CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI

REGIONAL BENCH - COURT NO. I

Custom Appeal No. 646 of 2011

(Arising out of Order-in-Appeal No.119/Mumbai-III/2011 dated 30.5.2011 passed by the Commissioner of Customs (Appeals), Mumbai.)

M/s. Panam Corporation .... **Appellant**
12-A, Gazdar House, 1st Floor
629-A, J. Shanker Seth Road,
Mumbai – 400 002

Versus

Commissioner of Customs .... **Respondent**
(ACC & Import), Mumbai

Appearance:

Shri Anil Balani, Advocate for the appellant
Shri Bhushan Kamble, AC (AR) for the Respondent

CORAM:

HON'BLE DR. D.M. MISRA, MEMBER (JUDICIAL)
HON'BLE MR. P. ANJANI KUMAR, MEMBER (TECHNICAL)

FINAL ORDER NO. A/85692 / 2020

Date of Hearing: 05.02.2020
Date of Decision: 05.02.2020

Per: P. Anjani Kumar

Heard both sides. The issue before us is about classification of TCL brand Digital Video Camera Model DV710 imported under Bill of Entry dated 18.2.2010; the appellants classified impugned goods under CTH 85258020 as digital camera, and claimed benefit of Sl. No.13 of exemption Notification No.25/2005-Cus. The department classified the goods under CTH 85258030 as video camera recorders and denied the exemption.

2. Learned counsel for the appellants submits that the order-in-Appeal mentions erroneously the Model No to be DV701, whereas in the Bill of Entry, the model number was correctly indicated to be DV710; Learned Commissioner (Appeals) held that digital cameras that can take both still image and moving images like camcorder or video recorder shall not be eligible for the exemption; upheld classification under CTH 85258030 on the basis of CBEC Circular No.32/2007. Learned counsel for the appellants submits that the goods are correctly classifiable under CTH 85258020, as it covers all digital cameras without any condition or exception; admittedly and undisputedly the goods imported are digital cameras and are correctly classifiable under CTH 85258020; CTH 85258030 is not appropriate because it covers video camera recorders other than digital cameras; imported goods being digital cameras cannot be classified under CTH 85258030 by any stretch of imagination; as per Sl. No.13 of exemption Notification No.25/2005-Cus, digital still image video cameras falling of 85258020 are exempted; there is no doubt that the digital cameras imported are capable of shooting still images as well as videos and hence, are squarely covered by Sl. No.13 of Notification No.25/2005. The department's case is that exemption will only be available for cameras which take moving images for limited period of time.

2.1. Learned counsel for the appellants further submits that appellant vide letter dated 23.2.2010, submitted that the number of still photos would be 200 whereas the video recording would not be more than 3.5 minutes; the same was also demonstrated with the actual product before the lower authority; yet, the exemption was arbitrarily denied; CBEC Circular No.32/2007 stipulates that the video recording should be for limited time is not supported by any authority or literature on the subject and is incorrect. Nevertheless, the product satisfies the conditions laid down in the circular also; OIA nowhere explained the concept of limited time; it was not even alleged that the video shooting capability is more than 3.5 minutes; exemption was extended to similar imports of the appellants in December 2009; no justification for deviation from the practice was given.

3. Learned Authorised representative for the department reiterated the findings of OIO and OIA and relies upon Sony India Pvt. Ltd. [2018 (362) ELT 637(Tri. -Del.) and SRP Enterprises Pvt Ltd. Vs. CCE, Mumbai [2019 ELT 840 (Tri.-Mum.).

4. Learned counsel for the appellants in his rejoinder submits that the judgment in Sony's case is not applicable for the reason that the case pertains to a Camera which is completely different from the impugned TCL-DV710 cameras; the import in the Sony case is post 17.3.2012, when an explanation was added in Sr.No.13 under Notification 25/2005, which was not available when the instant goods were imported.

5. For better understanding of the case, the relevant Customs Tariff Heading, Chapter Note of Harmonized System of

Nomenclature (HSN) and Sr. No. 502 of notification dated 30. 06.2007 are reproduced herein below:

5.1. "<u>Tariff Heading 8525.80</u>

"8525 TRANSMISSION APPARATUS FOR RADIO-BROADCASTING OR TELEVISION, WHETHER OR NOT INCORPORATION RECEIPTION APPARATUS OR SOUND RECORDING OR REPRODUCING APPARATUS; <u>TELEVFISION CAMERAS, DIGITAL CAMERAS AND VIDEO CAMERA RECORDERS</u>

…

….

8525 80 .... Television cameras, digital cameras and video camera recorders:

8525 80 10	*….*	*Television Cameras*
8525 80 20	*….*	*Digital cameras*
8525 80 30	*…..*	*Video camera recorders*
8525 80 90	*....*	*Others"*

5.2. <u>Chapter Note of HSN for Heading 8525 80</u>

(B) TELEVISION CAMERAS, DIGITAL CAMERAS AND VIDEO CAMERA RECORDERS

This group covers cameras that capture images and convert them into an electronic signal that is:

(1) Transmitted as a video image to a location outside the camera for viewing or remote recording (i.e. television cameras); or

(2) Recorded in the camera as a still image or as a motion picture (i.e. digital camera and video camera recorders).

Many of the cameras of this heading may physically resemble the photographic cameras of heading 90.06 or the cinematographic cameras of heading 90.07. the cameras in heading 85.25 and the cameras in Chapter 90 typically include optical lenses to focus the image on a light-sensitive medium and adjustments to vary the amount of light entering the camera. However, photographic and cinematographic cameras of Chapter 90 expose images onto photographic film of Chapter 37, while the cameras of this heading convert the images into analogue or digital data.

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In digital cameras and video camera recorders, images are recorded onto an internal storage device or onto media (e.g. magnetic tape, optical media, semiconductor media or other media of heading 85.23). They may include an analogue/digital convertor (ADC) and an output terminal which provides the means to send images to units of automatic data processing machines, printers, televisions or other viewing machines.

> *Some digital cameras and video camera recorders include input terminals so that they can internally record analogue or digital image files from such external machines.*
>
> *Generally, the cameras of this group are equipped with an optical viewfinder or a liquid crystal display (LCD)), or both. Many cameras equipped with an LCD can employ the display both as a viewfinder when capturing images and as a screen for displaying images received from other sources or for reproducing images already recorded.*

6. In these cases, the appellant had claimed the classification of the imported goods namely, TCL-DV710 cameras under CTH 8525 8020, which describes the goods as "Digital Cameras". There is no definition provided for the Digital Camera; neither the Customs Tariff nor Notification No.25/2005. The HSN Explanatory notes to Heading 85.25 too do not have a definition for such goods as such. But the said Explanatory note describes the characteristic of a digital camera by explaining that the images are recorded on an internal storage device like semiconductor media; the camera has an output terminal, to send the images to other viewing machines. The features of a digital camera as submitted by the appellants are in conformity with the Explanatory Notes. According to the technical information, the 'digital cameras' are those wherein the images and/or video are stored digitally (without a film) in the camera and can be viewed digitally on other devices like computer etc. It is an admitted fact on record that the cameras imported by the appellant were meant for capturing images/videos and stored the same on semiconductor media for viewing digitally on the camera itself and on other digital devices.

7. We find that the impugned goods have capacity to record video images also in addition to still images. Furthermore, on perusal of the literature submitted by the appellants, it is clear that the accessories of cameras include PC connection set indicating that the they store images and/or video are stored digitally (without a film) in the camera and can be viewed digitally on other devices like computer etc. This conforms to the explanatory notes. Moreover, the notification does not define the cameras but says that the exemption is applicable to 'Digital Still Image Video Cameras'. Hon'ble Apex Court the case of Associated Cement Co. Ltd. Vs. State of M.P. [2004 (168) ELT 151 (S.C.)], held that when the words in the notification have not been specifically defined, then their popular or commercial meaning given by those dealing with them has to be resorted to.

8. We find that after alignment of the impugned Tariff Item was aligned with the Harmonised System of Nomenclature (HSN). As a result of the alignment, digital cameras came to be classified under Tariff Item 8525 8020 and video camera recorders were classified under Tariff Item 8525 8030 of the CTH. With regard to proper classification of "digital still image video camera", we find that on a prayer by M/s Sony Electronics INC, U.S. Court of International Trade, New York, after detailed discussions and upon analysis of the relevant Tariff description, HSN notes and considering the functional test of the camera, vide judgment dated 23.12.2013, opined that 'digital still image video camera' is that which is capable of recording still images as well as videos, in digital format; the Court also held that it is irrelevant as to which feature/function is more fundamental or principal and that as long as the camera is capable of recording both photographs and videos, the same qualifies to be a 'digital still image camera'. Since the camera is an electronic device, capable of digitally capturing and recording still and moving images, the U.S. Court has held that such camera should appropriately be classifiable under 8525.80.40 as digital still image video camera. In view of the fact that the Tariff classification of the goods as per HSN is determined according to the standards prescribed by the World Customs Organisation, where India is a member country, we are of the considered opinion that the declaration made by the U.S. Court in respect of classification of the subject goods should have persuasive value in consideration of the classification of the disputed goods under CTH 8525 8020 in the present case.

9. The Department relies upon Circular No. 32/2007 dated 10.09.2007, the Circular mentions at Paras 5,6, &7 as follows:

> *5. The WCO has clearly outlined the features of the Digital Video camera. Such cameras have been described as Digital cameras that capture light images, convert them to digital electronic signals and then record such digital image data on internal or removable media (built-in memory or diskettes). These images can be reproduced by connecting the camera to a video monitor (or TV), an ADP machine, or by inserting the media in the ADP machine. This type of digital cameras can produce both video signals (e.g., NTSC, PAL, SECAM or other similar video format) and computer readable image data like MPEG.*
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> *6. The term 'Video' relates to recording, reproducing or broadcasting of visual images. It is a technology of electronically capturing, recording, processing, storing, transmitting, and reconstructing a sequence of still images representing scenes in motion. The term "Still image video" camera covers the types of camera that take still images and stores them as single frame of video. These single video frames, when reproduced at a specified frame rate achieve an illusion of a moving image. The minimum frame rate is about fifteen frames per second. The term 'digital still image video camera' covers only digital cameras that have the capability of taking still images. This would also include digital cameras that take moving images for limited period of time although they are primarily still image cameras. Such cameras fall under tariff item 8525 80 20. However, digital cameras that can take both still images and moving images like Camcorder or video recorder falling*

> *under Tariff item 8525 80 30 shall not be covered under the said entry. Digital still image video cameras can also be differentiated from the still cameras of heading 9006 i.e. photographic film cameras. Cameras of this type are also not eligible for the benefit of these notifications.*
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> *7. It is accordingly clarified that the benefit of entry at Sl. No. 314 of notification No. 21/2002-Cus. as well as Sl. No. 13 of Notification 25/2005-Customs dated 1-3-2005 would be available to 'digital cameras' with still image recording as its principal function. This would also include those digital cameras that have the capability of recording moving images for a limited period of time.*

10. In view of the above Circular, exemption will be available to "Digital Cameras" with still image recording as the principal function. This should also include those digital cameras that have the capability of recording moving images for a limited period of time. We find that the appellants submit that on testing the product, it would be clear that the number of still image photos clicked would be about 200, whereas, at the same time, the video recording/shooting would be not more than 3 to 3.5 minutes. We find that Revenue has not denied the fact and have not recorded any findings contracting the submissions of the appellant. The appellants also submit that the packaging indicated the impugned goods to be digital still image video camera and the functions are explained in the Manuals. We find that as per the HSN Explanatory Notes, the impugned goods are digital cameras. Therefore, the exemption contained in Notification No. 32/2007 is applicable to digital still image video cameras. It is not the case of the Department that the impugned goods are not digital cameras. Once the fact is established, exemption cannot be denied. Moreover, it is also not denied that the impugned cameras have a limited capability of recording videos. Even as per the Circular, such cameras are eligible for exemption. We also find that the case laws relied upon by the

Department are not relevant in view of the above discussion and in view of the fact that goods discussed wherein are different.

11. In view of the above, we hold that the impugned TCL-DV710 cameras imported by the appellants are eligible for exemption, applicable to "Digital Still Image Video Cameras", in terms of Notification No. 32/2007. The appeal is allowed with consequential benefits, if any.

(Operative portion of the order pronounced in open court)

(Dr. D.M. Misra)
Member (Judicial)

(P. Anjani Kumar)
Member (Technical)

Sinha