

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
MUMBAI**

WEST ZONAL BENCH

CUSTOMS APPEAL NO: 395 OF 2012

[Arising out of Order-in-Original No: 79/2011/CC(I), JNVH dated 9th February 2012 passed by the Commissioner of Customs (Import), Nhava Sheva.]

Compuage Infocom Limited
3 Dhuru Building, 1st Floor, 329, Vithalbhai Patel Road
Mumbai - 400004

... Appellant

versus

Commissioner of Customs (Import)
Jawaharlal Nehru Custom House, Sheva, Tal: Uran
Dist: Raigad - 400707

...Respondent

WITH

CUSTOMS APPEAL NO: 402 OF 2012

[Arising out of Order-in-Original No: 79/2011/CC(I), JNVH dated 9th February 2012 passed by the Commissioner of Customs (Import), Nhava Sheva.]

Commissioner of Customs (Import)
Jawaharlal Nehru Custom House, Sheva, Tal: Uran
Dist: Raigad - 400707

... Appellant

versus

Compuage Infocom Limited
3 Dhuru Building, 1st Floor, 329, Vithalbhai Patel Road
Mumbai - 400004

...Respondent

APPEARANCE:

Shri Ajit Kumar, Advocate for the assessee-appellant

Shri Ramesh Kumar, Assistant Commissioner (AR) for Revenue

CORAM:

**HON'BLE MR ANIL CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)**

FINAL ORDER NO: A / 85723-85724/2022

DATE OF HEARING:	16/02/2022
DATE OF DECISION:	16/08/2022

PER: C J MATHEW

These appeals lie against order-in-original no. 79/2011/CC(I), JNVH dated 9th February 2012 of Commissioner of Customs (Import), Jawaharlal Nehru Custom House, Nhava Sheva in which the classification of 'TV tuners' claimed to be covered by tariff item 8473 3099 of First Schedule to Customs Tariff Act, 1975 and thereby to 'nil' rate of duty under the authority of notification no. 24/2005-Cus dated 1st March 2005 (at serial no. 10), in imports effected by M/s Compuage Infocom Limited between 2006-07 and 2010-11, was revised to tariff item 8528 7100 of First Schedule to the Customs Tariff Act, 1975 with consequential confirmation of differential duty of ₹ 1,05,26,716/-. Goods valued at ₹14,35,282/-, which had been seized during the proceedings, were confiscated under section 111(m) of Customs Act, 1962 but offered for payment of fine of ₹ 10,00,000. In addition, penalty of ₹ 10,00,000 was imposed on the importer under section 112 of Customs Act, 1962. The case against the appellant is that the imported goods are 'reception apparatus for television' even if not accompanied by a video display screen and the adjudicating authority had relied upon the *Explanatory Notes* to heading 8528 in the Harmonized System of Nomenclature (HSN) and upon note (2) to section XVI of the First Schedule to the Customs Tariff Act, 1975 requiring 'parts of goods', which are included in any of the headings of chapter 84 or 85, to be classified in their respective headings even

if they are principally for use with machines of headings 8471 of First Schedule to the Customs Tariff Act, 1975.

2. Revenue is also in appeal against the impugned order for not having imposed with mandatory penalty under section 114A of Customs Act, 1962.

3. Learned Counsel for the assessee-appellant contends that the 'TV tuners' does not function with a television but is intended for enabling computers to receive television signals that are to be further processed by the CPU before the same are visually available. He contends that the adjudicating authority has placed reliance on circular no. 52/2011-Cus dated 11th November 2011 of Central Board of Excise & Customs to adjudicate the matter and that the said circular is based on incorrect appreciation of the technology involved. It is also submitted that the issue stands decided by the Tribunal in *Compuage Infocom Ltd v. Commissioner of Customs (Seaport-Import), Chennai* [final order no. 41994/2017 dated 6th September 2017 in appeal no. C/349/2008 against order-in-original no. 7046/2008 dated 10th January 2008 of Commissioner of Central Excise (Appeals), Chennai].

4. Learned Authorised Representative placed reliance upon the *Explanatory Notes* relevant to chapter 84 and 85 in the Harmonized Data Description and Coding System of the World Customs Organisation. It is also pointed that there has been a detailed

examination of the technical issues in circular of Central Board of Excise & Customs *supra*. He further submitted that the decision of the Tribunal referred to by the Learned Counsel pertains to ‘external VGA box’ and not the goods impugned here. He placed reliance on the decision of the Tribunal in *Neotric Informatique Ltd v. Commissioner of Customs (Import), Nhava Sheva* [2015 (318) ELT 701 (Tri.-Mumbai)].

5. Having considered the rival submissions, we find that the impugned order has relied almost entirely on the elaboration by Central Board of Excise & Customs in the circular *supra*. There is no doubt that the Central Board of Excise & Customs is empowered to issue circulars under the authority of section 151A for the purpose of uniformity in the classification of goods or with respect to levy of duty thereon. However, the said authority is circumscribed by *proviso* which debars directing of officers of customs to make a particular assessment or to dispose off a particular case in a particular manner. Furthermore, there is also an embargo on instructions which have the effect of interference with the discretion of Commissioner of Customs (Appeals) in the exercise of appellate function. Thus the said circular has the effect of binding the original authorities while permitting the appellate authorities under the administrative control of Central Board of Excise & Customs to take varying stands. This has the effect of causing uncertainty insofar as the imports and importers are concerned. Reliance placed by the adjudicating authority on such

circular is, therefore, not acceptable. Insofar as the decision of the Tribunal in *re Neotric Informatique Ltd* is concerned the issue was decided on the bar of limitation without going into the classification. On the other hand, the decision in *re Compuage Infocom Ltd* laid down the principle that parts which are to be used principally with computers should rightly be classified under the appropriate tariff item within heading 8473 of the First Schedule to the Customs Tariff Act, 1975.

6. Strictly following the precedent decision we set aside the impugned order and allow the appeal of the assessee-appellant and in view of the finding *supra*, the appeal of Revenue is dismissed.

(Order pronounced in the open court on 16/08/2022)

(ANIL CHOUDHARY)
Member (Judicial)

(C J MATHEW)
Member (Technical)

**/as*