

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

REGIONAL BENCH - COURT NO. I

**Customs Miscellaneous Application No. 85588 & 85755 of 2023
In
Customs Appeal No. 85352 of 2023**

(Arising out of Order-in-Appeal No. 142 & 143 (Gr.VA)/2023(JNCH)/Appeals dated 21.02.2023 passed by Commissioner of Customs (Appeals), Mumbai-II, Jawaharlal Nehru Custom House (JNCH), Nhava Sheva, District Raigad, Maharashtra.)

MIRC Electronics Limited

Onida House. G-1, MIDC,
Andheri (East),
Mumbai – 400 093.

.....Appellants

VERSUS

Commissioner of Customs (NS-V)

Jawaharlal Nehru Custom House (JNCH), Nhava Sheva
Taluk Uran, District Raigad, Maharashtra-400 707.

.....Respondent

WITH

**Customs Miscellaneous Application No. 85589 & 85756 of 2023
In
Customs Appeal No. 85353 of 2023**

(Arising out of Order-in-Appeal No. 142 & 143 (Gr.VA)/2023(JNCH)/Appeals dated 21.02.2023 passed by Commissioner of Customs (Appeals), Mumbai-II, Jawaharlal Nehru Custom House (JNCH), Nhava Sheva, District Raigad, Maharashtra.)

MIRC Electronics Limited

Onida House. G-1, MIDC,
Andheri (East),
Mumbai – 400 093.

.....Appellants

VERSUS

Commissioner of Customs (NS-V)

Jawaharlal Nehru Custom House (JNCH), Nhava Sheva
Taluk Uran, District Raigad, Maharashtra-400 707.

.....Respondent

Appearance:

Shri V. Sridharan a/w Shri T. Vishwanathan, Shri Akhilesh Kangsia & Ms. Apoorva,
Advocates for the Appellants
Shri D.S. Mann, Authorized Representative for the Respondent

CORAM:

**HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR. M.M. PARTHIBAN, MEMBER (TECHNICAL)**

FINAL ORDER NO. A/85403-85404/2024

Date of Hearing: 14.12.2023

Date of Decision: 15.04.2024

PER : M.M. PARTHIBAN

These appeals have been filed by M/s MIRC Electronics Limited, Pune (herein after, referred to as 'the appellants'), assailing Order-in-Appeal No. 142 & 143 (Gr.VA)/2023(JNCH)/Appeals dated 21.02.2023 (herein after, referred to as 'the impugned order') passed by Commissioner of Customs (Appeals), Mumbai-II, Jawaharlal Nehru Custom House (JNCH), Nhava Sheva, District Raigad, Maharashtra.

2.1 The issue involved in these two of appeals is relating to the eligibility of goods imported by appellants under two Bills of Entry (B/E) No. 9574139 dated 16.07.2022 and B/E No.2453614 dated 15.09.2022 for availing Customs duty exemption under Sl. No. 29 and 30 of Notification No.24/2005-Customs dated 01.03.2005, as amended.

2.2 The appellants have also filed two Miscellaneous Applications No. 85588/2023 and No.85755/2023 in Customs Appeal No.85352 of 2023 and another two Miscellaneous Applications No. 85589/2023 and No.85756/2023 in Customs Appeal No.85353 of 2023, for incorporation of certain additional grounds in their appeal filed before the Tribunal, which got omitted due to their inadvertent error. On careful examination of the applications filed by the appellants for consideration of these additional grounds vis-à-vis the case records, we find that the averments made therein justify the case for consideration of such additional grounds and accordingly, we take up those additional grounds as part and parcel of the appeal memorandum for consideration. In view of the above, the miscellaneous applications are taken up for hearing along with main appeals in the case and for a decision on merits. Accordingly, these miscellaneous applications are disposed of on the above terms.

2.3 The appellants are an Original Equipment Manufacturer (OEM)/ Original Design Manufacturer (ODM) of Flat Panel Television (LCDs/ LEDs) since 1981, and for manufacture of the above goods have been importing Liquid Crystal Display (LCD) devices and various other components. Up to 01.02.2020, the appellants had classified the imported 'Open cells' under Customs Tariff Item (CTI) 9013 80 10 and parts of open cells under CTI 9013 90 10. As a specific customs tariff item 8529 90 30 was created for 'open cell' in the Finance Act, 2020, the appellants have started classifying the imported goods under CTI 8529 90 30 and associated parts under CTI

9013 90 10. With effect from 01.01.2022, the First Schedule to the Customs Tariff Act, 1975 was amended to include the changes made by the World Customs Organisation in the HSN, which inter-alia, introduced a new CTH 85.24 covering 'flat panel display modules, whether or not incorporating touch-sensitive screens' and parallelly CTH 90.13 was also amended to remove 'Liquid Crystal Devices' from its scope of coverage and specific customs tariff item 8529 90 30 earlier created for 'open cell' was also omitted. Accordingly, the appellants had revised the classification in terms of the above amendments, by classifying 'open cell' under CTH 85.24 and associated parts of open cells under CTH 85.29. During the disputed period the appellants had imported 'open cells' and 'associated parts thereof' under two Bills of Entry (B/E) No. 9574139 dated 16.07.2022 and B/E No.2453614 dated 15.09.2022 and self-assessed by availing Customs duty exemption under Sl. No. 29 and 30 of Notification No.24/2005-Customs dated 01.03.2005, as amended. The Department disputed the claim of the appellants on the eligibility of notification benefits and issued re-assessment order contrary to the claim made by the appellants, by changing the notification under Sl. No. 515A and 516 of Notification No. 50/2017-Customs for imported goods covered under B/E No. 9574139 dated 16.07.2022. In respect of imported goods under B/E No.2453614 dated 15.09.2022, the department had issued re-assessment order, contrary to the self-assessment done by the appellants-importer, in denying the Customs duty exemption claimed by the appellants and ordering the re-assessment at merit rate of duty. The Original orders passed in this regard by the proper officer of Customs were appealed against by the appellants before the learned Commissioner of Customs (Appeals), which were disposed of vide impugned order dated 21.02.2023 passed by him in upholding the orders passed by the original authority and rejecting the appeals filed by the appellants. Feeling aggrieved with the impugned orders, the appellants have preferred these appeals before the Tribunal.

3.1 Learned Advocate appearing for the Appellants, stated that the impugned goods viz. 'open cell' undisputedly is classifiable under CTH 85.24, and it is not disputed by the Department. In terms of Note 7 to Chapter 85, all articles of 85.24 are treated as 'device' or 'apparatus'. Accordingly, he claimed that open cell will qualify as 'device' and its use as 'liquid crystal display' will qualify as 'liquid crystal device'. In addition to the above, it is also claimed by the appellants that 'open cells' in as-imported condition/ as such can be used for manufacture of monitors falling under sub-headings

8528.42, 8528.52, 8528.62, solely or principally used in automatic data processing system of heading 84.71 and therefore are eligible for exemption under Sl. No. 29 of Notification No.24/05-Customs dated 01.03.2005. Similarly, they claimed that parts of open cells are eligible to avail customs duty exemption under Sl. No. 30 of Notification No.24/2005-Customs dated 01.03.2005.

3.2 In support of their stand, learned Advocate had relied upon following decisions of the Tribunal and judgements of Hon'ble High Courts, Hon'ble Supreme Court, in the respective cases mentioned below:

- (i) *Calico Mills Vs. Collector of C. Ex., Ahmedabad* – 1985 (22) E.L.T. 574 (Tribunal)
- (ii) *Samsung India Electronics P Ltd. Vs. Commissioner of Customs, Noida* – 2015 (326) E.L.T. 161 (Tri.- Del.)
- (iii) *Videocon Industries Ltd. Vs. CCE, Aurangabad* – 2009-TIOL-653-CESTAT-MUM
- (iv) *Commissioner of Central Excise, Aurangabad Vs. Videocon Industries Ltd.* – 2023 (384) E.L.T. 628 (S.C.)
- (v) *H.C.L. Limited Vs. Collector of Customs, New Delhi* – 2001 (130) E.L.T. 405 (S.C.)
- (vi) *Secure Meters Limited Vs. Commissioner of Customs, New Delhi* – 2015 (319) E.L.T. 565 (S.C.)
- (vii) *Asst. CC Vs. Daga Nylomet* – 1993 (67) E.L.T. 270 (Cal. HC)
- (viii) *West Coast Paper Mills Vs. CTO* – (2002) 127 STC 53 (Mad. HC)
- (ix) *Andhra Patrika, Madras Vs. CC* - 1983 (13) E.L.T. 1103 (CEGAT)
- (x) *T.I. Diamond Chain Vs. CC* - 2004 (177) E.L.T. 209 (Tri.- Del.)

3.1 Learned Authroised Representative appearing for the Revenue reiterated the findings recorded by the learned Commissioner (Appeals) in the impugned order and stated that notification No.25/2005-Customs dated 01.03.2005 cover under its scope ITA bound items, and television classifiable under CTH 8528 are not at all covered in this notification. Consequent to the changes introduced in WCO HSN with the flat panel display module, with effect from 01.04.2021 specific entries for CTH 85.24 at Serial No. 29 & 30 of notification No.25/2005-Customs was created restricting the exemption to liquid crystal devices for goods mentioned at Sl. No. 1 to 38A of the said notification. Hence the said exemption cannot be

interpreted to extend the benefit to open cells for use for flat panel display module of television classifiable under CTH 8528.

3.2 Further, countering the arguments placed by the learned Advocate for the appellants that when two exemption notifications are available, the assessee is entitled to benefit which gives greater relief; exemption benefits are not deniable on account of multiple use/function; in the absence of end use condition in the notification, benefit cannot be denied so long as goods conform to the description mentioned in the notification, learned AR stated that in terms of the judgement in the case of *Commissioner of Customs (Import), Mumbai Vs. Dilip Kumar & Company* 2018 (361) E.L.T. 577 (S.C.), all the earlier decisions prior to 2010 are not applicable in view of the recent judgement of the Hon'ble Supreme Court. Learned AR submitted that the said decision of the Hon'ble Apex Court, has held that exemption notification should be interpreted strictly; the burden of proving applicability would be on the assessee to show that his case comes within the parameters of the exemption notification; when there is ambiguity in exemption notification which is subject to strict interpretation, the benefit of such ambiguity cannot be claimed by the assessee and it must be interpreted in favour of the revenue. Accordingly, Learned AR submitted that the impugned order of the Commissioner of Customs (Appeals) is legally sustainable.

4. Heard both sides and perused the records of the case. We have also considered the additional written submissions given in the form of paper book by learned Counsel for the appellants as well as Authorised Representatives for the Revenue, and the arguments advanced during the hearings of this case.

5. Brief issue for consideration before us is the eligibility of imported goods of description 'Open Cell' under Sl. No. 29 of Notification No.24/2005-Customs dated 01.03.2005, and of description 'other parts of Open Cell' under Sl. No. 30 of Notification No.24/2005-Customs dated 01.03.2005, for deciding on the appropriate levy of customs duty, in respect of two Bills of Entries filed during the disputed period.

6.1 From the factual matrix of the case, we find that imported goods under dispute covered under B/E No. 9574139 dated 16.07.2022 have been declared as 'Open Cell 31.5" CS ST3151A07-2 32HIF1-11069908' under item Sl. No.4 by claiming customs duty exemption under Sl. No. 29 of Notification No.24/2005-Customs dated 01.03.2005, and 'Reflector-32" 0.15MM

731.4MM 421.6MM – 11069910' under item Sl. No.6; 'Diffuser Plate-32" 1.0MM 713 – 11069910' under item Sl. No.7; 'Prism sheet -32" 0.315MM 421.1MM – 11069916' under item Sl. No.12; 'Bezel front cabinet -32D2010 32HIF1 – 11070377' under item Sl. No.30; 'Back cover metal (Panel) - 32D2000 R=Y - 11073036' under item Sl. No.44, and claiming customs duty exemption under Sl. No. 30 of Notification No.24/2005-Customs dated 01.03.2005, as 'other parts of Open Cell' out of total 46 items declared in the above B/E. The imported goods were self-assessed by the appellants in terms of Section 17(1) *ibid*. During the process of verification of such self-assessment by the proper officer of customs, initially under the Faceless Assessment Group (FAG) and later by the Port Assessment Group (PAG), the Department have objected to the claim of the customs duty exemption claimed by the appellants and raised certain queries. These questions were replied by the appellants. However, as the proper officer was not convinced with the justification given by the appellants and wanted to assess the impugned goods by changing the notification for item Sl. No.4 under Sl. No. 515A of Notification No. 50/2017-Customs, the appellants had requested for issue of speaking order vide their letters dated 05.08.2022 and 17.10.2022.

6.2 The Assistant Commissioner of Customs of Appraising Group-VA, as proper officer for issue of order under Section 17(5) *ibid*, for re-assessment of the impugned goods, contrary to the self-assessment done by the appellants-importer had issued the Order-in-Original dated 17.11.2022, in denying the Customs duty exemption claimed by the appellants. The relevant portion of the above Order is extracted and given below:

"ORDER

14(i) I reject the declared notification benefit of Notification No. 24/2005-Customs dated 01.03.2005 Sr. No. 29, claimed for item No. 4 in Bill of Entry 9574139 dated 16.07.2022 of M/s. MIRC Electronic Ltd, (IEC No. 0388063394) and order to re-assess the item no. 4 with notification benefit of Sr. No. 515A of Notification 50/2017-Cus.

(ii) I reject the declared notification benefit of Notification NO. 24/2005-Customs dated 01.03.2005 Sr. No. 30, claimed for item No. 6, 7, 12, 30 & 44 in Bill of Entry 9574139 dated 16.07.2022 of M/s. MIRC Electronic Ltd, (IEC No. 0388063394) and order to re-assess these items with notification benefit of Sr. No. 516 of Notification 50/2017-Cus. "

6.3 Similarly, imported goods under dispute covered under B/E No. No.2453614 dated 15.09.2022 have been declared as ' Open Cell 42.5" ' under item Sl. No.10 & 24 of invoice No.1 and 23 of invoice No.2 by claiming

customs duty exemption under Sl. No. 29 of Notification No.24/2005-Customs dated 01.03.2005, and 'other parts of open cell' under various items Sl. Nos. 13,14,15,16,17,18 of invoice No.1 and 12,13,14,15,16,17 of invoice No.2 and claiming customs duty exemption under Sl. No. 30 of Notification No.24/2005-Customs dated 01.03.2005. The imported goods were self-assessed by the appellants in terms of Section 17(1) *ibid*. During the process of verification of such self-assessment by the proper officer of customs, initially under the Faceless Assessment Group (FAG) and later by the Port Assessment Group (PAG), the Department have objected to the claim of the customs duty exemption claimed by the appellants and raised certain queries. These questions were replied by the appellants. However, as the proper officer was not convinced with the justification given by the appellants and they did not submit the details of their status with respect to Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017 for availing the exemption under Sl. No. 515A, 516 of Notification No. 50/2017-Customs, and replied negatively for availing any other customs duty exemption, the Assistant Commissioner of Customs of Appraising Group-VA, as proper officer proceeded for issue of an order under Section 17(5) *ibid*. In such re-assessment of the impugned goods, contrary to the self-assessment done by the appellants-importer, he had issued the Order-in-Original dated 29.11.2022, in denying the Customs duty exemption claimed by the appellants and ordering the re-assessment at merit rate of duty. The relevant portion of the above Order is extracted and given below:

"ORDER

16(i) I reject the declared notification benefit of Notification NO. 24/2005-Customs dated 01.03.2005 Sr. No. 29, claimed for item No. 10 & 24 in invoice no. 1 and at item No. 23 of invoice no. 2 in Bill of Entry 2453614 dated 15.09.2022 of M/s. MIRC Electronic Ltd, (IEC No. 0388063394) and re-assessed the above stated items under merit rate of duty.

(ii) I reject the declared notification benefit of Notification NO. 24/2005-Customs dated 01.03.2005 Sr. No. 30, claimed for item No. 13, 14, 15, 16, 17, 18 of invoice no. 1 and at item Sr. nos. 12, 13, 14, 15, 16, 17 of invoice no. 2 in Bill of Entry 2453614 dated 15.09.2022 of M/s. MIRC Electronic Ltd, (IEC No. 0388063394) and re-assessed these items under merit rate of duty."

6.4 Feeling aggrieved against the Original re-assessment orders dated 17.11.2022 and 29.11.2022, the appellant had preferred an appeal before the Commissioner of Customs (Appeals), who on the basis of certain findings had rejected the appeals filed by the appellants by holding that there are no reasons to interfere with the Original Orders and upheld the same. The

specific findings given in the impugned order and the conclusion arrived by the learned Commissioner of Customs (Appeals) is extracted and given below:

"5.2 During the assessment, the Assessing Officer raised queries with respect to the exemption claimed by the Appellants under Sr. No. 29 and 30 of Notification No. 24/05-Cus., on the ground that imported Open Cell is not an LCD Device. As per the department, Open Cell and its parts are correctly eligible for concessional rate of BCD @ 5%/10% in terms of Sr. No. 515A and 516 of Notification No. 50/17-Cus. dated 30.06.17, and are not eligible for complete exemption from BCD under Notification No. 24/05-Cus., dated 01.03.05 as claimed by the Appellants.

5.3 The original authority rejected the benefit of complete exemption from payment of Basic Customs Duty (BCD) in terms of Sr. No. 29 as claimed with respect to 'Open Cell' & Sr. No. 30 as claimed with respect to 'Associated Parts of Open Cell' imported and has ordered to re-assess these goods at the rate of 5%/10% by applying new notification no. 50/17-Cus. (Sr. No.515A) vide Order-in-Assessment No. 721/2022-23/AC/Grp.VA/NS-V/JNCH dated 17.11.2022 and Order-in-Assessment No. 772/2022-23/AC/Grp.VA/NS-V/JNCH dated 29.11.2022.

XX XX XX XX XX

8. I have carefully gone through the appeal papers and submission of the appellant made during personal hearing. I find that the issue in contention is whether the exemption under Sr. No. 29 and 30 of Notification No. 24/05-Cus., dated 01.03.05 is applicable on the impugned goods or not as there has been no dispute the classification of Open Cell under Heading 85.24 and associated parts under Heading 85.29.

9. I find that as per the impugned Orders-in-Assessment issued by the OA dated 17.11.2022 & 29.11.2022, Open Cell and its parts are eligible for concessional rate of BCD @ 5%/10% in terms of Sr. No. 515A and 516 of Notification No. 50/17-Cus. dated 30.06.17, and are not eligible for complete exemption from BCD under Notification No. 24/05-Cus, dated 01.03.05 as claimed by the Appellants. OA has however, not objected on the self assessed classification of the goods Open Cell under Heading 85.24 and associated parts under Heading 85.29. I find that the Hon'ble Supreme Court in the case of ITC Ltd., Vs. VVE, Kolkata-IV [2019(368) E.L.T.(SC)] has held that the order of self-assessment is nonetheless an assessment order passed under the Act and the revenue, as well as assessee can also prefer an appeal aggrieved by an order of assessment.

10. Open Cell comprises of LCD devices sandwiched in-between two sheets of any material such as plastic/glass and basically it is heart of LCD/LED panels..." In the concluding paras of technical understanding of an 'Open Cell' given by Mr. V.R. Gokhale, DGM, Engineering Head of Engineering Department in the appeal papers, it is mentioned that "Back over, reflector, diffuser, prism sheet, open cell & cabinet are common components used in an LCD/LED display/panel assembly. Open Cell is the common component used after the back light assembly. LCD display is the term used for panel & not for open cell. Also it is clear that Open Cell is the major component in an LCD/LED device & it is usable in both LCD/LED". Hence, from the technical understanding, LED panel manufacturing process,

it is clear that the Open Cell is just a part of LCD Panel assembly imported principally for use in manufacturing of LCD/LED television panels.

11. In the instant case, I find that the Notification No. 50/2017-Cus as amended vide Notification No. 32/2018-Customs dated 23.03.2018 (Sr. No. 515A), the item which is eligible for exemption for concessional rate of duty is "Open Cell (15.6" and above) for use in the manufacture of Liquid Crystal Display (LCD) and Light Emitting Diode (LED) TV panels of heading 8529". From this, it is very clear that open cell is a part of LCD/LED TV panel for which the concessional rate of duty has been extended. It is not the case of the appellant that the 'Open Cell' imported by them are not used for manufacture of LCD/LED TV's.

12.1 I observe that the impugned goods "Open Cell" are used in the manufacture of Liquid Crystal Display (LCD) and Light Emitting Diode (LED) TV panels and cannot be considered as the Liquid Crystal Display (LCD) itself as certain other components have to be attached to convert it into a fully functional Liquid Crystal Display (LCD). I find that benefits of Notification No.24/05-Cus., dated 01.03.2005 Sr. No.29 which has been claimed for Open Cells is applicable for LCD devices and not for open cells, especially when there is a specific exemption benefit provided for open cell vide Notification No.50/2017-Cus. as amended vide Notification No. 32/2018-Customs dated 23.03.2018 (Sr. No.515A).

12.2 Similarly, I find that benefit of Notification No.24/05-Cus., dated 01.03.2005 Sr. No.30 which has been claimed for the parts of Open Cell declared under CTH 85199090 is not applicable on the subject goods, as it is applicable specifically for parts of LCD devices. A specific exemption benefit provided for parts of open cell vide Notification No.50/2017-Cus. as amended vide Notification No. 32/2018-Customs dated 23.03.2018 (Sr. No.516).

13. In view of the above, I do not find any reason to interfere with the Order-in-Assessment No. 721/2022-23/AC/Grp.VA/NS-V/JNCH dated 17.11.2022 & Order-in-Assessment No. 772/2022-23/AC/Grp.VA/NS-V/JNCH dated 29.11.2022 passed by the Assistant Comm. of Customs, Group VA, JNCH and reject the Appeal No(s) 46/2023 and 1372/2022 filed by the appellant M/s MIRC Electronics Limited."

7. On careful reading of the impugned order passed by the learned Commissioner of Customs (Appeals), it transpires that he has given a specific finding that there is no dispute in the classification of impugned goods viz. "Open Cells" under CTH 85.24 and in classification of "associated parts of Open Cells" under CTH 85.29. Further, he had stated that the issue in contention is whether exemption under Serial No. 29 & 30 of Notification No.24/2005-Customs dated 01.03.2005 is applicable to the impugned goods or not. In answering to the issue in dispute, learned Commissioner of Customs (Appeals), had concluded that "Open Cell" cannot be considered as the Liquid Crystal Display (LCD) itself, as certain other components have to

be attached to convert it into a fully functional LCD. In other words, the learned Commissioner of Customs (Appeals) had given a finding that the imported goods of the description “Open Cell” cannot be covered under the description “Liquid Crystal Display (LCD)”. In coming to such conclusion, he had referred to the technical understanding of the term “Open Cell” given by the Deputy General Manager, Head of Engineering department of the appellants, and stated that open cell is a major component in an LCD/LED device and it is usable in manufacture of LCD/LED television panels. Accordingly, he has concluded that since certain other components have to be attached converting it into a fully functional LCD, ‘open cell’ cannot be considered as LCD. On the above basis, learned Commissioner of Customs (Appeals) had concluded that that benefit of customs duty exemption in the exemption entry at Sr. No.29 & 30 of the Notification No.24/05-Cus., dated 01.03.2005 is not applicable to the impugned goods viz. “Open Cells” and “associated parts of Open Cells”.

8.1 In order to properly appreciate the conclusion arrived at in the impugned order in denying the Customs duty exemption claimed by the appellants, we would like to firstly refer to the relevant exemption notification No.24/2005-Customs dated 01.03.2005 as amended, the relevant portion of which is extracted below:

“Notification
No. 24/2005-Customs

New Delhi, dated the 1st March, 2005
10 Phalguna, 1926 (Saka)

G.S.R. (E).- In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962), the Central Government, on being satisfied that it is necessary in the public interest so to do, **hereby exempts the following goods, falling under the heading, sub-heading or tariff-item of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) and specified in column (2) of the Table below**, when imported into India, from the whole of the duty of customs leviable thereon under the said First Schedule, namely:-

TABLE		
Sr. No.	Heading, sub-heading or tariff item	Description
1	3818 00	All goods
xx	xx	xx
17	8528 42, 8528 52 or 8528 62	All goods of a kind solely or principally used in an automatic data processing system of heading 8471
18	8529 90 90	Parts and accessories of goods of a kind solely or principally used in an automatic data processing system of heading 8471
xx	xx	xx
29	8524	Liquid crystal devices for goods mentioned at Sl. Nos. 1 to 38A
30	8529	Parts of liquid crystal devices for goods mentioned at Sl.

Sr. No.	Heading, sub-heading or tariff item	Description
		Nos. 1 to 38A
xx	xx	Xx
38A	8541 42 00 or 8541 43 00	All goods for use solely and exclusively with goods covered under S. Nos. 1 to 38.
39	Any Chapter except Chapter 74	All goods except solar tempered glass or solar tempered (anti-reflective coated) glass] for the manufacture of goods covered by S. Nos. 1 to 38 above, provided that the importer follows the procedure set out in the Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017."

Plain reading of the above Notification provides that the imported goods classifiable by specific heading or sub-heading or tariff item in Column (2) of the Table and covered under the description in column (3) are exempt from the payment of whole of Customs duty as stated therein. The description of the goods mentioned in various serial number of the above notification are of different types viz., "**all goods**", "**all goods of a kind** used solely or principally used in...", "**all goods for use solely and exclusively** with...", "**specific goods** like **Liquid Crystal Devices for goods** mentioned at Sl. No. 1 to 38A" and "**All goods except for the manufacture of goods** covered by S. No.1 to 38...". It is, therefore, clear that in order to decide whether the exemption is applicable to the imported goods, it is necessary to classify the goods under specific Customs Tariff Item (CTI) and to examine, whether such CTI or sub-heading or headin is covered under the above exemption. In respect of 'All goods', it would suffice to see that the imported goods are covered under the respective heading or sub-heading or CTI; however, for other phrases, the requirement of compliance is at varying levels from simple declaration/determination of 'for use' to 'sole and exclusive use'. In respect of these phrases used as 'all goods' which is further qualified for certain purpose such as 'for use', 'of a kind', 'for sole and exclusive use', 'for the manufacture' etc., there is a further requirement to examine whether these purposes for which the exemption have been extended by use of different phrases in the above Notification is also fulfilled in order to grant exemption under the respective entries at various serial numbers.

8.2 In careful examination of the impugned order passed by learned Commissioner of Customs (Appeals), we find that such an examination has not been carried out. This is for the reason that firstly, the description of the goods specified in the exemption entry at Sl. No. 39 viz., 'Liquid Crystal Devices' has not been explained to state whether the imported goods is the 'Liquid Crystal Device' or not. Instead, it has been simply stated that the

imported goods are not a fully functional 'Liquid Crystal Display', as open cell needs to be added with certain other components to make it so. Even the original authority did not examine these aspects despite the claim made by the appellants that 'Open Cell' is a 'Liquid Crystal Device' in terms of HSN Explanatory note to the heading 8524. Further, in compliance with the judgement of the Hon'ble Supreme Court in *Union of India Vs. Kamlakshi Finance Corporation Ltd.*, 1991 (55) E.L.T. 433 (S.C) judicial discipline is required to be followed in the quasi-judicial process, and hence the learned Commissioner of Customs (Appeals) is required to follow the decisions of the higher judicial forum and distinguish the cases if any case laws are not applicable in the present set of facts dealt by him. Further, we also find that the instructions of CBIC No. 15/2022-Customs dated 20.07.2022 issued in the context of amendment to Sl. No.515A of Notification No.50/2017-Customs dated 30.06.2017 in respect of open cells and the details of such instructions have not been taken into consideration and discussed in the impugned order.

8.3 The facts of the case further indicate that in the Original order dated 17.11.2022, customs duty exemption benefits under Sl. No.515A and 516 of Notification No.50/2017-Customs dated 30.06.2017 have been extended, whereas in the Original order dated 29.11.2022, merit rate of duty has been applied without extending any duty exemption benefit, while reassessing the B/Es under Section 17(5) *ibid*, in contrary to the declaration made for self-assessment of goods by the appellants under Section 17(1) *ibid*. In this context, the learned Commissioner of Customs (Appeals), has not examined in detail how the exemption was allowed for imported goods under one B/E and in other B/E the same was rejected, without verifying the fulfillment of the exemption entries under Sl. No.515A and 516 of Notification No.50/2017-Customs dated 30.06.2017 which are subject to certain conditions under Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017, and upheld this contradictory original orders, in the same Order-in-Appeal i.e., impugned order dated 21.02.2023. Thus, in our considered view is a clear case of non-application of the mind and thus the impugned order dated 21.02.2023, is liable to be set aside on these grounds alone.

9.1 We also find that the appellants had submitted in their appeal papers filed before the learned Commissioner of Customs (Appeals) which was received by him on 10.01.2023, detailed grounds for their claim of duty

exemption benefits under Sr. No.29 & 30 of the Notification No.24/05-Cus., dated 01.03.2005, including the following:

(i) Technical explanation of the item 'open cell' and how it is Liquid Crystal Device;

(ii) Definition of Liquid Crystal Device provided under HSN Explanatory notes;

(iii) Amendments to the customs tariff entry of Liquid Crystal Device over the years on account of HSN changes and the history of creation of separate entry for 'open cell' and later merging it with new tariff entries introduced under CTH 85.24 with effect from 01.01.2022 as part of HSN changes

(iv) scope of the coverage of CTH 8524 in terms of chapter note 7 introduced w.e.f. 01.01.2022 and how the 'open cell' are specifically referred in the HSN explanatory notes under the category of flat panel display modules without drivers or control circuits.

9.2 However, we find that these have not at all been taken into consideration and not even an attempt made either to state whether these are relevant or not, and if so, why these are not relevant or if these points have relevance on exemption, how these enabled him to decide that the impugned goods are not eligible for exemption benefits under Sr. No.29 & 30 of the Notification No.24/05-Cus., dated 01.03.2005.

10.1 We further find from the additional paper books filed by both sides that during the disputed period viz., import transactions in July, 2022 and August, 2022, the relevant customs tariff entries under Chapter 85 of Section XVI of the First Schedule to Customs Tariff Act, 1975 stood as follows:

Tariff Item	Description of goods	Unit	Rate of Duty	
			Standard	Preferential Areas
(1)	(2)	(3)	(4)	(5)
8524	FLAT PANEL DISPLAY MODULES, WHETHER OR NOT INCORPORATING TOUCH-SENSITIVE SCREENS			
	- <i>Without drivers or control circuits:</i>			
8524 11 00	-- Of liquid crystals	u	15%	-
8524 12 00	-- Of organic light-emitting diodes (OLED)	u	15%	-
8524 19 00	-- Other	u	15%	-
	- <i>Other:</i>			
8524 91 00	-- Of liquid crystals	u	15%	-
8524 92 00	-- Of organic light-emitting diodes (OLED)	u	15%	-
8524 99 00	-- Other	u	15%	-

The relevant notes to the chapter heading 8517 and 8524, which was introduced with effect from 01.01.2022, read as follows:

"5. For the purposes of heading 8517, the term "smartphones" means telephones for cellular networks, equipped with a mobile operating

system designed to perform the functions of an automatic data processing machine such as downloading and running multiple applications simultaneously, including third-party applications, and whether or not integrating other features such as digital cameras and navigational aid systems.

7. For the purposes of heading 8524, "flat panel display modules" refer to devices or apparatus for the display of information, equipped at a minimum with a display screen, which are designed to be incorporated into articles of other headings prior to use. Display screens for flat panel display modules include, but are not limited to, those which are flat, curved, flexible, foldable or stretchable in form. Flat panel display modules may incorporate additional elements, including those necessary for receiving video signals and the allocation of those signals to pixels on the display. However, heading 8524 does not include display modules which are equipped with components for converting video signals (e.g., a scaler IC, decoder IC or application processor) or have otherwise assumed the character of goods of other headings.

For the classification of flat panel display modules defined in this Note, heading 8524 shall take precedence over any other heading in the Nomenclature."

10.2 The Tax Research Unit of the Ministry of Finance, in bringing out the above changes introduced in the Budget for the year 2021-2022, vide D.O.F. No. 334/02/2020-TRU dated 01.02.2021 had issued instructions explaining the changes made in the First Schedule to the Customs Tariff as follows:

"II. Amendments in Customs Tariff Act, 1975:

(a) First Schedule to the Customs Tariff Act, 1975 is being amended to create specific tariff lines for certain items.

(b) Changes to the first schedule to the Customs Tariff Act are being proposed that are to come into effect from 01.01.2022. This is in accordance with HSN 2022, which proposes 351 amendments to the existing harmonized nomenclature, covering a wide range of goods moving across borders. The amendments are necessary to adapt to the current trade through the recognition of new product streams, the changing nature of commodities being traded, advent of new technologies and addressing the environmental and social issues of global concern, all with a prime focus on the larger goal of ease of doing business and trade facilitation."

10.3 In the same amendments introduced in the Finance Bill, 2021, specific tariff entry created earlier for 8529 90 30 for 'open cell for television set' under CTH 8529 was omitted considering the above changes in creation of separate CTH 8524 for 'Flat panel display modules, whether or not incorporating touch-sensitive screens'.

11. We further find that HSN explanatory notes to CTH 8524 specifically provide that these cover articles which are equipped at a minimum with a display screen utilizing liquid crystal display (LCD), organic light-emitting

diodes (OLED), light emitting diodes (LED) or other display technologies. It specifically includes three types of products viz., (i) flat panel display modules without drivers or control circuits (ii) flat panel display modules with drivers or control circuits (iii) flat panel display modules with touch – sensitive screens.

12. From the arguments advanced by the Advocates for the appellants, explaining in detail the relevant customs tariff entries and the Chapter 85 and 90, introduction of Chapter Note 7 chapter 85 and the explanation for the insertion of new CTH 85.24 and the entries therein, legislative history of 'open cell', 'technical literature and explanation' in the form of an affidavit duly notarized stating that open cell are used for Television or monitor or display screen application and the various process involved in manufacture of such articles, concluding that open cell and panel are both LCD devices; various decisions of the Tribunal and the judgements of the Hon'ble Supreme Court relied upon by them, there is legal force in the argument that the exemption benefit under Sr. No.29 & 30 of the Notification No.24/05-Cus., dated 01.03.2005 should be extended to the impugned goods.

13.1 We are also of the considered view that the authorities below in re-assessment of impugned goods under Section 17(5) *ibid*, are required to pass a reasonable order, which is of a speaking nature, conforming to the requirements of the definition of 'assessment' which include such 're-assessment'. Hence, it is imperative that amongst other issues, tariff classification of imported goods and exemption or concession of duty issued under notifications issued under Section 25 *ibid* are required to be examined and determined in order to fulfill the requirements of re-assessment in terms of Section 2(2) *ibid*.

13.2 In this regard, we find that requirement of Section 17(5) *ibid* in passing of a 'speaking order' is a specific requirement and hence the basic requirement is to record the reasons for arriving at an order, which has not been fulfilled by the authorities below. We also find that the Hon'ble Supreme Court in the case of *Kranti Associates Pvt. Ltd. Vs. Masood Ahmed Khan* 2011 (273) E.L.T. 345 (S.C.) had elaborated in detail the various aspects of the speaking order that is required to be followed by a quasi-judicial authority or even an administrative authority. The relevant paragraphs of the above judgement are extracted and given below:

"17. The expression 'speaking order' was first coined by Lord Chancellor Earl Cairns in a rather strange context. The Lord Chancellor, while explaining the ambit of Writ of Certiorari, referred to orders with errors on the face of the record and pointed out that an order with errors on its face, is a speaking order. (See 1878-97 Vol. 4 Appeal Cases 30 at 40 of the report)

18. This Court always opined that the face of an order passed by a quasi-judicial authority or even an administrative authority affecting the rights of parties, must speak. It must not be like the 'inscrutable face of a Sphinx'.

xx

xx

xx

xx

xx

51. Summarizing the above discussion, this Court holds :

- (a) In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially.
- (b) A quasi-judicial authority must record reasons in support of its conclusions.
- (c) Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.
- (d) Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.
- (e) Reasons reassure that discretion has been exercised by the decision maker on relevant grounds and by disregarding extraneous considerations.
- (f) Reasons have virtually become as indispensable a component of a decision making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies.
- (g) Reasons facilitate the process of judicial review by superior Courts.
- (h) The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually the Life blood of judicial decision making justifying the principle that reason is the soul of justice.
- (i) Judicial or even quasi-judicial opinions these days can be as different as the judges and authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important for sustaining the litigants' faith in the justice delivery system.
- (j) Insistence on reason is a requirement for both judicial accountability and transparency.
- (k) If a Judge or a quasi-judicial authority is not candid enough about his/her decision making process then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism.
- (l) Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or 'rubber-stamp reasons' is not to be equated with a valid decision making process.
- (m) It cannot be doubted that transparency is the *sine qua non* of restraint on abuse of judicial powers. Transparency in decision making not only makes the judges and decision makers less prone to errors but also makes them subject to broader scrutiny. (See David Shapiro in Defence of Judicial Candor (1987) 100 Harward Law Review 731-737).
- (n) Since the requirement to record reasons emanates from the broad doctrine of fairness in decision making, the said requirement is now virtually a component of human rights and was considered part of Strasbourg Jurisprudence. See (1994) 19 EHRR 553, at 562 para 29 and *Anya v. University of Oxford*, 2001 EWCA Civ 405, wherein the Court referred to Article 6 of European Convention of Human Rights which requires, "adequate and intelligent reasons must be given for judicial decisions".
- (o) In all common law jurisdictions judgments play a vital role in setting up precedents for the future. Therefore, for development of law, requirement of giving reasons for the decision is of the essence and is virtually a part of "Due Process".

Since these pre-requisites have not been followed by the authorities below in adjudication of the cases, we consider it appropriate to set-aside the

impugned order and remand the same back to the original authority by passing a reasoned order in the light of the observations made above.

14. In view of the foregoing discussions and analysis, we are of the considered view that the impugned order passed by the learned Commissioner (Appeals) cannot be sustained on merits. However, we are also of the considered view that in order to examine the various issues of re-assessment of impugned goods covered under the two Bills of Entry (B/E) No. 9574139 dated 16.07.2022 and B/E No.2453614 dated 15.09.2022 for deciding upon the eligibility to Customs duty exemption benefits under Sl. No. 29 and 30 of Notification No.24/2005-Customs dated 01.03.2005, as amended, the matter needs to be decided afresh in *de novo* proceedings by the original authority.

15. Therefore, the impugned orders are set aside and the appeals are allowed in favour of the appellants by remanding the matter for a fresh decision by Original Authority after duly taking into consideration the various submissions made by the appellants and the points advanced by Revenue in these appeals before the Tribunal. The appellants are also directed to cooperate with the adjudication authorities by submitting the various grounds made out in the appeal before us and are at liberty to submit any additional points in the dispute during the *de novo* proceedings. Needless to say that the Original adjudicating authority should take into account such additional submissions given by the appellants and provide reasonable opportunity for personal hearing, before ordering for re-assessment the impugned goods.

16. In the result, the appeals are allowed by way of remand for fresh *de novo* proceedings in the above terms.

(Order pronounced in open court on 15.04.2024)

(S.K. Mohanty)
Member (Judicial)

(M.M. Parthiban)
Member (Technical)