IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT MUMBAI

APPEAL NO: C/444/2009

[Arising out of Order-in-Appeal No: 28/Mumbai – III/2009 dated 13th February 2009 passed by the Commissioner of Customs (Appeals), Mumbai – II.]

Hewlett Packard India Sales (P) Ltd …***Appellant***

versus

Commissioner of Customs (Imports)
ACC, Mumbai ***…Respondent***

Appearance:

Shri T Vishwanathan, Advocate for the appellant

Shri SR Nair, Enquiry Officer (AR) for the respondent

CORAM:

Hon'ble Justice Dr. Satish Chandra, President
Hon'ble Shri C J Mathew, Member (Technical)

Date of hearing: 14/12/2017
Date of decision: 05/04/2018

ORDER NO: A/86000 / 2018

Per: C J Mathew

M/s Hewlett Packard India Sales (P) Ltd are in appeal against order-in-appeal no. 28/Mumbai – III/2009 dated 13th February 2009 of Commissioner of Customs (Appeals), Mumbai – II which dismissed their appeal against the determination of classification under 9010 5000 of the First Schedule to the Customs Tariff Act, 1975 against the declared classification of 8443 3250 on bill of entry no. 460316/18.02.2008 for import of 'HP Photo Center Microlab Printer'. The item under import is an ink jet printer capable of being connected to an automatic data processing machine and is used primarily for printing photographs of certain sizes. To alter the declared classification the original authority relied upon note (1)(m) of section XVI that excludes the articles of chapter 90. The HSN Explanatory Notes for heading 9010 brings printing machines of apparatus and equipment for photography under sub heading 9010. The first appellate authority rejected the claim of the appellant for coverage under the most specific heading on the ground that the headings have to be read along with relative section/chapter notes and that printer is an apparatus, by holding thus

> '*(iv). One can argue that the Section XVI Note 1(m) can take effect only when the subject goods are proved to be an article of Chapter 90. Even if such argument is accepted, the question still remains as to how one should prove the subject goods to be an article of Chapter 90? To do so, one has to necessarily go back to the Interpretative Rules (and the Rule 1 to start with). Rule 1 requires considering the terms of headings* <u>*AND*</u> *relative Section Note. Thus one cannot*

conclude the classification by just considering the terms of possible headings; one has to consider the Section Note also simultaneously. This becomes thus an iterative loop. To break the loop, one can weigh the two possible headings by taking input from the Section Note. In this case it is possible to classify the photograph printer in 84433250 (more specifically by name) and also in 90105000 by considering its feature as a printer dedicated to photography (in fact the imported printer is used, according to the Importer themselves, for printing 4" X 6" photographs or cards of this size only) and with the help of HSN EN (supra). So it is possible to call the subject printer as an article of Chapter 90. It is in this context subject printer as an article of Chapter 90. It is in this context that the Section XVI Note 1(m) throws its weight in favour of the latter (the heading 9010 5000)'

2. Disregarding the various decisions of the Tribunal cited by the appellant and the authority of circular no. 11/2008 dated 1st July 2008 of Central Board of Excise and Customs, the first appellate authority concluded that these do not support the claim of classification as claimed by the appellant.

3. Heard the Learned Counsel for appellant and Learned Authorised Representative. Learned Counsel submits that the imported item is an ink jet printer and is specifically covered under 8443 3250.

4. The section note relied upon by the first appellate authority makes it clear that articles of chapter 90 are not covered by section

XVI which is intended for classification of

> ‘Machinery and Mechanical Appliances; Electrical Equipment; Parts thereof; Sound Recorders and Reproducers, Television Image and Sound Recorders and Reproducers; and Parts and Accessories of such articles’

On the other hand chapter 90 covers

> *‘Optical, Photographic, Cinematographic, Measuring, Checking, Precision, Medical or Surgical Instruments and Apparatus; Clocks and Watches; Musical Instruments; Parts and Accessories thereof’*

and the classification adopted by the adjudicating authority pertains to apparatus and equipments for photographical laboratories. The explanatory notes in chapter 8443 is specifically for printers with the mechanics of their working as the distinguishing features.

> *‘This group includes apparatus for the printing of text, characters or images on print media, other than those that are described in Part (I) above.*
>
> *These apparatus accept data from various sources (e.g. automatic data processing machines, flatbed desktop scanners, networks). Most incorporate memory to store that data.*
>
> *The products of this heading may create the characters or images by means such as laser, ink-jet, dot matrix or thermal print processes. The two most common types of printers are:*

(1) ***Electrostatic printers,*** *which employ a process that involves electrostatic charges, toner and light. A light source (e.g., .a laser, a light-emitting diode) is used to cancel the charge at specific points on a positively, charged photoconductive surface (usually a drum) leaving a positively charged replica of the Image. The negatively charged toner is electrostatically attracted to the photoconductive surface, reproducing the original image. The toner is electrostatically transferred to the print medium, which has a stronger positive charge than the photoconductive surface, and the image is then fused to the print medium by applying pressure and heat.*

(2) *Inkjet Printers. These machines place drops of ink onto a print medium to create an image*

This heading includes printers presented separately for incorporation in or connection to other products of the nomenclature (e.g., receipt printers of cash registers of heading 84.70'

5. Learned Counsel has relied upon the following decisions of the Hon'ble Supreme Court in *Collector of Customs v. Business Forms Limited [2002 (142) ELT 18 (SC)] and* of the Tribunal in *Lipi Marketing v. Commissioner of Customs (C), Chennai [2005 (184) ELT 316 (Tri.- Chennai)]* and *Commissioner of Customs, Mumbai v. Avery Digital Imaging [2007 (208) ELT 123 (Tri.Mumbai)]*.

6. According to Learned Authorised Representative, the consequential application of the various provisions relating to

interpretation and of the headings by the adjudicating authority clearly establishes that the classification adopted therein is the correct one.

7. In *re Business Forms Limited* the Hon'ble Supreme Court relying upon its earlier decision in *re Wood Crafts Products Ltd*, held that

> *'2. This Court in Collector of Central Excise, Shillong v. Wood Craft Products Limited [1995 (77) E.L.T. 23] has said :*
>
> > *"We are of the view that the Tribunal as well as the High Court fell into the error of overlooking the fact that the structure of the Central Excise Tariff is based on the internationally accepted nomenclature found in the HSN and, therefore, be resolved with reference to the nomenclature indicated by the HSN unless there be an express different intention indicated by the Central Excise Tariff Act, 1985 itself. The definition of a term in the ISI Glossary, which has a different purpose, cannot, in case of a conflict, override the clear indication of the meaning of an identical expression in the same context in the HSN. In the HSN, block board is included within the meaning of the expression 'similar laminated wood' in the same context of classification of block board. Since the Central Excise Tariff Act, 1985 is enacted on the basis and pattern of the HSN, the same expression used in the Act must, as far as practicable, be construed to have the meaning which is expressly given to it in the HSN when there is no indication in the Indian Tariff of a different intention."*
>
> *Clearly, therefore, the HSN Explanatory Notes are entitled to far greater consideration than the Tribunal has given there.'*

In *re Lipi Marketing*, the Tribunal has held that

> *'6. We have gone through the rival contentions. The learned Counsel apart from citing the case laws, emphasized Note 5(D) of Chapter 84 to buttress his point that ink-jet printers imported by the appellants satisfy Note 5(D) and hence they are rightly classifiable under Heading 84.71. However, as*

urged by the learned SDR one cannot go simply by reading of Note 5(D) in isolation. Note 5(D) refers to Note 5(B) which in turn is subject to Note 5(E) according to which when the machine performs specific function of data processing, it should be classified under the heading appropriate to its respective functioning, even though the machine is used in conjunction with automatic data processing machine. In the present case, no doubt, the imported ink-jet printer satisfies Condition 5(D). In that sense, one can classify it under Heading 84.71. But Note 5(E) also cannot be ignored. Note (E) has been amplified in the HSN explanatory notes and it specifically states that ink-jet printers working in conjunction with an automatic data processing machine, but having particularly in terms of their size, technical capabilities, the characteristics of a printing machine designed to perform a specific function in the printing or graphics industry (production of pre-press colour proofs, for e.g.) are to be regarded as machine having a specific function are classifiable under Heading 84.43. In our view, on going through the explanatory note we come to an understanding that ink-jet printers, which are normally used in conjunction with computer in office or home, would rightly be classifiable under Heading 84.71. However looking into the specifications of the machines imported by the appellants, we find that they are used in Industry in the sense that these machines print in rolls and sheets. They are not normal papers. They are actually PVC or plastic media and are used mainly in Signage Industry. Hence, we are of the considered view that the impugned goods are rightly classifiable under Heading 84.43. Chapter Heading 84.43 reads as follows :

> *"Printing machinery used for printing by means of the printing type, blocks, plates, cylinders and other printing components of heading 8442; Ink-jet printing machines, other than those of heading 8471 machines for uses ancillary to printing"*

Even this heading includes ink-jet printing machine other than those of Heading 84.71. That means ink-jet printers are capable of two classifications, one classification under Heading 84.71 and the other is 84.43. A reading of Heading 84.43 reveals that machines included therein are mainly used in printing/ graphics industry. After going through the specifications of the imported ink-jet printers, 84.43 and not under Heading 84.71. Hence the appeals are rejected.'

In *re Avon Digital Imaging Inc*, the Tribunal has held that

'After hearing both sides and considering the issue of classification of the SIENNA FP 5000, 220 V DIGITAL PRINTER (COMPUTERISED) settled by the CC(Appeals) under heading 8471 is to be upheld for the reasons -

(a) The acceptance of argument that the entity performs the functions as envisaged of an apparatus of heading 9010 and can perform the function of development of a photo sensitive film albeit with the assistance of a digital Computer Command will not be in accordance with the rejection of the very similar arguments advanced to place a photocopier working in tandem with a Computer in the case of Xerox Modicorp Ltd. [2001 (130) E.L.T. 165] as seen from para 5, was not accepted by the Tribunal to classify the entity as a photocopier. No contrary decision is shown.

(b) It is on record that earlier similar apparatus/ appliances of model FP-500 were considered to be classified under 84.71. The plea now made that model FP 5000 not only exposes but also develops photo sensitive paper which model FP-500 could not, that cannot be a ground to change and depart from the classification under 8471 arrived at in case of model

FP-500 which decision is followed by Commissioner (Appeal).

(c) The classification opinion for the very same/model to be classified under 8471 by United States of America Department of Commerce Bureau of Export, which is s relied upon by the Ld. CC (Appeal), cannot be lightly bushed aside as in the present appeal filed by Revenue has no grounds why such an opinion on classification based on HSN, the internationally adopted Classification System should be departed from.

(d) Examining the chapter notes 5 to chapter 84 of the Customs Tariff especially the admitted fact by both sides that sans use of a Computer, the entity cannot perform any independent function the classification under 8471 is called for and approved.

2. We find the CC (Appeal)'s order to be logical and find no reason to depart from the same on the grounds made out herein.

3. Consequently the Revenue appeal of classification under Chapter 9010 cannot be upheld. The same is rejected.'

8. Following the above decisions of the Tribunal which are pertinent to the present dispute we found no merit in the stand adopted by the adjudicating authority for which reason we set aside the impugned order and allow the appeal.

(Pronounced in the Open Court on 05/04/2018)

(Justice Dr. Satish Chandra)
President

(C J Mathew)
Member (Technical)

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