

**IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL
WEST ZONAL BENCH AT MUMBAI
COURT No. I**

APPEAL No. C/272/2012

(Arising out of Order-in-Appeal No. 16 (GR.VA)/2012(JNCH)/IMP-12 dated 18.01.2012 passed by Commissioner of Customs (Appeals), Nhava Sheva)

Hewlett Packard India Sales Pvt. Ltd.

Appellant

Vs.

Commissioner of Customs (I), Nhava Sheva

Respondent

Appearance:

Shri T. Viswanathan, Advocate, for appellant
Ms. P. Vinitha Sekhar, Joint Additional Commissioner (AR), for respondent

CORAM:

Hon'ble Mr. S.K. Mohanty, Member (Judicial)

Hon'ble Mr. Sanjiv Srivastava, Member (Technical)

Date of Hearing: 19.12.2018

Date of Decision: 19.12.2018

ORDER No. **A/88330/2018**

Per: Sanjiv Srivastava

This appeal is directed against Order in Appeal No 16 (GR.VA)/2012 (JNCH) / IMP-12 dated 18.01.2012 of the Commissioner (Appeals) Nhava Sheva. By the said order Commissioner (Appeals) upheld the Order in Original dated 31.01.2011 of Assistant Commissioner Customs (Import), Nhava Sheva holding as follows:

"I order to classify the goods covered under B/E No 972434 dated 25.11.2010 under CTH 84713010 and to be charged appropriate rate of duty."

2.1 Appellant have imported "HP Dream Screen All in One 400 PC" an filed Bill of Entry No 972434 dated 25.11.2010 claiming the classification of imported goods under CTH 84715000.

2.2 Since revenue was not in agreement with the classification made in the Bill of Entry by making the query they were asked to explain the functioning of goods and how the same has been classified under 84715000.

2.3 After taking information provided by the appellant, product catalogue etc., department was of the view that imported goods were more appropriately classifiable under heading 84713010 and informed the appellants.

2.4 After taking into account the submissions made by the part vide their letter dated 10.12.2010 and during personal hearing on 10.12.2010, the issue of classification was adjudicated by the Assistant Commissioner as per his order referred in para 1, supra.

2.5 Aggrieved by the order of Assistant Commissioner, appellants filed the appeal before Commissioner (Appeal). Commissioner (Appeal) upheld the order of

Assistant Commissioner and dismissed the appeal filed by the party as per his order referred in para 1, supra.

2.6 Aggrieved appellants have filed this appeal before CESTAT.

3.1 Appellants have in their appeal assailed the order of Commissioner (Appeal) stating-

- A. The finding of the adjudicating authority that the product contains a keyboard is incorrect. The product does not contain an in-built physical input keyboard such as those found in Laptops. The screen may display the alphabet which may be pressed to form words but that is not the keyboard. Thus where the product is not accompanied by a keyboard the adjudicating authority is incorrect in holding so. The order of adjudicating authority based on wrong finding of fact could not have been sustained as held in case of International Shipping Agency [2001 (130) ELT 573 (T-Mum)] and Mahatre and Sons [2007 (226) ELT A32 (Bom)]
- B. From the readings of term of heading 84713010 as in Custom Tariff and also in HSN explanatory notes the goods cannot be appropriately be classified under that heading as they are not potable and do not have physical keyboard

C. The classification claimed by them under heading 84715000 is more appropriate, as product imported by them has a secondary storage unit as provided in the description of this tariff item.

4.1 We have heard Shri T Viswanathan, Advocate for the Appellant and Ms P Vinita Sekhar, Joint Commissioner for the revenue.

4.2 Arguing for the Appellant learned counsel submitted-

- i. Heading 847130 applies to *"Portable automatic data processing machine weighing no more than 10 kg consisting of at least a central processing unit, a keyboard and a display unit."*
- ii. Imported goods though weigh less than 10 kgs and comprise of a Central Processing unit and Display unit do not have a key board and hence do not merit classification in this heading
- iii. As per subheading notes to heading 847130, in HSN it is stated that *"This subheading covers portable digital automatic data processing machine, the case of which may be fitted with a handle and the weight not exceeding 10 kg. These machines, which are equipped with a flat screen may be capable of operating without an external source of electric power and often have an acoustic modem for establishing link via the switched network."*

- iv. As per QUE's "Computer & Internet Dictionary",-
- a. page 282, "**Keyboard** The most frequently used input device. The keyboard provides a set of alphanumeric, punctuation, symbol and control keys. When a character key is pressed a coded input signal is sent to the computer, which echoes the signal by displaying a character on screen."
 - b. Page 260, "**input device** Any peripheral that assists you in getting data into a computer, such as a key board, mouse, trackball, voice recognition system, graphic tablet, or modem."
 - c. Page 395, "**peripheral** A device, such as a printer or disk drive, connected to and controlled by a computer but external to the computer's central processing unit."
 - d. Page 407, "**portable computer** A computer with a screen and keyboard built in designed to be transported easily from one location to another."
 - e. Page 289, "**Laptop Computer** A small portable computer that's light and small enough to hold on your lap. Small laptop computers, which weigh less than 6 pounds and can fit in a brief case, are called notebook computers. The smallest portable computers, weighing about 5 pounds are called subnotebook computers."
 - f. Page 263, "notebook computer A portable computer that typically weighs less than 7 pounds and measures about 8"X11"X1 ½" inches easily fitting inside a briefcase. Notebook computers, unlike subnotebook computers, usually include a floppy disk drive."
- v. As per The Hutchinson "Dictionary of Computing, Multimedia and The Internet", page 41, "**Keyboard** an input device resembling a typewriter keyboard, used to enter instructions and data. There are many

variations on the input and labeling of keys. Extra numeric keys may be added, as may special-purpose function keys whose effect can be defined by programs in the computer."

- vi. As per Mitra's "Legal & Commercial Dictionary", page 43, "**At least** "At least" means not less than. [Anokhamal vs Chief Panchayat Officer ILR (1956) 6 Raj 1044: AIT 1957 Raj 388] ."
- vii. On the basis of above for the item to be classified under heading 847130, following conditions must be simultaneously be fulfilled by the imported good-
 - a. It must be portable;
 - b. It must weigh less than 10 kgs
 - c. It must at least contain a Central Processing Unit, Keyboard and a display.
- viii. Since the item imported by them is neither portable nor having the keyboard the classification made by the revenue under heading 847130 cannot be sustained.
- ix. He submitted that item of similar nature have been imported from 2010 to 2017-18 and were classified by them as follows:
 - a. 2010: Dream Screen All in One 400-52 PC [84715000/Assessee, 847130/ Revenue]
 - b. 2013: HP Elite One 800 GI All in one Business PC [84715000]
 - c. 2013: HP Pavilion All in One [84715000]

- d. 2017-18: HP Pro One 440/490 G3 Non Touch All in One PC [84714900]
- e. 2017-18: HP Pro One 400 G2 Non Touch All in One PC [84714900]
- f. 2017-18: HP Elite One 1000 G1 All in One Business PC [84714900]
- x. Since the items imported were imported and did not have key board nor were portable the classification as made by the revenue cannot be justified.

4.3 Arguing for the revenue learned Authorized Representative, referred to Wikipedia, article on *"Portable Computer"*. On the basis of the said article, she submitted that *"Portable Computer"* historically never ever meant to be equivalent to laptop. She stated that as per this article *"portable Computer was a computer designed to be easily moved from one place to another and included a display and keyboard."* She referred to page 6 of the Catalogue "HP DreamScreen User Guide" to emphasise that the system has an inbuilt Keyboard utility which could be used for entering the data as and when required. In her submissions the imported item had all the essential features required for it to be classified under heading 847130 and hence submitted that order of lower

authorities classifying the imported goods under the said heading cannot be faulted with.

5.1 We have considered the submissions made in the Appeal and during the course of arguments.

5.2 The competing entries in which revenue has classified the imported goods and in which appellants had claimed the classification at the relevant time read as follows

8471 *Automatic data processing machines and units thereof; magnetic or optical readers, machines for transcribing data on to data media in coded form and machines for processing such data, not elsewhere specified or included*

8471 30 - *Portable automatic data processing machines, weighing not more than 10 kg, consisting of at least a central processing unit, a keyboard and a display:*

8471 30 --- *Personal computer*

10

8471 30 --- *Other*

90

- *Other automatic data processing machines :*

8471 41 -- *Comprising in the same housing at least a central processing unit and an input and output unit, whether or not combined :*

8471 41 --- *Micro computer*
10

8471 41 --- *Large or main frame computer*
20

8471 41 --- *Other*
90

8471 49 -- *Presented in the form of systems*

00

8471 50 - Processing units other than those of sub-headings 8471 41 or 8471 49, whether or not containing in the same housing one or two of the following types of unit: storage units, input units, output units

5.3 From the terms of heading reproduced as above to be classified under heading 847130, the imported item should be-

- i. A portable device; and
- ii. Have weight not more than 10 kgs; and
- iii. Should have a Central Processing Unit; and
- iv. Should have a keyboard; and
- v. Should have a display unit.

5.4 From the examination of technical literature of the imported goods it is quite evident that item imported is having features as indicated below:

- i. Is a portable device as it can be easily be located and relocated from one place to another place;
- ii. Has weight less that 10 kgs;
- iii. Has a central processing unit;
- iv. Has a touch screen, virtual keyboard.
- v. Has display unit.

5.5 Adjudicating authority has on the basis of the product catalogue observed in para 7 observed:

"7. The product catalogue submitted by the importer defines the goods as "PC companion device that lets you lead photos, music and videos to enjoy from any room in your house". The goods have in-built CPU and VDU

integrated in one. The goods weigh less than 10Kg, in fact 2.44 kg approximately. The goods have keyboard and remote control. They can also function vide touch screen which acts as key board without external keyboard. The heading 847139 covers "portable digital automatic data processing machine, weighing not more than 10 kg, consisting of at least a central processing unit, a keyboard and a display."

5.6 Appellants have contended on the basis Page 6 of the catalogue reproduced below speaks about "Navigating the Keyboard Utility"

Navigating the Keyboard Utility

When you set up your HP DreamScreen, you occasionally will need to enter data into a data field. This is required when you set up a wireless network configuration, a weather reporting location, or a HP DreamScreen configuration to access user accounts on Internet sites (such as Snapfish and Facebook). The HP DreamScreen has a keyboard utility that appears when you need to enter such information into data fields.

NOTE: This section describes basic keyboard utility navigation. Detailed steps for performing the various configurations that use the keyboard utility are covered later in this document.

- 1 Select your first data field and press **OK** to select the keyboard.
- 2 Use the navigation controls to select the first character you want to enter or "type" into the data field. Then press **OK**.
Continue until you have spelled out the name or word that you are entering into the data field.

- 3 Use the navigation controls to select **Enter** on the keyboard. Then press **OK**.
- 4 Press **▶** or **◀** to move among any other data fields and the Continue and Back button. Select **Continue** and press **OK** when you have completed entering data in all required fields.

From the above it is quite evident that manufacturer has himself stated that the product is having a touch screen and virtual on screen keyboard is as good as the physical keyboard, and could be used for entry of data. Hence we do not find any merits in the submissions of the appellant to the effect that there is no keyboard imported/ associated with the imported goods. The terms of heading 847130 do not require the presence of physical keyboard but only require a keyboard as input device. Even the presence of onscreen keyboard is enough to fulfill the requirements of said heading.

5.6 Next issue for consideration is whether the item imported is portable or not. Appellants have contended that the item imported is not portable and hence the same cannot be classified under heading 847130. Assistant Commissioner has in his order para 9 observed as follows:

*"9. I find that goods are automatic data processing machine with CPU display and keyboard. They weigh 2.44 kg approximately. The weight of any goods is an important deciding factor for portability. The oxford dictionary defines portable as "that can be easily carried and not permanently fixed in a place." I observe that the size 47.6 cm * 36.5 cm is not a limiting factor for portability. The absence of in-built rechargeable battery does not make it non-portable. The goods have integrated CPU and VDU with touch-screen and has compact design. It can be carried by the user from one place to another. Hence the importer's contention that the imported goods cannot be treated as portable because it is not foldable and has no in-built rechargeable battery is not sustainable.*

HSN Explanatory Notes to sub-heading 847130 states – “this sub-heading covers automatic data processing machine weighing not more than 10 kg. These machines which are equipped with a flat screen may be capable of operating without an external source of electric power and often have a modem or other means for establishing a line with a network.” Hence it is very clear that in-built power source is not an essential feature for portability. Hence it is very clear that in-built power source is not an essential feature for portability. Hence I conclude that the imported goods are portable and declared CTH of the said goods that is 84715000 which covers “processing units other than those of sub-heading 8471.41 or 8471.49 whether or not containing in the same housing one or two of the following types of unit storage units, input units, output units” is not acceptable.”

5.7 It is observed that in technical literature “portable computers” are not limited to laptops/ notebooks but this term is used for all computers which can be easily relocated from one place to another place. As per-

i.

<https://searchmobilecomputing.techtarget.com/definition/portablecomputer->

“A portable computer is a personal computer that is designed to be easily transported and relocated, but is larger and less convenient to transport than a notebook computer. The earliest [PCs](#) designed for easy transport were called portables. As the size and weight of most portables decreased, they became known as [laptop computer](#) and later as [notebook computer](#). Today, larger transportable computers continue to be called portable computers. Most of these are special-purpose computers - for example, those for use in industrial environments where they need to be moved about frequently.”

ii. <https://www.techopedia.com->

“A Portable computer is a computer that comes with a keyboard and display and one which can be easily relocated or transported, although less convenient compared to a notebook.”

“Advantages of a portable computer:

- *Compared to other mobile computing device or laptop, portable computer makes use of standard motherboards and also provide plug in slots for add in cards.*
- *Portability and flexibility to use is a definite advantage for portable computer over desktop computers.*
- *Portable computers use less space than desktop computers and are smaller in size.*
- *Compared to a desktop computer, the power consumed is less in case of portable computer and can help in power and cost savings.*
- *Compared to desktop computers, immediacy is more pronounced in the case of portable computers.”*

5.8 In view of discussions as above we hold that the imported goods are definitely in category of portable computers. We do not find any support to the contentions raised by the appellant from the technical literature put forth by them. Nowhere in the technical literature relied upon by the appellant it is stated that keyboard has to be physical only. With the evolution of technology and advent of touch screen monitors, on screen keyboards have become quite popular. Even in

the touch screen mobile phones, we have only onscreen keyboard replacing the conventional keyboards. Neither in the entire literature referred to by the appellants it is brought out that the portable computers are only limited to laptops and notebooks. Hence we reject the contentions raised by the appellant in this respect either in their appeal memo and during arguments.

5.9 Since the imported goods satisfy all the terms and conditions for classification under heading 847130, we do not find any fault/error in the classification as determined by the adjudicating authority and the appellate authority.

6.1 In result we uphold the impugned order and dismiss the appeal.

(Pronounced in court)

(S.K. Mohanty)
Member (Judicial)

(Sanjiv Srivastava)
Member (Technical)