CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

WEST ZONAL BENCH

CUSTOMS APPEAL NO: 535 OF 2012

[Arising out of Order-in-Appeal No: 133(Gr.VA)/2012 (JNCH) IMP116 dated 14th March 2012 passed by the Commissioner of Customs (Appeals), Mumbai – II.]

Diebold India Pvt Ltd
Plot No. 45/46/47 Tivim Industrial Estate, Kasarwada
Mapusa, Goa – 403 526 … ***Appellant***

versus

Commissioner of Customs (Import)
Jawaharlal Nehru Customs House, Nhava Sheva
Tal: Uran, Dist: Raigad - 400707 ***…Respondent***

APPEARANCE:

Shri Sanjeev Nair, Advocate for the appellant

Shri Manoj Kumar, Deputy Commissioner (AR) for the respondent

CORAM:

HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)
HON'BLE MR AJAY SHARMA, MEMBER (JUDICIAL)

FINAL ORDER NO: A /86377 /2023

DATE OF HEARING: 24/03/2023
DATE OF DECISION: 14/09/2023

PER: C J MATHEW

The dispute in this appeal of M/s Diebold India Pvt Ltd, triggered by import of 430 nos. 'DB 49-213270-000F 15" DC LCD display' and 40 nos. of 'Diebold AUO Q150*Go3 V2 5621,USA' valued at ₹41,30,488 against bill of entry no. 928315/06.03.2010 declaring these to be 'parts of ATM machines' for charging to duty at the rate corresponding to tariff item 8473 50 00 of First Schedule to Customs Tariff Act, 1975, is the detriment of duty being applicable on the former by re-determination of classification as 'other monitors' corresponding to tariff item 8528 5900 of First Schedule to Customs Tariff Act, 1975. Objection was raised on recourse to a description that offered import without duty as the goods were declared to be and, as reported by examining officers, to be utilized in assembly of 'ATM machines' thereby excluding coverage within the description corresponding to tariff item 8473 50 00 of First Schedule to Customs Tariff Act, 1975 and as 'monitors' in the tariff enumerate did not offer latitude of classification elsewhere.

2. According to Learned Counsel for appellant, the imported goods, being 'displays' that find deployment across similar products and narrowed down for use in 'ATM machines' assembly only after local customization, hardly bear resemblance to 'monitor' as perceived by customs authorities and, according to him, a contention that had not been considered by the lower authorities. He pointed out that note 2(a) and 2(b) of section XVI in First Schedule to Customs Tariff Act, 1975 should have guided the classification before being subjected to comparison between rival descriptions for ascertaining

the most apt. Reliance was placed on the decisions of the Hon'ble Supreme Court in *Hindustan Ferodo Ltd v. Collector of Central Excise [1997 (89) ELT 16 (SC)]* and in *HPL Chemicals Ltd v. Commissioner of Central; Excise, Chandigarh [2006 (197) ELT 324 (SC)]* besides referring to decisions in *Quinn India Ltd v. Commissioner of Central Excise [2006 (198) ELT 326]* and in *Puma Ayurvedic Herbal (P) Ltd v. Commissioner of Central Excise, Nagpur [2006 (196) ELT 3 (SC)]* as invalidating the approach of customs authorities. It was also contented that, in *Secure Meters Ltd v. Commissioner of Customs, New Delhi [2015 (319) ELT 565 (SC)]*, the classification of 'LCD' in heading 9013 of First Schedule to Customs Tariff Act, 1975 had attained finality and, even if the declared classification was not the most apt, the substituting classification would have to be discarded on that very ground.

3. According to Learned Authorized Representative, the appellant sought the most promising classification without considering the true nature of the goods – as excluded from 'parts' corresponding to tariff item 8473 50 00 of First Schedule to Customs Tariff Act, 1975 – or that a specific heading existed within heading 8528 of First Schedule to Customs Tariff Act, 1975. It was argued that a cogent finding on the rejection of the classification claimed, as well as their motive, apparent from their changing stands during the proceedings, must lead to acceptance of classification that was found appropriate by customs

authorities.

4. The dispute is all about placement of the imported goods at the tariff item level with both sides claiming their respective classifications to be more appropriate; both the importer and customs authorities, however, appear to have overlooked the significance of the structural hierarchy and the General Rules for Interpretation of the Import Tariff which sets out the flow from the heading level to the tariff item level as well as the validity of comparison levels. The appellant claims that the goods find use in more than one equipment and, owing to such adaptability, fits within the generality of the claimed classification. Revenue relies upon the specificity of 'monitors' in heading 8528 of First Schedule to Customs Tariff Act, 1975 to justify overwhelming precedence over the claimed heading.

5. The rules for interpreting of tariff enumeration has been supplemented by judicial decisions. In *re Hindustan Ferodo Ltd*, it was held that

> *'It is not in dispute before us as it cannot be, that onus of establishing that the said rings fell within Item No. 22-F lay upon the Revenue. The Revenue led no evidence. The onus was not discharged. Assuming therefore, the Tribunal was right in rejecting the evidence that was produced on behalf of the appellants, the appeal should, nonetheless, have been allowed.'*

and in *re HPL Chemicals Ltd* that

> *'28. This apart, classification of goods is a matter relating to chargeability and the burden of proof is squarely upon the Revenue. If the Department intends to classify the goods under a particular heading or sub- heading different from that claimed by the assessee, the Department has to adduce proper evidence and discharge the burden of proof. In the present case the said burden has not been discharged at all by the Revenue……'*

making it clear that, in the scheme of classification, it is for customs authorities to establish the claim of independent classifiability without the crutch of doubts cast on the fitment of the classification claimed by importer. Therefore, in the scheme set out by the above decisions, we are merely required to ascertain if the imported goods are 'monitors' within the ambit of the heading of the *Explanatory Notes to Haramonised System of Nomenclature (HSN)*. We must, however, add a cautionary note to ourselves in the absence of 'top down' approach on the part of both sides and the rival submissions being all about the description at the tariff item level which the *Explanatory Notes* cannot, legally, descend to.

6. That the domestic formulation of policy expressing tariff item 8473 50 00 of First Schedule to Customs Tariff Act, 1975 in terms of equal deployment is cause of a rigid approach to intent is, for the nonce, placed on the backburner. Even if that description corresponding to tariff item 8528 59 00 of First Schedule to Customs Tariff Act, 1975 may be animadverted for ambivalence, it cannot be

gainsaid that the heading to which the customs authorities have inclined is also not free of ambivalence. Moreover, that 'monitors' of a 'kind solely or principally used in an automatic data processing machines' exists along with the description corresponding to sub-heading 8473 30 of First Schedule to Customs Tariff Act, 1975 should exclude 'monitors' from parts and accessories. Yet, the heading itself disaggregates 'television reception apparatus' and 'apparatus for such reception but without display as well as monitors and projectors' but in the context of the latter segregates monitors to be used with automatic data processing machines from other monitors – both, however, replete with technical specifications that should be the deciding factor.

7. Given such complexity, the show cause notice proposing that

> *'2. Prima facie the goods appeared to be misclassified and appropriately classifiable under CTH 8528 as LCD Monitors, however as the importers did not agree, a first check order was given and RSS called for to ascertain the correct classification of the impugned goods. As seen from the RSS forwarded by the Docks Officer the items are LCD monitors specifically meant for the ATM which is being manufactured by the importer and did not seem to have alternate applications. The importers had also declared the same as such. In that case the declared CTH of 84735000 would not be applicable as this included those parts which were equally suited for use with machines for use with two or more headings of 84.69 to 84.72. However the importers had clearly stated that these were specific parts of the ATM. Later the importers vide their letter*

> *dated 22.03.2010 submitted that these monitors could be used for either of the following applications such as four stage franking machines, ticket booking/issuing machine, Micro computer/PC, Mainframe computer, hectograph duplicating machine and coin sorting machine. This just appeared more of an afterthought to justify their declared classification entitling them to a NIL rate of duty.*
>
> *3. However LCD monitors are specifically classifiable under 85285900 as "Other monitors". The importer's contention that these goods are rightly classified under 84735000 as these find multiple applications as stated above. So from their initial contention that the goods were exclusive parts of ATM the importers later changed their stand that the goods could he used as monitors for other applications such a franking, duplication, coin sorting etc.*
>
> *4. Reference must also be made to the General Rules for the Interpretation of the Tariff wherein Rule 1 states that "classification shall be determined according to the terms of the hearings and any relative section or chapter notes, provided such headings or notes do not otherwise require according to the other provisions listed later. In other word, specific headings will have preference over General heading. So when LCD monitors are specifically covered in the heading 85285900 then the same should be classified accordingly. In view of the above the goods are liable to pay duty @ of 10% BCD as against "NIL" claimed.'*

is sketchy and lacking in justification for coverage within this technical swamp. The original authority, in holding that

> *'10. It has to be examined first that exactly what is the imported goods. Importer has claimed that department has*

changed the nomenclature of the goods from what they have declared LCD Display to LCD Monitor. So the question arises what is a monitor. The monitors in essence are the goods which are capable of accepting signals and displaying/reproducing the same

on the screen. HSN explanatory notes to 85.28 explains the goods covered under this chapter as under-

This heading includes:

(1) Monitors and projectors ,not incorporating television reception apparatus.

(2) Television reception apparatus ,whether or not incorporating radio-broadcast receivers or sound or recording or reproducing apparatus, for the display of signals (television sets).

(3) Apparatus for the reception of television signals, without display capabilities (e.g receivers of satellite television broadcasts)

It further explains-

"monitors,projectors and television sets utilize different technologies ,such as CRT (Cathode ray tube), LCD (Liquid crystal display), DMD (digital micro-mirror device), OLED (Organic light emitting diodes) and plasma, to display images. Monitors and projectors may be capable of receiving a variety of signals from different sources. However ,if they incorporate a television tuner they are considered to be reception apparatus for television."

There is no exclusion in this chapter. The imported goods described are monitors which is capable of receiving signals and displaying the same by using LCD (liquid crystal display) *technology. The importer has not contended this point and has not given any reason/explanation as to why the goods are not monitors. Of course they have cited some differences like accessories, power source , metal shield etc ,but all these do not alter the fact that goods are in essence are monitors.*

11. Once it is decided that goods are monitors , next comes the issue where it is to be classified? CTH 85.28 specifically covers all types of monitors without any exclusion. Rule 1 of General Rules for Interpretation of Tariff is very clear that classification will decided according to terms of heading. Contrary to the importer's claim that Rule 1 nowhere specifies that specific heading will have primacy , it makes it amply clear that specific heading will prevail over general heading. A similar matter of monitors has been examined and decided in the case of COMMISSIONER OF CUS., MUMBAI Versus VIKING INTEGRATION PROJECTS (P) LTD reported in 2003 (155) E.LT. 179 (Tri. - Mumbai) by CEGAT, WEST ZONAL BENCH, MUMBAI, which has held in para 5 as -

" GIR 1 itself states that classification shall be determined according to the terms of a heading. GIR 3(a) states that the heading which provides most specific description shall be preferred to a heading providing a more general description. A combined reading of GIR 1 and GIR 3(a), leaves no doubt that all video monitors have to be classified under Heading 85.28. The Commissioner (Appeals) has applied GIR 3(c) which says that only when goods cannot be classified with reference to GIR 3(a) or GIR 3(b) then they have to be classified under the heading which occurs in last numerical order. In the instant case, the impugned goods can be classified under Heading 85.28 applying GIR 3(a). Therefore, Commissioner (Appeals) is not correct in applying GIR 3(c)"

There are many judicial pronouncements where goods falling under specific heading were ordered to be classified under that heading and not under heading for parts. In case of SWETHA Engineering Ltd .Vs Commissioner of C. Ex., Chennai in Final Order No. 319/2008, dated 4-4-2008 in Appeal

No.:E/l21/2001/MAS decided in" Structures, steel structures - Parts thereof - Items viz. plates, racks, angles etc. for structural support holding the boiler - Classifiable under sub-heading 730890 of Central Excise Tariff as parts of steel structural and not under sub-heading 840290 ibid as parts of boiler. [paras 3, 4]

In another case Colletor of Customs Vs Moto Industries Co. Ltd., in respect of 'Measuring Head and Retraction Unit'. The department seeks to classify it as 'Machine Device" under Heading 90.28 (4) read with Heading 90.16(1). The respondents want the assessment under

Heading 84.45/48 as part of machine tools. It was urged that this is merely a machine tool. But as rightly urged by the department, the function of the imported article is to serve as a 'Measuring Device'. The main equipment is the 'grinding machine' and the 'measuring head' is designed for fitment in the machine. The function is to measure continuously during the process of grinding. I do not agree that it should be treated as an integral part of the grinding machine: The classification sought for by the department under Heading 90.28(4) read with Heading 90.16(1) of the C.T.A. is, therefore, correct.

has relied upon lack of exclusions in the description, the absence of any response from the appellant herein to technical capability of the goods and assumption, thereby, that these are 'monitors' by default.

8. The impugned order holding that

'5. I have gone through the impugned order and submissions of the appellant. The appeal has been filed with an application seeking waiver of predeposit of duty.

Considering the fact that the duty has been secured by a bank guarantee and bond. I waive the predeposit and proceed to decide the appeal. Appellant's contention is that Liquid Crystal Display devices imported by them should be considered as part of ATM and of similar machines as they are specially designed for use with such machines and therefore have to be classified as parts as per the provisions of Section Note 2(b) of Section XVI. The said Section Note reads as under:

> *"2. Subject to Note 1 to (his Section, Note 1 to Chapter 84 and to Note 1 to Chapter 85. parts of machines (not being parts of the articles of heading 8484, 8544. 8545, 8546 or 8547) are to be classified according to the following rules : (a) parts which are goods included in any of the headings of Chapter 84 or 85 (other than headings 8409, 8431, 8448, 8466, 8473. 8487, 8503, 8522. 8529, 8538 and 8548) are in all cases to be classified in their respective headings;*
>
> *(b) other parts, if suitable for use solely or principally with a particular kind of machine, or with a number of machines of the same heading (including a machine of heading 8479 or 8543) are to be classified with the machines of that kind or in heading 8409, 8431, 8448, 8466, 8473, 8503, 8522, 8529 or 8538 as appropriate. However, parts which are equally suitable for use principally with the goods of headings 8517 and 8525 to 8528 are to be classified in heading 8517: (c) all other parts are to be classified in heading 8409, 8431, 8448, 8466. 8473. 8503, 8522, 8529 or 8538 as appropriate or, failing that, in heading 8487 or 8548."*

It can be observed from the above that the parts which are goods included in any of the heading of Chapter 84 or 85 (other than specified headings) have to be classified in their respective headings. It is observed that LCD Panels have vide range of applications as could be seen from the following article on Wikipedia (http://en.wikipedia.org/wiki/Liquid_crystal_display)

> *"Liquid crystal display*
>
> *from Wikipedia, she free encyclopedia*
>
> *A liquid crystal display (LCD) is a flat panel display, electronic visual display, or video display that uses the light*

modulating properties of liquid crystals (LCs). LCs do not emit light directly.

LCDs are used in a wide range of applications, including computer monitors, television, instrument panels, aircraft cockpit displays, signage, etc. They are common in consumer devices such as video players, gaming devices, clocks, watches, calculators, and telephones. LCDs have replaced cathode ray tube (CRT) displays in most applications"

Heading 8428 covers the following items:

"8528 MONITORS AND PROJECTORS, NOT INCORPORATING TELEVISION RECEPTION APPARATUS, RECEPTION APPARATUS FOR TELEVISION, WHETHER OR NOT INCORPORATING RADIO-BROADCASTRECEIVERS OR SOUND OR VIDEO RECORDING OR REPRODUCING APPARATUS

- Cathode-ray tube monitors:

8528 41 00 -- Of a kind solely or principally used in an automatic data

processing system of heading 8471
8528 49 00 - Other

- Other monitors:

8528 51 00 — Of a kind solely or principally used in an automatic data

processing system of heading 8471
8528 59 00 -Other

xxxxxx

8528 71 00 xxxxxxxxxxxxx

8528 73 90 xxxxxxxxxxxxx"

Explanatory Notes on the above Heading state as follows:

"This heading includes:

(1) Monitors and projectors, not incorporating television reception apparatus

(2) Television reception apparatus, whether or not incorporating radio broadcast receivers or sound or video recording or reproducing apparatus for the display of signals (television sets).

(3) Apparatus for the receiption of television signals, without display capabilities (eg. Receivers of satellite television broadcasts).

Monitors, projectors and television sets utilize different technologies, such as CRT (cathode-ray tube). LCD (liquid crystal display), DMD (digital micromirror device), OLED (organic light emitting diodes) and plasma, to display images, xxxxxxxxxx

(A) MONITORS OF A KIND SOLELY OR PRINCIPALLY USED IN AN
.AUTOMATIC DATA PROCESING SYSTEM OF HEADING 84.71
xxxxxxxxxx

(B) MONITORS OTHER THAN THOSE OF A KIND SOLELY OR
PRINCIPALLY USED IN AN AUTOMATIC DATA PROCESSING SYSTEM OF HEADING 84.71

This group includes monitors which are receivers connected directly to the video camera or recorder by menas of co-axial cables, so that all the radio-frequency circuits are eliminated. They are used by television companies or for closed-circuit television (airports, railway stations, factories, hospitals, etc.). These apparatus consist essentially of devices which can generate a point of light and display it on a screen synchronously with the source signals, xxxxxxxxxx

The most common means of image reconstitution is the cathode-ray tube, for direct vision, or a projector with up to three projection cathode-ray tubes: however, other monitors achieve the same objective by different means (e.g.. liquid crystal screens, diffraction of light rays on to a film of oil). These mar be in the form of CRT monitors or flat panel display, e.g., LCD, LED, plasma."

It is clear from (A) and (B) above that LCD Monitors of all kinds are clearly classifiable in Heading 8528. The LCD Panels specially designed for computers have to be classified under "Sub Heading No. 852851. All other LCD panels whether or not specially designed for any particular machine have to be classified in Sub Heading No. 852859 in view of the (B) above.

6. The appellant has argued that the impugned goods have to be classified as per Section Notes 2(b). In this regard it is observed that Section Notes 2 (a) of section XVI is directly applicable in the present case as the impugned items are goods included in heading 85.28 & therefore are classifiable in their respective heading in all cases as provided in Section Note 2(a). The Question of classifying the same on the basis of their sole or principal use as per the provision Note 2 (b) does not arise in the present case as the said Note 2(b0 applies to 'other parts' i.e. parts which are not goods included in any Heading of Chapter 84 or 85. As the Section Note 2(a) of Section XVI categorically provides that the goods included in any Heading of Chapter 84 or 85 (other than the specified Headings) have to be classified in all cases in respective Headings, question of excluding LCD Monitors designed for ATM or similar machines from the provision of the above Note 2 (a) does not arise. Hon'ble Tribunal has in the following cases held that items which figure in chapter headings of chapter 84 or 85 have to be necessarily classified under that heading in view of Section Note 2 (a) of Section XVI, even though they may be parts designed for exclusive use in machines falling under Chapter 84 or 85.

(i) Commissioner of Centra! Excise, Chennai Vs Sundaram Fastners Ltd. 2008(228) ELT 91 (Tri.Chennai)

(ii) Commissioner of Central Excise & Customs, Rajkot Vs Indian Plastic Industries 2007 (2I0)ELT 534(Tri.-Ahmd.)

(iii) Mukund Engineering Works Vs Commissioner of Central Excise, Rajkot 2001 (136} ELT 1141 (Tri.-Del.)

(iv) Hydraulic Engineers Vs Commissioner of Central Excise. Calcutta -1 2001 (130) ELT 366 (Tri.-Kolkata)'

has discarded the validity of section notes which is relevant only when rule 3(3) of General Rules for Interpretation of the Tariff is brought to bear on a classification dispute. In the light of the claim of the appellant on the classification approved by the Hon'ble Supreme Court in *re Secure Meters Ltd*, qualification of the substituted classification to be at par with claimed classification, and amenable to choice by recourse to rule 3(3) of General Rules for Interpretation of the Tariff is questionable.

9. There are too many gaps, despite the abundance of material in the order of lower authorities, that has grown beyond the brief proposal in the show cause notice to enable determination at the second appellate level that the impugned goods would be covered by description corresponding to a particular heading, sub-heading and tariff item. The importer proposed one in accordance with their lights and to their benefit. The adjudicating authority who is expected to independently justify the proposed heading has not adhered to that responsibility. That requires rectification.

10. To enable that, we set aside the impugned order and restore the show cause notice before the original authority to render a fresh

decision that would be in conformity with the decisions of the Hon'ble Supreme Court *supra* on the adversarial engagement in classification disputes and on the distinction, if any, between 'LCD' and 'monitor' to justify the appropriateness of the proposed classification. Appeal is, thus, allowed by way of remand.

(Order pronounced in the open court on 14/09/2023)

(AJAY SHARMA)
Member (Judicial)

(C J MATHEW)
Member (Technical)

**/as*