

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI**

PRINCIPAL BENCH – COURT NO. 1

CUSTOM APPEAL NO. 55671 OF 2013

[Arising out of Order-in-Original No.33/NLB/ADJ/2012 dated 08.11.2012 passed by the Commissioner of Customs (I & G), New Delhi]

M/s. Kajaria Ceremics Ltd.

..... Appellant

19 K.M. Stone, Bhiwadi-Alwar Road,
Village Galipur, Alwar (Rajasthan)

Versus

Commissioner of Customs (I & G)

.....Respondent

New Customs House, Near IGI Airport,
New Delhi- 110037

AND

CUSTOM APPEAL NO. 55672 OF 2013

[Arising out of Order-in-Original No.33/NLB/ADJ/2012 dated 08.11.2012 passed by the Commissioner of Customs (I & G), New Delhi]

Shri Gyan Prakash Nirmal

..... Appellant

(M/s. Kajaria Ceremics Ltd.)
19 K.M. Stone, Bhiwadi-Alwar Road,
Village Galipur, Alwar (Rajasthan)

Versus

Commissioner of Customs (I & G)

.....Respondent

New Customs House, Near IGI Airport,
New Delhi- 110037

APPEARANCE:

Shri G.K.Sarkar and Shri Prashant Shrivastava, Advocates for the Appellant
Shri Shashi Kant Sharma, Authorized Representative for the Department

CORAM :

HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT

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

Date of Hearing:20.02.2025
Date of Decision:21.05.2025

FINAL ORDER No.50750-50751/2025

HEMAMBIKA R. PRIYA:

The present two appeals arise out of the common Order-in-Original No. 33/NLB/ADJ/12 dated 08.11.2012 passed by the Commissioner of Customs (I&G), New Delhi against M/s. Kajaria Ceremics Ltd. and Shri Gyan Prakash Nirmal¹ (Vice President), whereby the demand of Rs. 50,36,786/- was confirmed and penalties imposed on the appellant.

2. The brief facts are that investigations were undertaken by DRI in respect of import of two Ink jet Printers by the appellant vide Bill of Entry No. 3967742 dated 02.07.2011 and Bill of Entry No. 4414865 dated 20.08.2011. The said Ink jet Printers were imported by the appellant by classifying them under Custom Tariff Sub-Heading² 844332 at NIL rate of duty. However, the Department was of the opinion that the said printers were classifiable under CTSN 844339 wherein the applicable rate of Customs duty was @ 7.5%. Searches were conducted by the DRI Officers at the factory premises of the appellant, where one more printer, in addition to the subject two printers, was found installed. The said printers had been imported vide Bill of Entry No. 2409364 dated 08.12.2010 and the appellant had classified the same under

-
1. the Appellants
 2. CTSN

Customs Tariff Item³ 8443 39 90. Thereafter, statements of Shri Gyan Prakash Nirmal, then Vice President in Appellant company and Shri Lalit Chander Sharma were recorded. On completion of the investigations, the instant show cause notice was issued demanding differential Customs Duty of Rs. 50,36,786/- in respect of printers imported vide Bills of Entry Nos. 3967742 dated 02.07.2011 and 4414865 dated 20.08.2011 under Section 28(4) of the Customs Act, 1962, along with applicable interest under Section 28 AA of the Customs Act, 1962. Further, penalty under Section 114A and 112 (a) was also proposed. The show cause notice was adjudicated vide the impugned order confirming the demand under Section 28 (4) along with interest and imposing penalty equal to the duty under the provisions of Section 114A of the Customs Act

3. Learned Counsel submitted that the issue in the present case, is whether the subject goods (Ink jet Printers) imported by the appellant are appropriately classifiable under CTSN 844332 or CTSN 844339. He submitted that the appellant has however deposited the differential duty i.e, Rs. 50,36,786/- along with interest and 25% of mandatory penalty under protest.

3.1. Learned Counsel further submitted that Customs Tariff Heading⁴ 8443 can be divided into three parts as is evident from three single dash (-) entries which are given below:

3 **CTI**
4 **CTH**

- (i) Printing machinery used for printing by means of plates, cylinder and other printing component of heading 8442.
- (ii) Other printers, copying machine and facsimile machine, whether or not combined; **and**,
- (iii) Parts and accessories.

3.2. In the present case, learned counsel contended that the appellant is concerned with the goods as indicated in (ii) above. He further added that this category can be further divided into three sub - categories, as is evident from double dash (--) entries of the above category:

- (a) Machines which perform two or more of the functions of printing, copying on facsimile transmission, capable of connecting to an automatic data processing machine⁵ or to a network
- (b) Other capable of connecting to an automatic data processing machine or to a network; **and**
- (c) Other machine / printers not covered under the above mentioned two categories i.e, which are not capable of connecting to an automatic data processing machine or to a network.

3.3. Thus, learned counsel submitted that Printers which are capable of connecting to an ADP machine or to a network, would

be classifiable under CTSN 844332. However, he submitted that, if the printers are not capable of connecting to an automatic data processing machine or to a network, then the same would be classifiable under CTSN 844339.

3.4. Learned counsel drew attention to the Circular No. 11/2008 - Cus dated 01.07.2008, which reads as below:

" ..These "Other printers" are further classified under two sub-groups depending upon the criterion that whether they are capable of connecting to ADP machine. The term 'capability of connecting to an ADP machine' has also been defined in the sub-heading notes:

(i) Printers covered by heading 8443 31 are printers which are capable of carrying out more than one function of printing, copying, facsimile transmission AND must be capable of connecting to a ADP machine or to a network.

(ii) Printers covered by heading 8443 32 are printers which do not carry out any other function other than printing BUT must be capable of connecting to an ADP machine or to a network. These are further classified in to various headings depending upon different technology. 8443 32 90 covers other printers that are connectable to ADP machine or to a network, which use technology other than those specified under tariff items from 8443 32 10 to 8443 32 60.

(iii) Printers covered by heading 8443 39 are printers other than those which are connectable to an ADP machine or to a network."

3.5. Learned counsel stated that the term "connectable to an ADP machine or to a network" for the purpose of subheadings 8443.31 and 8443.32 has been explained in the Explanatory Notes which is extracted in the aforesaid circular, which reads as follows:

"The criterion "capable of connecting to an automatic data processing machine or to a network" denotes that the apparatus comprises all the components necessary for its connection to a network or an automatic data processing

machine to be effected simply by attaching a cable. The capability to accept the addition of a component (e.g., a "card") that would then allow the connection of a cable is not sufficient to meet the terms of these sub-headings. Conversely, that the component to which a cable would-be connected is present but inaccessible or otherwise unable to effect a connection (e.g., switches must first be set) is not sufficient to exclude goods from these sub-headings."

3.6 Learned Counsel stated that it is apparent that connectability is the criterion to determine as to whether the subject printers are classifiable under CTSN 844332 or under CTSN 844339. If the subject printers are connectable to an automatic data processing machine or to a network, it would be classifiable under CTSN 844332 and if the same are not connectable to another ADP or to a network, it would be classifiable under CTSN 844339.

3.7 Learned counsel further contended that in the present case, panchama drawn during the course of search at factory premises of the appellant records that one of the subject printers (imported vide Bill of Entry No. 4414865 dated 20.08.2011) and one printer imported earlier (vide Bill of Entry No. 2409364 dated 08.12.2010) were connected with another computer, however, the printer imported vide Bill of Entry No.3967742 dated 02.07.2011 was not connected. The same Panchnama also records that there was no difference in functioning of said printers. Thus, if two printers were connected to another computer, third could also be connected. Thus, it is evident that both the subject printers fulfil the criterion of capable of being connected to another ADP machine or to network which is the essential requirement of classification under CTSN 844332. Further, Sh. Gyan Prakash Nirmal, Vice President of

the appellant, in his statement dated 14.01.2012, on being asked as to whether the subject printers had been connected to any computer/ADP machine in factory premises, clearly stated that two of said machines had been connected with another computer.

3.7. Learned Counsel relied on the decision of CESTAT, in case of **Monotech Systems Ltd. vs. Commissioner of Customs (Import), Chennai**⁶ which had relied upon earlier decision in case of **Monotech Systems Limited vs. Commissioner**⁷ wherein the Tribunal after considering all the relevant Tariff Entries, Circular No. 11/2008 and HSN Explanatory Notes, had held that the subject printers were classifiable under CTSH 844332 in view of the fact of availability of components for connecting said printer to a network. The Tribunal in case of **Aztec Fluids And Machinery Pvt. Ltd. vs. Commissioner of Customs, Ahmedabad**⁸ has followed the said two decisions. In view of aforesaid decisions of the Tribunal, learned counsel submitted that the subject printers in instant case are appropriately classifiable under CTSH 844332 attracting nil rate of duty at the relevant point of time.

3.8. Learned Counsel further stated that for classification of an item under a particular heading, the terms of that heading should first be applied and then the Section Notes & Chapter Notes and thereafter, Rules of Interpretation and other provisions should be looked into. In the instant case, the term pertaining to CTSH

6. (2024) 18 Centax 226 (Tri-Mad)

7. 2020 (373) ELT 718 (Tribunal)

8. (2024)14 Centax 174(Tri-Ahmd)

844332, is connectability of printers to an ADP machine or to a network while the term pertaining to CTSN 844339 is non-connectability of printers to an ADP machine or to a network. Thus, for determining the appropriate classification of subject printers between two contesting CTSN i.e, 844332 and 844339, the only thing is to be looked into in the present case is connectability of subject printers to any other ADP machine or to a network but not the fact of having or not having in-built ADP. In this context he relied upon the Supreme Court's judgement in **Salora International Ltd. vs. Commissioner of Central Excise, New Delhi**⁹ in which it was held that for legal purposes, classification "shall be determined according to the terms of the headings and any relevant section or Chapter Notes".

4. Learned authorised representative submitted that the imported inkjet printers were found to be capable of independent operation, making them classifiable under CTN 84433910. He contended that the appellant had misclassified the machines to avail the benefit of lower duty rate. These machines should have been classified under CTSN 8443 39, attracting 7.5% customs duty. The classification chosen by the appellant was incorrect, as it did not fully describe the technical capabilities of the imported goods. The department's reliance on past cases supported the reclassification, showing consistency in tariff application. The CHA's

9. 2012(284) ELT 3 (SC)

failure to verify product details was seen as a lapse in due diligence.

5. Learned authorised representative submitted that the Commissioner had found that the appellant had prior knowledge of the correct classification but still chose a different one in order to avail the benefit of the nil rate. The penalty and duty demand were based on the findings of misclassification and intent to evade duty. The redemption fine of Rs. 50,00,000/- was imposed to deter future misclassification attempts.

6. We have heard the learned counsel for the appellant and the learned authorised representative for the Department.

7. The current two appeals raise the following issues for our consideration:

- Whether the goods are correctly classifiable under CTI 84433250 or under CTH 84433910?
- Whether the appellant deliberately misdeclared the goods with an intention to evade payment of customs duty?
- Whether the penalties and confiscation ordered are sustainable?

7. At the outset we note that the foundational distinction between 'Inkjet Printers' under CTSN 8443 32 and 'Inkjet Printing Machines' under CTSN 8443 39 lies in their functional dependence

on an ADP machine for executing print jobs. We note further the product brochures and technical manuals indicate that the impugned machines were expressly marketed as digital inkjet printing systems with in-built processing capability, operating systems, control interfaces, and independent command execution modules. The catalogues and brochures uniformly use the terminology 'machine' and 'system' in describing the impugned goods, which aligns with their industrial-scale printing functionality. It is relevant to extract here the technical specification section of the 'Creta Compat 700 x 4' and 'Durst Gamma 75 HDS 2-5 C' manuals which state as follows:

"Integrated Windows-based computer control platform; Touchscreen user interface; In-built design processing and print file generation software; No external ADP machine required for operation; Optional USB port or LAN interface available for data transfer."

7.1 The above description clearly confirms that the machines are capable of executing all essential functions — including print job management, image processing, print head control, and substrate alignment — internally, without dependency on any external ADP machine. The optionality of USB or LAN connectivity merely for design file transfer cannot render these machines as 'Inkjet Printers' within the meaning of CTSH 844332.

8. The learned counsel for the appellant submitted that the availability of a USB port or optional LAN connection for file transfer can be equated with the functional connectability required under CTSH 844332. In this context, we observe the HSN Explanatory Notes unequivocally clarify that the phrase 'capable of connecting to an automatic data processing machine or to a network' denotes that the apparatus must comprise all the components necessary for its connection to a network or an ADP machine to be effected simply by attaching a cable. It further elaborates that the capability to accept the addition of a component (e.g., a 'card') is insufficient to meet the terms of these sub-headings. In the present case, while a USB port is available for optional transfer of designs, this does not equate to an integrated network or ADP machine connectability for operational command. The core printing process — design interpretation, print job management, and head control — is executed by the in-built computer system of the machine itself. This distinction is not merely semantic but functional and legally significant. The Information Technology Agreement (ITA) exemptions under Notification No. 24/2005-Cus and its subsequent amendments are limited to those ADP machine peripherals and accessories which operated as output devices controlled by central ADP systems. Industrial-scale printing machines, designed to independently process and print designs without requiring ADP systems for job control, are not intended to fall within the ITA framework. This is

also evident from the contemporaneous records of classification under ITA, where 'Inkjet Printing Machines' under CTI 8443 3910 were not included in the exempted list.

9. We note that the lower authority has examined the technical specifications and has arrived at his findings. It has been noted that the 'Durst Gamma 75 HDS 2-5 C' is described in its operational manual as a fully integrated digital ceramic tile printing machine, featuring an integrated PC, touchscreen interface, proprietary print control software, automated tile feed mechanisms, and a self-contained ink management system. It provides optional interfaces for design import via USB storage devices but expressly notes that operational commands are managed internally. It further states that no external computer is required for print job management once the design is transferred. The machine incorporates software capable of converting design files to printable formats, managing print heads, and aligning substrates, all functions traditionally performed by an external ADP system in standard printers. In this context, we take note of the fact that such machines are primarily intended for industrial application in specialized sectors such as tile manufacturing, glass decoration, and large-format industrial signage, and not for office or commercial document printing as envisaged for devices under CTSH 8443 32. The product literature repeatedly uses the terms 'system' and 'machine' rather than 'printer', further reinforcing their industrial character.

10. Our view is further fortified by the General Rules for Interpretation of the First Schedule to the Customs Tariff Act, 1975, and in particular Rule 3(a) and Rule 3(c), which is reproduced hereinafter for ease of reference:

"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 3 (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 3 (a) or 3 (b), they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration."

10.1 It is a well-settled principle of tariff classification law that when by application of Rule 1 or 2, goods appear prima facie classifiable under two or more headings, the heading which provides the most specific description shall be preferred over headings providing a more general description. In the present case, CTI 8443 3910 specifically enumerates 'Inkjet Printing Machines', whereas CTI 8443 3250 covers 'Inkjet Printers' capable of connecting to ADP machines. It is not in dispute, as evident from the product literature, investigation findings, and statements recorded under Section 108, that the impugned machines are intended for industrial printing applications on hard substrates such as ceramic tiles, possess in-built processing units, and execute printing operations without the necessity of an external ADP machine. By applying Rule 3(a), the specific description of 'Inkjet Printing Machines' under CTI 8443 3910 must necessarily be preferred over the more generic category of 'Inkjet Printers' under CTI 8443 3250. Even if, there remained any ambiguity in classification between the two headings, Rule 3(c) enjoins that classification be made under the heading which occurs last in numerical order among those which equally merit consideration. Thus, by both application of specificity and sequential preference, the impugned goods correctly fall under CTI 8443 3910.

11. At this juncture, we also take note of the fact that the appellant had, prior to these consignments, imported similar machines under Bill of Entry No. 2409364 dated 08.12.2010 and

classified them under CTI 8443 3990 as 'Digital Printing Machine for Ceramic Industry'. We are of the opinion that this earlier classification under an eight-digit tariff heading covering 'Other' printing machinery is a tacit admission by the appellant of the character of the impugned goods as printing machinery, distinct from conventional ADP-connected printers. The appellant's subsequent attempt to classify functionally identical machines as 'Inkjet Printers' under CTI 8443 3250 was motivated in order to avail of the ITA exemption.

12. Further, in the decision in *Aztec Fluids and Machinery Pvt. Ltd*, we note that the machine in question was a 'Digital Inkjet Printer' which as per evidence on record was entirely dependent upon connection to an external ADP machine or network for performing its printing function. The decision in *Aztec Fluids* explicitly records that the machine lacked an in-built processing or command module and derived its operational command solely from an attached ADP machine. This crucial factual distinction renders the precedent wholly inapplicable to the present case, where the impugned machines are demonstrably capable of independent operation. Similarly, the judgment in *Monotech Systems Limited supra* is also of no assistance to the appellant. In that matter, the Tribunal was dealing with a 'Scodix S75 Digital Inkjet Printer' which had been established to process connectivity to ADP machines via LAN TCP/IP Cat 5E cables supplied at the time of installation, satisfying the test laid down in HSN Explanatory Notes and CBEC

Circular No. 11/2008-Cus dated 01.07.2008. In the instant case, as correctly argued by the Revenue, there is no evidence to suggest that the impugned machines were supplied or installed with LAN or other ADP connection components. The mere availability of a USB port for file transfer, absent evidence of continuous ADP machine dependency for command and operational control, cannot bring the impugned goods within the ambit of CTH 8443 32. Further, it is settled law that decisions rendered on different factual matrices cannot be relied upon, unless the material facts are identical. The principle is that the applicability of precedents is contingent upon parity of facts. In the instant case, neither *Aztec Fluids* nor *Monotech Systems* involve machines with equivalent specifications, industrial application, or independent processing capabilities as the subject imports.

13. We now consider the appellant's argument predicated on Board Circular No. 11/2008-Cus dated 01.07.2008 and the HSN Explanatory Notes to CTH 8443. In this context, we note that the Circular categorically stipulates that large-format printers qualifying under CTH 8443 31 and CTH 8443 32 must be capable of connection to an ADP machine or network through the mere act of attaching a cable and that they should lack independent processing capacity. In the present matter, the investigation has unambiguously established that the impugned machines are industrial digital printing systems with in-built

processing modules executing complex print jobs autonomously, thus precluding classification under CTSH 8443 32.

14. As regards the World Customs Organization (WCO) Classification Opinion cited by the learned counsel, we find that the same pertains to digital printers for office or commercial document printing, which are fundamentally dependent upon a controlling ADP machine. The impugned industrial machines, by contrast, are intended for large-scale industrial applications involving direct printing on non-paper substrates such as ceramic tiles, equipped with advanced automation and independent control systems, situating them outside the scope of the WCO opinion relied upon.

15. It must be appreciated that customs classification is not determined by commercial description alone but by the nature, functionality and technical characteristics of the goods as discernible from the Harmonized System of Nomenclature (HSN), tariff schedules and statutory interpretative rules. The mere usage of the term 'printer' in the invoice description or even product marketing material does not bind the customs authority if the functional specifications of the equipment reveal it to be a printing machine within the meaning of the CTI 8443 3910. This position has been upheld by the Supreme Court in **Atul Glass Industries Ltd. v. Collector of Central Excise**¹⁰ where it was observed that trade parlance and nomenclature adopted by the manufacturer are

10 [1986 (25) ELT 473 (SC)]

not decisive and the true test lies in examining the essential character and functionality of the goods.

16. In the instant case, as demonstrated by the product manuals, technical literature, and investigation findings, both the 'Creta Compat 700 x 4 Inkjet Printer' and 'Durst Gamma 75 HDS 2-5 C Inkjet Printer' possess advanced internal computer systems, touchscreen interfaces, and in-built proprietary print management software systems enabling autonomous operation. The presence of USB ports or LAN interfaces does not, by itself, satisfy the requirements of CTI 8443 3250, since these are ancillary provisions for optional data transfer and not primary conduits for operational command from an external ADP machine. The critical determinant is whether the machine requires such an external device for its essential operation, which in the present case, it does not.

17. The extended period of limitation invoked under Section 28(4) is also fully justified. The suppression of material facts, deliberate misdeclaration of classification despite prior knowledge from past import experience, and conscious omission of product literature disclosing true functionality all evidence intent to evade duty. The statements of Shri Gyan Prakash Nirmal and Shri Lalit Chandra Sharma, recorded under Section 108 which have not been retracted, corroborate that the impugned machines were described in invoices as 'printers' for the avowed purpose of classifying them under a duty-exempt heading. The plea of bona fide error is untenable in light of such clear evidence of knowledge and intent.

18. Accordingly, the confiscation of the impugned goods under Section 111(m) is legally sustainable. The option for redemption on payment of fine in lieu of confiscation granted by the adjudicating authority is a reasonable exercise of discretion and not subject to interference.

19. The imposition of penalty under Section 114A equal to the amount of duty demanded is statutorily mandatory upon proof of deliberate misdeclaration with intent to evade payment of duty, which stands amply established on record. In this context, it is noteworthy that the adjudicating authority, in the impugned Order-in-Original, has categorically recorded that the earlier import made by the same appellant under Bill of Entry No. 2409364 dated 08.12.2010 was for a comparable machine, classified at that time under CTI 8443 3990 as a 'Digital Printing Machine for Ceramic Industry', with full payment of applicable customs duty @7.5%. This establishes the appellant's prior awareness of the true nature and appropriate classification of such machines. The sudden deviation in classification for subsequent imports of similar machinery under CTI 8443 3250 and 8443 3290 cannot be viewed as an inadvertent or bona fide misinterpretation of tariff provisions. Rather, it amounts to a conscious and calculated attempt to avoid payment of customs duty by resorting to misdeclaration and suppression of facts, warranting the invocation of the extended limitation under Section 28(4) of the Customs Act, 1962.

20. Having regard to the material on record, including the product literature, inspection reports, statements recorded, and the applicable interpretative rules under the Customs Tariff Act, we have no hesitation in affirming the finding of the Commissioner that the impugned goods are correctly classifiable under CTI 8443 3910 as 'Inkjet Printing Machines' and not under CTI 8443 3250/3290 as claimed by the appellant.

21. Similarly, the penalty imposed under Section 114A being statutorily equal to the duty evaded is mandated by law upon establishment of deliberate misdeclaration with intent to evade duty, which is undeniably present in this case. The discharge of 25% of the penalty within the prescribed period, as noted by the adjudicating authority, entitles the appellant to the reduced penalty benefit to that extent alone, with the balance remaining payable.

22. We note that the penalty has been imposed upon Shri Gyan Prakash Nirmal under Section 112(a). However, keeping in view the circumstances, we are of the opinion that the penalty is liable to be reduced.

23. In view of the foregoing discussions we hold as follows:

- (i) The classification of the impugned consignments under CTI 8443 3910 is upheld.
- (ii) The demand of differential customs duty of ₹50,36,786/- along with interest under Section 28AA of the Customs Act, 1962 stands confirmed.

(iii) The penalty imposed under Section 114A on the appellant company is upheld.

(iv) The penalty on Shri Gyan Prakash Nirmal under Section 112(a) of the Customs Act, 1962 is reduced to Rs.2,50,000/-.

24. Accordingly, the impugned order is modified to the extent above. The Custom Appeal No.55672 of 2013 filed by Shri Gyan Prakash Nirmal is allowed to the extent indicated above. The Customs Appeal No.55671 of 2013 stands dismissed.

(Order pronounced in the open Court on 21.05.2025.)

(JUSTICE DILIP GUPTA)
PRESIDENT

(HEMAMBIKA R. PRIYA)
MEMBER (TECHNICAL)

Archana