CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI
WEST ZONAL BENCH
COURT No.

Appeal No. C/181/2012

(Arising out of Order-in-Appeal No. 628 (Gr.VA)/2011 (JNCH) IMP 545 dated 18.11.2011 passed by Commissioner of Customs (Appeals), Mumbai-II, Nhava Sheva)

Lenovo (India) Pvt. Ltd. **Appellant**
S, IOW Complex,
Bldg. No.46/53,
Dapode Road,
Opp. Gajanan Petrol Pump,
Mankoli, Bhiwandi 421 302

Vs.

Commissioner of Customs (Import), Nhava Sheva **Respondent**
Jawaharlal Nehru Custom House,
Post Uran,
Dist. Raigad, Sheva 400 707.

Appearance:

None for the Appellant
Ms. P. Vinitha Sekhar, Authorised Representative for the Respondent

CORAM:

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

FINAL ORDER NO. **A/86162/2019**

Date of Hearing: 09.04.2019
Date of Decision: 24.06.2019

PER: SANJIV SRIVASTAVA

This appeal is directed against Order in Appeal No 628 (GR.VA)/2011 (JNCH) / IMP-545 dated 18.11.2011 of the Commissioner (Appeals), Nhava Sheva. By the said order, Commissioner (Appeals) upheld the Order in Original dated 07.04.2010 of Assistant Commissioner Customs (Import), Nhava Sheva holding as follows:

"I order to that the goods covered by B/E No 721441 dated 15.10.2009 to be classified under CTH 84713010 and appropriate duty to be charged accordingly."

2.1 Appellant had filed Bill of Entry No 721441 dated 15.10.2009 for clearance of following goods:

i. 3000 C 100 INE 200 78691 BQ (XPH) Product No 57-109327 (Computer with CPU, ICB, Mouse & Monitor)
ii. 3000 C 300 INE 100 30121 HQ (XPH) Product No 57-103484 (Computer with CPU, ICB, Mouse & Monitor)

They claimed classification under CTH 84715000.

2.2 The goods covered under this Bill of Entry were referred for first check examination with specific order to ascertain weight of each item. Representative sample of goods were also called for by the appraising officer. Examining Officer informed that both the items have weight less than 10 kgs per piece [Item no C 100 wt 8.53 kgs and C 300 wt 9.8 Kgs]. On viewing the sample, the goods were found to be all in one computer having integrated CPU, VDU, keyboard and mouse.

2.3 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 06.11.2009 & 20.11.2009 and during personal hearing, 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 product does not contain an in-built physical input keyboard or a mouse. The All In One Computers imported by them are desktop computers wherein only two units namely Central Processing Unit and Display unit are integrated. The input units are not integrated.

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. 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."*

D. 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."*

E. From the definition of "portable computer" it is evident that in a present situation what is referred to as "portable computer" is only the laptop computers and notebook computers and not the desktop computers. The reliance placed by the Commissioner (Appeal) on definition of portable computers from various websites do not support the case that the items under import are portable computers.

F. 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.

G. If the items imported by the are not classifiable under CTH 84715000, then the same should be classified under heading 84714900. What has been imported by them is an system and not an integrated machine. While a machine would be a compact unit, a 'system' would be consisting of different units which need to be connected to make it functional. Based on HSN Explanatory Note stating "a complete automatic data processing system" and not just "automatic data processing machine", Commissioner (Appeal) was correct in holding that when a processing unit falling under Sub Heading No 8471 50 with two other items in one housing are presented with the third remaining item attachable to them from outside the same assumes the character of a complete computer an no longer remains classifiable under 847150 and has to be classified under heading 847130, 8471 41 or 8471 49 depending upon its weight and description. Since these goods are being presented in the form of system and not machine, therefore they should get classified under Heading 8471 49 00 since they are Automatic Data Processing Machine and are also presented in form of system. They had claimed the classification in this heading before both the authorities.

H. 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.

I. Similar goods are being allowed clearance by other custom formation by allowing the CVD assessment on transaction value and the same practice should have been followed.

J. They are entitled to refund

4.1 Mater was listed on 06.09.2018, 01.11.2018, 30.11.2018, 03.01.2019, 12.02.2019, 11.03.2019 & 09.04.2019. None appeared on the behalf of appellants for hearing on any of the above dates despite notice. Since none was appearing on behalf of appellants despite notice of hearing and also there was no adjournment request made matter has been taken up for final hearing and disposal.

4.2 We have heard Ms P Vinitha Sekhar, Additional Commissioner for the revenue.

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 findings recorded by both the lower authorities that items imported was an integrated system with Central Processing Unit, Video Display Unit, Keyboard and Mouse. She referred to the Bill of Entry itself wherein the item has been described by the Appellants themselves as complete with all the four pats described. 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 10	***---***	***Personal computer***
8471 30 90	*---*	*Other*
	-	*Other automatic data processing machines :*
8471 41	*--*	*Comprising in the same housing at least a central processing unit and an input and output unit, whether or not combined :*
8471 41 10	*---*	*Micro computer*
8471 41 20	*---*	*Large or main frame computer*
8471 41 90	*---*	*Other*
8471 49 00	*--*	*Presented in the form of systems*
8471 50 00	***-***	***Processing units other than those of sub-headings 8471 41or 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 as follows:

"7. The imported goods are all-in-one computer with integrated cpu and vdu and with keyboard and mouse. The weight of goods is less than 10 kg as has been reported in examination report. The heading 847130 covers "portable digital automatic data processing machine, weighing not more than 10 kg, consisting of at least a central processing unit, a keyboard and display". The oxford dictionary defines portable defines portable as "that can be easily carried and not permanently fixed in a place". I find that the goods in question are automatic data processing machine, weighing less than 10 kg consisting of cpu, keyboard and display. I also find these are portable. Mere absence of in-build battery does not make it non-portable. The goods can be easily moved and carried by the used from one place to another. Therefore importer contention that the goods imported can not be treated as "Portable" on the ground that these computers, unlike a Laptop computer are not provided with a rechargeable battery is not acceptable. HSN explanatory notes to sub-heading 847130 also states-"This subheading covers portable automatic data processing machines weighting 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 link with a network". Therefore 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. The alternate cth 84714190 which was proposed by the importer vide their letter dated 20.112.2009 too is not acceptable. CTH 847141 covers" comprising in the same housing at least a central processing unit and an input and output unit, whether or not combined Sub-heading 84714190 covers the category others of the above mentioned Heading."

5.6 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."*

5.7 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. 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. Appellants have in their appeal memo agreed with the order of the Commissioner (Appeal) to the extent of rejecting the classification claimed by them in Bill of Entry under CTH 8471 50 00.

5.8 Appellants have in their appeal memo claimed alternate classification under CTH 8471 49 00. Sub Heading Note 2 to Chapter 84, reads as under:

"2. For the purposes of sub-heading 8471 49, the term "systems" means automatic data processing machines whose units satisfy the conditions laid down in Note 5(C)

to Chapter 84 and which comprise at least a central processing unit, one input unit (for example, a keyboard or a scanner), and one output unit (for example, a visual display unit or a printer)."

As per the above referred sub heading note, for the item to classified as a system, the items should be segregated as at least a central processing unit, one input unit and one output unit. It is admitted position by the appellants that in their case CPU and Output Unit (Visual Display Unit) are integrated into one. Hence do not find any merits in the said submission of the appellants.

5.10 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.

(Order pronounced in the open court on 24.06.2019)

(S.K. Mohanty)
Member (Judicial)

(Sanjiv Srivastava)
Member (Technical)

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