1) itself distinguishes between the original electronic record and the secondary copies of the electronic record..

8.3 After perusing the record of the case, we note that in the present case the computer print outs of the performa invoices have not been retrieved by the officers of the department nor from the seized laptop. But were retrieved by the appellant himself from his e-mail ID except that he opened his mail on the computer system installed in SIIB, ICT TKD, Delhi. None can alter the extract of appellant's e-mail except appellant himself or the authorized accessor to his mail account. The same is not the fact of the present case. Hence the print out of the performa invoices are held to be the primary evidence which is admissible as evidence without complying with Section 138C (2) of Customs Act.

8.4 Reverting back to the allegations of undervaluation based on difference in value mentioned in performa invoices retrieved by

appellant himself from his mail ID. We observe that the only evidence produced by the department to discharge their burden is the performa invoices as apparent from Para 42 of show cause notice. Though this document is held admissible in evidence in view of discussion above, but performa invoice cannot be the sole document to prove alleged undervaluation. We draw our support from the decision of this Tribunal in the case of **H.S. Chadha Vs. Commissioner of Customs reported in 2021 (378) ELT 193 (Tri.Del.)**, wherein it is held that enhancement of value of imported goods solely based on parallel invoices/performa invoices existed on e-mails exchanged between importer and supplier of goods and statements of director of importer companies is not sustainable when his statements recorded on various occasions are conflicting and the e-mails have not been the relied upon documents. Same are the facts of the present case. The relevant para reads as:

Valuation (Customs) - Undervaluation of imported tyre - Enhancement of value of imported goods solely based on parallel quotations/invoices existed on e-mails exchanged between importer and supplier of goods and statement of Director of importer companies, not sustainable when his statements recorded on various occasions conflicting and such e-mails never made part of Relied upon Documents and also not admissible in evidence in absence of compliance of provisions of Sections 138C and 139 of Customs Act, 1962 Tyres are regularly imported all over country and, therefore, Department could have easily garnered evidence of contemporaneous imports which it admittedly did not do In absence of any contemporaneous import data/NIDB data of

identical or similar items or any allegation of buyer and seller being related or any extra payment made by importer, declared value cannot be rejected particularly alleging undervaluation when imported goods not prohibited and freely importable - Section 14 of Customs Act, 1962.

8.5 In this decision itself, it has been held that it is trite law that since the goods were assessed by proper officer based on transaction value, onus lies on the Revenue to prove undervaluation, which it has failed miserably to do so since it did not show any contemporaneous import data of identical or similar items or NIDB data to indicate undervaluation and therefore the invoice value is required be accepted as the transaction value itself instead of being discarded. We draw our support from the judgement of the Hon'ble Supreme Court in the case titled as **CCE Vs Sanjivani Non-Ferrous Trading Pvt. Ltd. MANU/SC/1456/2018: (2019) 2 SCC 378 and CC Vs South India Television Pvt. Ltd. MANU/SC/2966/2007: (2007) 6 SCC 373**. We find that there is no allegation or finding that the buyer and seller being related or of any extra payment to the supplier beyond the normal authorized banking channels and thus undervaluation is not established.

8.6 Even Tribunal Mumbai in the case of **CCE Pune IV Vs. S.S.Engineers reported in 2014 (313) ELT 429 (Tri. Bom)** held that :

"We do agree with the observations of the adjudicating authority that proforma invoice has no legal sanctity in the eyes of law and same cannot be basis for the demand of differential duty. It is also

an admitted fact that these proforma invoices were not accepted by the buyers and no payment was made by the buyers to the respondent as per these proforma invoice. Therefore, the question of demand of differential duty does not arise. Accordingly, Revenue's appeals deserve no merit, hence it is dismissed."

8.7 Further, we observe that mere suspicion on invoice produced cannot be the ground to reject transaction value. We rely upon the decision of Hon'ble Supreme Court also in the case of **Commissioner of Customs, Calcutta Vs. South India Television (P) Ltd. reported as 2007 (214) ELT 3 (SC)** has held as follows:

"what has to be seen by the Department is the value or cost of the imported goods at the time of importation, i.e., at the time when the goods reaches the customs barrier. Therefore, the invoice price is not sacrosanct. However, before rejecting the invoice price the Department has to give cogent reasons for such rejection. This is because the invoice price forms the basis of the transaction value. Therefore, before rejecting the transaction value as incorrect or unacceptable, the Department has to find out whether there are any imports of identical goods or similar goods at a higher price at around the same time. Unless the evidence is gathered in that regard, the question of importing [Section 14\(1A\)](#) does not arise. In the absence of such evidence, invoice price has to be accepted as the transaction value. Invoice is the evidence of value. Casting suspicion on invoice produced by the importer is not sufficient to reject it as evidence of value of imported goods. Under- valuation has to be proved. If the charge of under-valuation cannot be supported either by evidence or information about comparable imports, the benefit of doubt must go to the importer. If the Department wants to allege under-valuation, it must make detailed inquiries, collect material and also adequate evidence. When under-valuation is alleged, the Department has to prove it by evidence or information about comparable imports. For proving under-valuation, if the

Department relies on declaration made in the exporting country, it has to show how such declaration was procured. We may clarify that strict rules of evidence do not apply to adjudication proceedings. They apply strictly to the courts' proceedings. However, even in adjudication proceedings, the AO has to examine the probative value of the documents on which reliance is placed by the Department in support of its allegation of under-valuation. Once the Department discharges the burden of proof to the above extent by producing evidence of contemporaneous imports at higher price, the onus shifts to the importer to establish that the invoice relied on by him is valid. Therefore, the charge of under-invoicing has to be supported by evidence of prices of contemporaneous imports of like goods. [Section 14\(1\)](#) speaks of "deemed value". Therefore, invoice price can be disputed. However, it is for the Department to prove that the invoice price is incorrect. When there is no evidence of contemporaneous imports at a higher price, the invoice price is liable to be accepted. The value in the export declaration may be relied upon for ascertainment of the assessable value under the Customs Valuation Rules and not for determining the price at which goods are ordinarily sold at the time and place of importation. This is where the conceptual difference between value and price comes into discussion."

8.8 We further observe that the parts of TV which were imported in the past by the appellant, before detaining the live consignments of Bill of Entry No. 4747421 dated 10.01.2018 were released from the customs and there was no objection raised by the custom department at the time of clearance of those past consignments/goods. We also observe that goods imported under Bill of Entry given in table in Para 17 of show cause notice seized vide seizure memo dated 05.03.2018 have been reassessed and provisionally released at value of Rs.8,85,90,372/- vide order dated 05.04.2018. Goods seized under seizure memo dated 17.01.2018

from the office premises of the appellant and reassessed at Rs.33,52,150/- and provisionally released vide order dated 11.05.2018. It there was any flaw in the imports of the goods, as alleged why the department did not took opinion of a customs empanelled independent chartered engineer, who could make and assemble the entire television to prove the stand of the department prior provisionally releasing the goods exercise was never done.

8.9 We also draw our support from the decision in the case of **Xing International Vs. Commissioner of Customs, New Delhi, Imports reported as 2016 (339) ELT 283 (Tri. Del.)** where the imported LED panels have been distinguished from LED TV panels (computer). As already hold above, there is no evidence about any chartered engineer report to technically hold that the goods of 19 live Bills of Entry of 2018 were complete TV in CKD condition. The Bills of Entry of 2015 and 2016 have also been questioned. For one of the Bill of Entry of 2016 there was the Central Excise report holding the imported goods are not complete TV. In the give circumstances it is held that department since has failed to prove that the goods are undervalued. The transaction value of commercial invoices has to be accepted in terms of Rule 14 of Valuation Rules.

8.10 Coming to the allegations about goods being branded, it is the case of the appellant that TV is not of Samsung brand rather it only the chip set which has to be installed while manufacturing TV, is of Samsung brand. There is no evidence of the department to

falsify the same. On the contrary to prove that the 65' TV is unbranded appellant has supplied the copy of certificate issued by foreign supplier (XIN YING GLOBAL LTD) dated 22.01.2018 vide letter dated 23.01.2018 and 15.02.2018 which clearly states that the only part which is of Samsung brand in 65' TV set is the internal chip set. It was also mentioned in said certificate that the description, 'Samsung' mentioned (Samsung) on carton boxes is only customized in reference to show that Samsung IC used in main board so the customs labor doesn't need to take out the panel out of packing in production during normal course. Department has failed to falsify said certificate and has also failed to produce any evidence to discharge their burden of proving the imported goods to be branded 'Samsung' products. On the contrary the appellant in person had produced the panel and chip and to show that no brand was mentioned as the pane. 'Samsung' was embossed only on a chip. Department could not deny the fact it is rather on record that examination results with respect to live Bills of Entry were never provided to the appellant which they obtained through an application under Right to Information Act. In light of the entire discussion, we hold that the imported parts and TV panels were unbranded. Packing material of 'Samsung' brand was used out of exporter's own wisdom.

8.11 We further observe that a PUBLIC NOTICE NO. 136/2018 dated 08.10.2018. talks about Strict compliance of provisions of Electronics and Information Technology Goods (Requirement for

Compulsory Registration) Order, 2012 as amended at the time of assessment, registration and examination mandates about:

LABELLING REQUIREMENT: 6. It has been the legal requirement under the said "RCR Order" that the Standard Mark shall be placed on the product & the packaging both. However, if it is not feasible to place the same on the product for size constraints, it can be put on the packaging only. For the products with display screen, provisions of e-labelling of products also exist. Label should display the Standard Mark as notified vide Gazette No. 2559 dated 01st December 2015. BIS does not permit the use of stickers for display of BIS Standard Mark on any of the products under its product certification scheme.

8.12 In the present case the label of Samsung brand was only on packing material. It is not the case of the department that other components were too small in size to have labels of brands. It is also nowhere denied that the Samsung Brand was affixed only on Chip in addition to be affixed on the packing material. Chip is admittedly of Samsung Brand but rest all the imported parts/components are denied to be branded. Department has failed to get the imported goods examined by the Chartered Engineer. (CE) Earlier Bill of Entry no. 5131023 dated 03.05.2016 of the year 2016 importing similar goods was detained and the goods were got examined by the CE. Hence the present case is neither of mis-declaration vis-à-vis brand name nor of undervaluation. This issue also stands decided in favour of the appellants.

9. Issue No. 5

9.1 The allegations of the department are that the appellant has declared the imported goods as LED panels and parts of TV unbranded, however on the examination the goods were found to be LED curved panels of Samsung brand. The brand was embossed on a chip in the consignment and the brand stickers were also affixed on the packing material of the consignment. Since the observation falsifies the declaration, it becomes the case of suppression of material facts and the extended period of limitation is mentioned to have been rightly invoked. On the contrary the submissions of appellants have been that the LED panels were unbranded. The only branded part was the electronic chip which was to be inserted on the mother board while manufacturing the TV. With respect to the stickers of Samsung brand on the packing material the defense put forth is that it has been the mistake of the exporter. The certificate of the exporter to this effect has been relied upon. Learned counsel while falsifying the allegations of suppression and misrepresentation has also mentioned that in fact the department has failed to act fairly, the details of the Bills of Entry about the examination of the goods with respect to 14 number of Bills of Entry was not provided to the appellant. It is vide an application dated 22.05.2020, the appellant obtained those details by filing an application dated 12.06.2020 under RTI Act. In response to the said application print outs of the screenshots of the examination order in respect of Bill of Entry taken from ICES were

provided to the appellant except for the Bill of Entry No. 6408733 dated 19.08.2016. The perusal of those screenshots revealed that the import consignments of the appellants were found to contained the spare parts and the LED monitors of 15", 17" and 19". None of those examination reports had alleged the goods to be branded goods. The allegations that same number of parts of TV as the number of panels imported shows that import was for TV in CKD condition. But, as already discussed above appellants have submitted the records of selling the goods into local market along with applicable GST and the receipts of the goods sold and bank statement showing the payment for the selling of imported goods into market were provided by the appellants which have not been taken into consideration.

9.2 The appellants, admittedly, have all the necessary permissions to carry out manufacturing as well as assembling of all the local products in his warehouse. The GST Certificate, BIS Certificate, ITR Returns of last 3 years, MSME Registration Certificate, Pollution Certificate, Factory Licenses MCD, Procedure of BIS Making were also duly submitted by the appellant. Thus every fact was already in the knowledge of the department. These observations are sufficient for us hold that there is no *mala fide* nor any mis-declaration found on part of the appellant. There is no evidence by the department that the consignments in question have different goods than those which were imported in the year 2016. The burden of proving the allegations was upon the revenue.

9.3 In the light of above discussion, we hold that the extended of limitation has wrongly been invoked. Show cause notice itself is held barred by time. This issue also stands decided in favour of the appellant and against the department.

10. In the totality of the discussion on all five issues, we hold that appellant is entitled for the duty exemption benefit of Notification No. 50/2017. There is no evidence of alleged mis-declaration and undervaluation. The order imposing penalties is also not sustainable. Accordingly, the order under challenge confirming differential demand and imposing penalties on three of the appellant is hereby set aside. Consequent to entire above discussion, the appeals are hereby allowed.

[Order pronounced in the open court on **18.11.2024**]

(DR. RACHNA GUPTA)
MEMBER (JUDICIAL)

(HEMAMBIKA R. PRIYA)
MEMBER (TECHNICAL)

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