

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

REGIONAL BENCH - COURT NO. I

Customs Appeal No. 87594 of 2023

(Arising out of Order-in-Original CAO No.CC-GSS/10/2023-24 Adj.(I) ACC dated 21.07.2023 passed by the Commissioner of Customs (Import), Air Cargo Complex, Sahar, Andheri (East), Mumbai.)

Philips India Limited

93 UPS SCS India Pvt. Ltd., B-3 Part-1
Indian Logistics Complex
Dive Anj. Mumbai – 421 302.

.... Appellants

Versus

Commissioner of Customs (Import)

Air Cargo Complex (ACC), Sahar
Andheri (East), Mumbai – 400 099.

.... Respondent

APPEARANCE:

Shri T.Vishwanathan a/w Ms Anjali Hirawat, Shri Bharat Menon, 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/86879/2024

Date of Hearing: 18.07.2024

Date of Decision: 18.11.2024

Per: M.M. PARTHIBAN

This appeal has been filed M/s Philips India Limited, Mumbai (herein after, referred to as 'the appellants') assailing the Order-in-Original No. CAO No.CC-GSS/10/2023-24 Adj.(I) ACC dated 21.07.2023 (herein after referred to as 'the impugned order') passed by the Commissioner of Customs (Import), Air Cargo Complex(ACC), Sahar, Andheri (East), Mumbai.

2.1 The facts of the case, leading to this appeal, are summarized herein below:

2.2 The appellants herein, had imported "LCD monitors" for use with medical equipment such as ultrasound machines, X-Ray machines and CT Scan etc. Through Air Cargo Complex (ACC), Mumbai and for this purpose have filed various Bills of Entry (B/Es) periodically during the disputed period from 29.07.2017 to 26.02.2022, by classifying the "LCD monitor" under Customs Tariff Item (CTI) 8528 5200. The appellants have self-assessed the customs duty payable thereon by claiming the Integrated Goods and Services Tax (IGST) @ 18% as applicable to 'computer monitor' under Serial Nos. 383C & 384 of Schedule-III to Notification No. 01/2017-Integrated Tax (Rate) dated 28.06.2017.

2.3 On the basis of intelligence, Central Intelligence Unit (CIU) of Air Cargo Customs authorities have conducted 100% examination of the imported goods covered under B/E No. 7103812 dated 17.01.2022 filed by the appellants, and found that the imported goods are 'system display' (parts of ultrasound machine) the appellants have classified it under CTI 8528 5900 wherein IGST have been claimed at 18% in terms of serial No.384 of Schedule-III of IGST Notification No.01/2017-IT (Rate) dated 28.06.2017. An enquiry with the importer appellants revealed that the '21.5 inch system display' is used as a display unit for sonography machine with the dedicated connectors and functions such that it cannot be used as monitor in any other computer. On the basis of statement recorded from Shri Swapnil Dilip Bendre, working as Modality Leader, Ultrasound-Western Region, Services and Solutions Delivery in the appellants company, the imported goods were seized under panchanama proceedings dated 24.01.2022. Few more imports under B/E 7375062 dated 05.02.2022 and B/E No. 7391787 dated 07.02.2022 were also subjected to 100% examination, and having found that such monitors are not normal computer monitors and since appropriate additional duty of customs has not been paid on such goods, these were also seized under panchanama proceedings dated 09.03.2022.

2.4 CIU Customs authorities of ACC have conducted further investigation on the past imports made by the appellants. The department had objected to the classification of imported monitors adopted by the appellants and for payment of IGST at the rate of 18%, as against the applicable rate of 28% under entry in serial No. 154 of the notification dated 28.06.2017, on the ground that the impugned goods are 'other' monitors which are designed to be used with medical equipment, X-Ray machines and not for use with the computers or Automatic Data processing machine (ADP). Accordingly, the

department had proposed for revising the classification / categorization of imported goods to fall under IGST rate @ 28% in terms of entry at serial No. 154 of the Schedule-IV of Notification No.01/2017-IT(Rate) dated 28.06.2017. Accordingly, the department had initiated show cause proceedings upon completion of the investigation by issue of Show Cause Notice (SCN) dated 26.07.2022, for revising the classification and demanding differential duty of customs in respect of the subject B/Es during the disputed period covering 29.07.2017 to 26.02.2022, under Section 28(4) the Customs Act, 1962 along with interest, and proposing for confiscation of impugned goods in few cases and for imposition of penalties on the appellants under provisions the Customs Act, 1962. The said SCN was adjudicated by the learned Commissioner of Customs (Import) in the impugned order by confirming the proposals made in the SCN. Feeling aggrieved with the impugned order, the appellants have filed this appeal before the Tribunal.

3.1 Learned Advocate appearing for the appellants, stated that the impugned goods viz., LCD monitors can connect with CPUs/ ADC machine or Laptop computers etc., as they have requisite input ports to receive data or information from computers. The impugned goods are not monitors for TV or Video monitor, as it does not have TV tuners. He further stated that the user manual of impugned goods specifically indicate that these have ports such as DVI-D, VGA, DP etc., to enable the imported goods to be connected to any ADP machine using appropriate cables. He also stated that the medical equipment to which these impugned goods are connected, have computer/ADP machine inside such equipment. This factual aspect of usage of imported goods with computers have also been certified by the Chartered Engineer in his certificate dated 10.11.2023 wherein it has been stated that the monitors in question can in fact be connected to the Central Processing Unit (CPU) of a Desktop Computer and that the monitors worked unhindered and in a manner that any other computer monitor interacts with the ADP. He further stated that the capability of the monitors to connect with ADP machine alone is relevant for deciding the classification as 'computer monitor' and the presence of additional features such as digital imaging and communications in medicine (DICOM) which only make the monitors suitable for use with the medical equipment, does not change the nature of the monitors being computer monitors. Therefore, they pleaded that the classification adopted by the appellants and the IGST paid by them is

appropriate and there is no ground for demand of additional duty as proposed in the SCNs.

3.2 Learned Advocate had relied upon the order passed in their own case to state that the classification of the impugned goods in Chennai Customs have been decided by the Commissioner of Customs in appellant's favour vide Order-in-Original No.07/2024-AIR dated 12.01.2014. He further stated that this order has held that the imported monitors are computer monitors attracting IGST @18% under Serial No.384 of the notification dated 26.07.2022 in terms of the CBIC Circular No. 33/2007-Customs and after taking into account the HS Explanatory Notes, physical demonstration of the imported monitors being shown the capability to be connected with ADP machines/CPU.

3.3 Learned Advocate also stated that the demand of IGST in the SCN is revenue neutral; statement of employees cannot be taken as a ground to determine the classification of the imported goods; the customs officers do not have jurisdiction to decide on the rate of IGST applicable on the imported goods; there is no ground for invoking extended period of limitation and hence on these grounds the SCN is liable to set aside. Further, he stated that different Customs Commissionerates cannot adopt varying and different stands on the classification of same type goods.

3.4 In support of their stand, the appellants had relied upon the following judicial pronouncements:

(i) Ortho Clinical Diagnostics India Pvt. Ltd. Vs. Commissioner of Customs (Import) – 2022 (9) TMI 1109- CESTAT Mumbai

(ii) Commissioner of Customs (Port-Import), Chennai-I Vs. Ogni Agate Systems – 2018 (363) E.L.T. (Tri.-Chennai)

(iii) Mahindra & Mahindra Ltd. (Automotive sector) Vs. Union of India – 2022-VIL-690-BOM-CU

(iv) Sony India Pvt. Ltd. Vs. Commissioner of Customs, C. Excise, New Delhi – 2019 (370) E.L.T. 1774 (Tri. – Del.)

(v) Benq India Pvt. Ltd. Vs. ADG (Adjudication), New Delhi – 2022 (9) TMI 690 – CESTAT New Delhi

(vi) BPL Mobile Communications Ltd. Vs. Commissioner of Customs, ACC, Mumbai – 2000 (126) E.L.T. 986 (Tribunal) affirmed by Hon'ble Supreme Court in 2001 (128) E.L.T. A202 (S.C.)

(vii) Neuvera Wellness Ventures P Ltd. Vs. Commissioner of Customs, Mundra – 2023 (10) TMI 964- - CESTAT Ahmedabad.

4.1 Learned Authroised Representative appearing for the Revenue reiterated the findings recorded by the learned Commissioner in the impugned order and stated that the appellants have described the goods in the B/Es as 'other monitors' and claimed classification under CTI 8528 5900 but for the purpose of IGST they had claimed the same as 'computer monitor'. The appellants without changing the classification adopted by them in CTI 8528 5900 cannot claim the benefit of the rate of 18% IGST. The imported goods are having BNC connectors which is for video signals/communication, composite signals whereby display units are connected to the video camera by BNC to VGA cable, which feature are not found in any general-purpose computer monitor for ADP machine. The adjudication order of Chennai Customs and the Chartered Engineer's certificate have not gone in to the details of BNC connectors and they cannot be taken as a basis for classification of the impugned goods.

4.2 He further stated that the classification cannot be decided based on the design or capability of its use alone. In terms of Section Note 2(a) of Section XVI, classification of a machine shall be under the heading where the whole machine falls and the appropriate classification shall under the heading appropriate to that whole function. Since in this case, there is no doubt that the monitors are for medical machines and/or ADP machines, learned AR stated that to classify the impugned goods as per Section 2(a) i.e., having specific entry in the tariff read with Explanatory Notes for Parts in reference to 'functional unit in terms of Note 4 of Section XVI, the video monitor are classifiable under specific heading 8528 and at CTI 8528 5900 in terms of GRI-1 read with GRI-6 based on the 'intended to contribute together to a clearly defined function' and/or 'specific function'.

4.3 Learned AR stated that concessional benefit of notification has to be strictly followed in accordance with wordings of the notification in terms of Hon'ble Supreme Court's judgement in Commissioner of Customs (Import), Mumbai Vs. Dilip Kumar & Company – 2018 (361) E.L.T. 577 (S.C.). He further stated that the aspect of revenue neutral is not applicable, as the restrictions under Rule 36(3) of the IGST Rules, 2017, does not allow utilization of the input tax credit of IGST in case of willful mis-statement,

suppression of facts fraud etc. On the above grounds, he prayed that the appeal preferred by the appellants is liable to be set aside.

4.4 Further, learned AR relied upon the following judgement in support of the department's stand.

(i) Ajwa Dry Fruit Impex Vs. Union of India – 2023 (11) TMI 773 - Kerala High Court

(ii) Keihin Automotive Systems India Pvt. Ltd. Vs. Office of Principal Commissioner of Customs Final Order No.51548 of 2019

(iii) Visteon Automotive Systems India Ltd. Vs. CESTAT, Chennai – 2018 (9) G.S.T.L. 142 (Mad.)

5. Heard both sides and perused the records of the case. We have also considered the additional written submissions given in the form of paper books by learned Advocates for the appellants as well as Authorised Representative for the Revenue, and the arguments advanced during the hearing of this case.

6. The issue for consideration before us is determination of the proper classification of imported goods, for deciding on the appropriate levy of customs duty i.e., additional duty of customs, more particularly the Integrated Goods and Service Tax (IGST) leviable under sub-section (7) of Section 3 of the Customs Tariff Act, 1975; and, whether the adjudged demands including penalty imposed in the impugned order is sustainable or not?

7. In order to address the above issue of classification of imported goods, we would like to refer the relevant legal provisions contained in Section 12 of the Customs Act, 1962; the Customs Tariff Act, 1975 and rules framed thereunder, relevant Notification Prescribing the IGST rate for consideration of proper and appropriate classification of the subject goods under dispute.

"Section 12. Dutiable goods. -

(1) Except as otherwise provided in this Act, or any other law for the time being in force, duties of customs shall be levied at such rates as may be specified under the Customs Tariff Act, 1975 (51 of 1975), or any other law for the time being in force, on goods imported into, or exported from, India.

(2) The provisions of sub-section (1) shall apply in respect of all goods belonging to Government as they apply in respect of goods not belonging to Government."

"Section 1. Short title, extent and commencement. -

(1) *This Act may be called the Customs Tariff Act, 1975.*

(2) *It extends to the whole of India.*

(3) *It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.*

Section 2. Duties specified in the Schedules to be levied. -

The rates at which duties of customs shall be levied under the Customs Act, 1962 (52 of 1962), are specified in the First and Second Schedules.

Section 3. Levy of additional duty equal to excise duty, sales tax, local taxes and other charges.

(1) *Any article which is imported into India shall, in addition, be liable to a duty (hereafter in this section referred to as the additional duty) equal to the excise duty for the time being leviable on a like article if produced or manufactured in India and if such excise duty on a like article is leviable at any percentage of its value, the additional duty to which the imported article shall be so liable shall be calculated at that percentage of the value of the imported article :*

...

(7) *Any article which is imported into India shall, in addition, be liable to integrated tax at such rate, not exceeding forty per cent as is leviable under section 5 of the Integrated Goods and Services Tax Act, 2017 on a like article on its supply in India, on the value of the imported article as determined under sub-section (8) or sub-section (8A), as the case may be.*

...

(12) *The provisions of the Customs Act, 1962 (52 of 1962) and the rules and regulations made thereunder, including those relating to drawbacks, refunds and exemption from duties shall, so far as may be, apply to the duty or tax or cess, as the case may be, chargeable under this section as they apply in relation to the duties leviable under that Act."*

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THE FIRST SCHEDULE – IMPORT TARIFF

(Refer Section 2)

THE GENERAL RULES FOR THE INTERPRETATION OF IMPORT TARIFF (GIR)

Classification of goods in this Schedule shall be governed by the following principles:

1. *The titles of Sections, Chapters and sub-chapters are provided for ease of reference only; for legal purposes, classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes and, provided such headings or Notes do not otherwise require, according to the following provisions:*

2. (a) *Any reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, as presented, the incomplete or unfinished articles has the essential character of the complete or finished article. It shall also be taken to include a reference to that article complete or finished (or falling to be*

classified as complete or finished by virtue of this rule), presented unassembled or disassembled.

(b) Any reference in a heading to a material or substance shall be taken to include a reference to mixtures or combinations of that material or substance with other materials or substances. Any reference to goods of a given material or substance shall be taken to include a reference to goods consisting wholly or partly of such material or substance. The classification of goods consisting of more than one material or substance shall be according to the principles of rule 3.

3. When by application of rule 2(b) or for any other reason, goods are, prima facie, classifiable under two or more headings, classification shall be effected as follows:

(a) The heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods.

(b) Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to (a), shall be classified as if they consisted of the material or component which gives them their essential character, in so far as this criterion is applicable.

(c) When goods cannot be classified by reference to (a) or (b), they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration.

4. Goods which cannot be classified in accordance with the above rules shall be classified under the heading appropriate to the goods to which they are most akin.

...

6. For legal purposes, the classification of goods in the sub-headings of a heading shall be determined according to the terms of those sub headings and any related sub headings Notes and, mutatis mutandis, to the above rules, on the understanding that only sub headings at the same level are comparable. For the purposes of this rule the relative Section and Chapter Notes also apply, unless the context otherwise requires."

8.1 From plain reading of the above legal provisions, it transpires that in order to determine the appropriate duties of customs payable on any imported goods, one has to make an assessment of the imported goods for its correct classification under the First Schedule to Customs Tariff Act, 1975 in accordance with the provisions of the Customs Tariff Act by duly following the General Rules for Interpretation (GIR) and the General Explanatory notes (GEN) contained therein. The First Schedule to the Customs Tariff Act, 1975 specifies the various categories of imported goods in a systematic and well-considered manner, in accordance with an international scheme of classification of internationally traded goods, i.e., 'Harmonized Commodity

Description and Coding System' (HS). Accordingly, goods are to be classified taking into consideration the scope of headings / sub-headings, related Section Notes, Chapter Notes and the General Rules for the Interpretation (GIR) of the First Schedule to the Customs Tariff Act, 1975. Rule 1 of the GIR provides that the classification of goods shall be determined according to the terms of the headings of the tariff and any relative Section notes or Chapter notes and thus, gives precedence to this while classifying a product. Rules 2 to 6 provide the general guidelines for classification of goods under the appropriate sub-heading. In the event of the goods cannot be classified solely on the basis of GIR 1, and if the headings and legal notes do not otherwise require, the remaining Rules 2 to 6 may then be applied in sequential order. Further, while classifying goods, the foremost consideration is the 'statutory definition', if any, provided in the Customs Tariff Act. In the absence of any statutory definition, or any guideline provided by HS explanatory notes, the trade parlance theory is to be adopted for ascertaining as to how the goods are known in the common trade parlance for the purpose of dealing between the parties.

8.2 In context with the case in hand, we note that the following are some of the important rules to be followed in the scheme of determining correct classification of imported goods:

- (i) classification of goods shall be determined according to the terms of the headings and any relative Section or Chapter Notes; (GIR 1)
- (ii) if the goods are found to be classifiable under two or more headings, then the classification shall be effected as per the rules provided under 3(a), 3(b) and 3(c) [GIR 3]
- (iii) Goods which cannot be classified in accordance with the aforesaid rules, then the same shall be classified under the heading appropriate to the goods to which they are more akin. (GIR 4)
- (iv) For legal purposes, the classification of goods in the sub-headings shall be determined according to the terms of those sub-headings and any related sub-heading Notes (GIR 6)

9.1 In the case before us, the contending classification of imported goods discussed in the impugned order is either under CTI 8528 5200 or CTI 8528 5900 of the First Schedule to the Customs Tariff Act, 1975 and thereafter proceed to decide on the correct entry in Notification No. 01/2017-IT(Rate) dated 28.06.2017, for determination of appropriate rate of IGST applicable on the imported goods.

9.2 The relevant tariff entries in the Schedule to the Customs Tariff Act, 1975 are extracted as below:

Tariff Item	Description of goods
(1)	(2)
8528	Monitors and projectors, not incorporating television reception apparatus; reception apparatus for television, whether or not incorporating radio-broadcast receivers or sound or video recording or reproducing apparatus - <i>Cathode-ray tube monitors:</i> 8528 42 00 -- Capable of directly connecting to and designed for use with an automatic data processing machine of heading 8471 8528 49 00 -- Other - <i>Other monitors:</i> 8528 52 00 - Capable of directly connecting to and designed for use with an automatic data processing machine of heading 8471 8528 59 00 - Other

Thus, it is clear that at the Chapter heading level i.e., Chapter 8528, there is no difference of opinion in classification of impugned goods among the appellants and the department. The dispute in classification lies in the narrow compass of the two Sub-headings i.e., 8528 52 or 8528 59 as such sub-headings themselves contain the respective Tariff Items i.e., 8528 52 00 or 8528 59 00, in which the impugned goods are required to be correctly classified. Now, we may closely examine the scope of the contending Sub-headings/Tariff Items thereof for determining correct classification of the imported goods.

9.3 It could be seen that by applying the GIR 1 - rule at (i) above, the position is made clear that Sub-heading 8528 covers within its scope and ambit, mainly of three broad categories of goods for ascertaining proper classification:

- (i) first category is about all the monitors and projectors not incorporating television reception apparatus;
- (ii) second category covers 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); and
- (iii) third category covering apparatus for the reception of television signals, with the display capabilities e.g., Receivers of satellite television broadcasts.

As the impugned goods are related to monitors, the relevant category of items that needed to be closely examined, is the goods covered under the first category. Further, the goods under second and third category are not relevant for the purpose of the present factual matrix of the case. Since, we are not dealing with cathode ray tube (CRT) monitors which use cathode ray tube to form images on the screen, the sub-category of the goods which need to examine in detail is 'other monitors' covered under two sub-headings of 8528 52 or 8528 59. LCD monitors, LED monitors etc. which use a series of small light emitting diodes to illuminate the display screen, as opposed to the conventional cathode-ray tubes of the old technology.

9.4 We find that the classification of goods prescribed under the above two sub-headings have been distinguished by the following functions of the monitors, viz., (i) being capable of directly connecting to ADP machine (ii) designed for use with ADP machine. In order to further examine the classification in terms of HS explanatory notes of the (World Customs Organization), which describe in detail the scope and coverage of the goods under the Customs classification, the relevant notes were also perused. In terms of HS explanatory notes, monitors capable of directly connecting to and designed for use with ADP machine includes monitors which are capable of accepting a signal from the central processing unit of an automatic data processing machine and provide a graphical presentation of the data processed. These monitors classifiable under sub-heading 8528 52 are distinguishable from other types of monitors and from television receivers by various characteristics/features as follows:

- (i) they usually display signals of graphics adapters which are integrated in the central processing unit of the ADP machine
- (ii) they do not incorporate a channel selector on a video tuner
- (iii) they are fitted with connectors characteristic of data processing systems
- (iv) the viewable image size of these monitors does not generally exceed 76 cm (30 inches)
- (v) they have display pitch size (Usually smaller than 0.3mm) suitable for close proximity viewing
- (vi) they may have an audio circuit and built in speakers
- (vii) they usually have a control button situated on the front panel
- (viii) they usually cannot be operated by a remote control

(ix) they may incorporate, swivel and height adjusting mechanisms, glare-free surfaces, flicker-free display, and other ergonomic design characteristics to facilitate prolonged periods of viewing at close proximity to the monitor

(x) they may utilize wireless communication protocol to display data from an ADP machine.

9.5 On the other hand, monitors which are not used with ADP machine, are of those monitors, which are capable of receiving signals when connected directly to video camera or recorder, by means of composite video, s-video or co-axial cables, so that all the radio frequency circuits are eliminated. These are typically used by television companies or for closed-circuit television (such as those in the airports, railway stations, factories, hospitals etc.,) for display. They can, moreover, have separate inputs for red (R), green (G) and blue (B), or be coded in accordance with a particular standard such as NTSC, SECAM, PAL, D-MAC etc., for reception of coded signals, by incorporating video decoding device.

9.6 On careful perusal of the tariff entries under the First Schedule to the Customs Tariff and the HS Explanatory Notes, we are of the opinion that if a monitor is capable of accepting signals from an ADP machine, and providing a graphical representation of the data presented, it will be treated as a monitor classifiable under CTI 8528 5200, since such monitors fulfil the twin conditions of 'capable of directly connecting to ADP machine' and 'designed for use with ADP machine'. In other words, whether a monitor is having the technical specifications by which it can be connected to an ADP machine, is the determining factor for its classification under CTI 8528 5200 and not the actual use for which these are being put to in each of the situation, where such monitors are used.

9.7 We further find that the facts on record indicate that various medical equipment such as Ultrasound equipment, CT scan, MRI scan systems, Digital x-ray machine etc. use monitors which are connected to an ADP machine, in order to compute large amount of data collected during the screening of patients. The computer connected to such medical equipment processes the image that is received in the main machine, and the output from the computer is displayed on the monitor (which are under dispute). Further information available is also stored in the computers connected to the medical equipment, and such stored information/images are displayed in the monitors, for comparison, analysis and for preparation of reports, for

viewing in such monitors. Further such monitors can also process like a normal computer for preparation of documents / reports, connecting to the Internet for sending images generated by the medical equipment to the patients, hospitals or the concerned persons. Thus, it clearly demonstrates that the impugned goods can be used as monitors not only for display of images etc. of the medical equipment, but also is monitor for display of ADP machine connected to the medical equipment.

9.8 From the above discussion of the legal provisions of the First Schedule to the Customs Tariff Act, 1975 and the explanation of coverage of products given in the Explanatory notes of HS of the WCO, we are of the considered opinion, that the impugned goods are appropriately classifiable under CTI 8528 5200 and not under CTI 8528 5900.

10.1 From the facts of the case, it is also indicated that the appellants had classified the monitors incorrectly under CTI 8528 5900. However, since the applicable BCD for both sub-headings of 8528 52 and 8528 59 remain the same, such incorrect classification have not resulted in any duty difference with respect to basic customs duty leviable under Section 14 of the Customs Act, 1962 read with Section 2 of the Customs Tariff Act, 1975. Further, in order to determine whether such incorrect classification has affected the determination of correct rate of IGST as the 'computer monitors' or not, we have to examine the coverage of entries given under Schedule-III (serial No. 383C & 384) and Schedule-IV (serial No.154) of the Notification No. 01/2017-IT (Rate) dated 26.07.2017, which are extracted and given below:

Notification No. 1/2017-Integrated Tax (Rate) dated 28-6-2017, as amended

*"In exercise of the powers conferred by sub-section (1) of section 5 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017) read with sub-section (5) of section 15 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on the recommendations of the Council, hereby **notifies the rate of the integrated tax of—***

- (i) 5 per cent in respect of goods specified in Schedule I,
- (ii) 12 per cent in respect of goods specified in Schedule II,
- (iii) 18 per cent in respect of goods specified in Schedule III,
- (iv) 28 per cent in respect of goods specified in Schedule IV,
- (v) 3 per cent in respect of goods specified in Schedule V,
- (vi) 0.25 per cent in respect of goods specified in Schedule VI, and
- (vii) 1.50 per cent in respect of goods specified in Schedule VII

appended to this notification (hereinafter referred to as the said Schedules), that shall be levied on inter-State supplies of goods, the description of which is specified in the corresponding entry in column (3) of the said Schedules, falling under the

tariff item, sub-heading, heading or Chapter, as the case may be, as specified in the corresponding entry in column (2) of the said Schedules.

SCHEDULE I - 5%

S. No.	Chapter/ Heading/ Sub- heading/ Tariff item	Description of Goods
XXX	XXX	XXX

SCHEDULE III - 18%

S. No.	Chapter/ Heading/ Sub- heading/ Tariff item	Description of Goods
XXX	XXX	XXX
383C	8528	Television set (including LCD or LED television) of screen size not exceeding 32 inches
384	8528	Computer monitors not exceeding 32 inches, Set top Box for Television (TV)
XXX	XXX	XXX

SCHEDULE IV - 28%

S. No.	Chapter/ Heading/ Sub- heading/ Tariff item	Description of Goods
XXX	XXX	XXX
154	8528	Monitors and projectors, not incorporating television reception apparatus; reception apparatus for television, whether or not incorporating radio-broadcast receiver or sound or video recording or reproducing apparatus other than computer monitors not exceeding 32 inches, set top box for television and Television set (including LCD and LED television) of screen size not exceeding 32 inches
XXX	XXX	XXX

Explanation.—For the purposes of this Schedule,—

...

(iii) "Tariff item", "sub-heading", "heading" and "Chapter" shall mean respectively a tariff item, sub-heading, heading and Chapter as specified in the First Schedule to the Customs Tariff Act, 1975 (51 of 1975).

(iv) The rules for the interpretation of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), including the Section and Chapter Notes and the General Explanatory Notes of the First Schedule shall, so far as may be, apply to the interpretation of this notification.

(v) The words and expressions used and not defined in this notification, but defined in the Central Goods and Service Tax Act, 2017 (12 of 2017), the Integrated Goods and Services Tax Act, 2017 (13 of 2017) and the Union Territory Goods and Services Tax Act, 2017 (14 of 2017), shall have the same meanings as assigned to them in those Acts.

2. This notification shall come into force with effect from the 1st day of July, 2017."

10.2 From plain reading of the above notification entries relevant to the present case, it transpires that the specified rate of IGST mentioned in the schedule would apply to all the goods itemized therein. Accordingly, computer monitors, set top boxes for television and television set including LCD or LED television falling under heading 8528, if these are not exceeding 32 inches are attracting IGST at the rate of 18%, as prescribed under entry at Serial No.383C and 384 of Notification dated 28.06.2017. As distinct from the above (i) Monitors and projectors, which are not incorporating television reception apparatus and (ii) Reception apparatus for television, other than (a) computer monitors not exceeding 32 inches, (b) television set, set top box for television set of screen size not exceeding 32 inches, are attracting 28% IGST%, as prescribed under entry at Serial No.154 said of Notification dated 28.06.2017. Therefore, it clearly transpires that on the basis of size of display i.e., monitors of size less than 32 inches; and on the basis of technical capability of the function of the monitor to be used, connected to or designed for use with ADP machines, there are appropriately chargeable to IGST at 18%, in terms of entry at Serial No.384 of above notification. It also transpires that television sets, other monitors not capable of connecting to ADP machine, if the screen size is not exceeding 32 inches, still they are chargeable to IGST at 18%, in terms of entry at Serial No.383C of above notification. As the impugned goods are of display screen not exceeding 32 inches and are used with or connected to the ADP machines, we find that the appropriate IGST leviable on the impugned goods are at 18% and not 28%, as held in the Impugned order.

10.3 In the impugned order, it has been recorded in paragraph 32.2, that the imported goods are of 19 inch LCD display monitors. Further, it has also been recorded in the impugned order that in order to fall under entry at serial No.384, monitors not only needed to be of screen size not exceeding 32 inches but it should also be classifiable under CTI 8528 5200 only. We find that such a finding in the impugned order passed by the learned Commissioner is contrary to the entry in the notification 384, inasmuch as the entry in column (2) for serial No.384 is heading "8528" and not tariff item "8528 5200". Hence, such a finding is contrary to the legal position and therefore on this ground alone, the impugned order is liable to be set aside, as it does not stand for legal scrutiny.

10.4 In this regard, we find that the Ministry of Finance, Central Board of Excise & Customs (CBEC) had examined the issue of classification of

monitors in the context of certain difficulties expressed by trade and industry association in classification of monitors for use with Automatic Data Processing (ADP) machine and consequent import duty exemption benefits available to those goods under Circular No. 33/2007-Customs dated 10.09.2007. The extract of the relevant paragraphs of the said circular is given below:

"Circular No.33/2007-Cus.
F. No. 528/96/2001-Cus.(TU)
Government of India
Ministry of Finance
Department of Revenue
Central Board of Excise & Customs
159A, North Block, New Delhi-1.
Dated 10th September, 2007.

To
All Chief Commissioners of Customs.
All Chief Commissioners of Customs & Central Excise.
Chief Departmental Representatives, CESTAT.
All Commissioners of Customs.
All Commissioners of Customs & Central Excise.

Subject: Classification of Digital LCD / Flat Panel Monitor - Admissibility of
Notification benefits - reg.

It has been represented by the trade and industry association that certain difficulties have been faced in classification of monitors for use with Automatic Data Processing (ADP) machine and consequent import duty exemption benefits. Doubts have been expressed by field formations as to whether 'LCD or Flat Panel Monitors, if used along with ADP Machines would be classifiable as 'ADP Monitor' and whether exemption from Customs duty vide Sl.No.17 of Notification No. 24/2005-Cus dated 1.3.2005 would be admissible.

2. The issue was examined in the Board. Monitors used along with ADP machines were classified till 31.12.2006, under heading 8471 of the First Schedule to the Customs Tariff Act, 1975. Due to HS 2007 changes brought into effect from 1.1.2007, such monitors are presently classifiable under sub heading 8528 40. All types of monitors and projectors which are solely or principally used with an ADP machine is covered under the sub headings 8528 41(Cathode Ray Tube Monitors), 8528 51(Other types) and 8528 61(Projectors) and are extended with exemption of customs duty vide Sl.No.17 of notification No. 24/2005-Customs dated 1.3.2005. Further, television or video monitors were classifiable earlier under heading 8528. Presently these monitors used as Television or Video reception apparatus are classified under sub heading 8528 71 or 8528 72 as the case may be, and are not eligible for the aforesaid exemption.

3. This issue was also deliberated at the Conference of Chief Commissioners' on Tariff and Allied Matters, wherein it was decided that the Board may issue guidelines on the basis of assessment practice that is being followed by Customs Commissionerate, Aircargo, Mumbai to distinguish 'computer monitors' from that of monitors for use with TV / Video and for classifying the goods under 8528 41 or 8528 51 (earlier classifiable under CTH 8471). However, to ensure uniformity, it was decided that Board could issue a circular in this regard.

4. Accordingly the technical features distinguishing the computer monitors from the other types of Television/video monitors are enclosed. These could be used by the officers of the field formation as guidance for assessment, examination of the said goods for determining its proper classification and extension of the notification benefit.

Comparative chart of physical characteristics of Computer monitors versus Video monitors

<i>Computer Monitors</i>	<i>TV/ Video Monitors</i>
<i>Computer Monitors cannot receive video/TV signals (eg: NTSC, SECAM, PAL) because they do not incorporate a TV tuner. They have DVI*** and/or mini D - Stub connectors to connect to the Central Processing Unit (CPU).</i>	<i>TV/Video Monitors receive television signals through a co-axial cable (S-video input connector). They do not have a mini D - Stub connector.</i>
<i>Only few ports like VGA*, DVI, USB are provided to receive signals from CPU or storage devices</i>	<i>Presence of composite video port, S-video port** are essential for multi functional screen. These enable the monitors to receive broadcast signals or other video signals from DVD player or video gaming devices. May also additionally have DVI Port.</i>
<i>Computer monitors receive RGB signals, which is only video information and horizontal and vertical sync information. They do not possess separate audio circuits.</i>	<i>TV/Video monitors are capable of receiving composite signals which are a modulated signal containing both video and audio signal. Thus, they require built-in Tuner Cards</i>
<i>Computer monitors are characterized by low emission standards (brightness of 400 cd/m² or less is an indication that a display is an ADP monitor) and have various ergonomic features such as swivel, tilt mechanism, glare free and flicker free surfaces, to enable close proximity and prolonged viewing.</i>	<i>TV displays are designed to be viewed across a room which is brighter than the computer displays. They are generally not provided with ergonomic features such as swivel and tilt.</i>
<i>Technical specifications: Display pitch size is small usually 0.28 mm or less; Band width more than 15MHZ; Horizontal frequency 15 to 155 KHZ; Marked by high resolution to enable clear and sharp text messages</i>	<i>Technical specifications: Display pitch is larger 0.41 mm or greater; Band width or video frequency range is less than 6 MHZ to cover national, international broadcast frequency; Horizontal frequency is fixed between 15.6 to 15.7 KHZ; Low resolution.</i>
<i>Computer monitors do not contain components like TV Tuner Card, Audio Amplifying System, Remote Function, Control Panel function</i>	<i>These components are necessary for functioning as a video monitor</i>
<i>Computer monitors do not contain the features mentioned opposite to this Entry in the column TV/Video Monitors.</i>	<i>Channel selection panel with buttons for volume, channel etc., on display unit, wall mounting facility are present for facilitating television/video viewing</i>
<i>The aspect ratio for ADP monitor is generally 16:10 (for wide angle).</i>	<i>The aspect ratio for TV is generally 16:9 (for wide angle)."</i>

11. From the above clarification issued by CBIC, it transpires that in order to provide a guideline for the customs field formations to distinguish computer monitors which are used with ADP machines from that of the television/video monitors they have prescribed certain physical

characteristics to be seen, in terms of certain specific eight broad technical specifications. It also transpires that the said CBIC circular had taken into account the customs assessment practices followed during the prevailing time at Air Cargo Complex (ACC), Mumbai, for specifying the various technical features that would enable the customs field officers to distinguish between computer monitors and television/video monitors and to classify the monitors properly. However, we find that these have not been examined so and the impugned order does not even go into such details for arriving at a proper and legally sustainable decision on the issue of classification. Therefore, on this ground also the impugned order is not legally sustainable.

12.1 It is also seen from the facts of the case, that such technical details have been examined in the very same appellants-importer's case on similar product 'colour LCD monitor CR' by the Commissioner of Customs, Air Cargo Complex, Chennai vide Order-in-Original No. 07/2024-AIR dated 12.01.2024 and the data-sheet of the distinguishing specification as per instructions of CBIC have been demonstrated to prove that such monitors are fulfill those technical specifications to be treated as 'computer monitors'. Therefore, we find that the impugned goods are properly classifiable as 'computer monitors'.

12.2 In addition to the above, in deciding the issue of classification within the Chapter Heading 8528, learned AR has stated that in terms of Section Note 4 to Section XVI and in terms of Chapter Note 5(E) to Chapter 84 providing for classification of 'machine' forming part of whole combination of machines to be classified along with such machine and that even though such machine being part of ADP machine, since provide a specific function has to be classified under the heading appropriate to their respective function, for treating it as a part of the medical equipment. In this regard, we find that the Section Note 5 to Section XVI clearly state that for the purposes of these section notes, the expression 'machine' means any machine, machinery, plant, equipment, apparatus or appliance cited in the headings of Chapter 84 or 85. Further, medical or surgical instruments or apparatus including ultrasound scanning machine, MRI apparatus, ECG machine etc. are covered under heading 9018. Thus, the reference to the above section/chapter notes for arguing the classification of monitors along with the medical equipment of 9018 is neither contemplated in the SCN nor discussed in the impugned order, and hence we donot find it necessary to examine these aspects submitted by the learned AR.

13.1 The appellants have also relied upon CBIC circular dated 11.01.2005, to submit that on interpretation of the exemption available to 'general purpose machine', CBIC had clarified that such exemption benefits should be extended as long as they are capable of use in the specified industry. Since such circular of CBIC on clarification of products, is issued after detailed discussion and decision thereof having been taken in Customs Tariff Conferences, and these circulars are issued for the purpose of uniformity in classification and levy of duty, in terms of section 151 A of the Customs Act, 1962, we find that these CBIC circular have the force of law and the Customs field formations like the Customs Commissionerate of ACC, Mumbai cannot deviate from such instructions to be followed. The extract of the said circular is given below:

"Circular No. 1/2005-Cus., dated 11-1-2005

F. No. 528/78/2004-Cus(TU)

Government of India

Ministry of Finance (Department of Revenue)

Central Board of Excise & Customs, New Delhi

Subject : Clarification on various Tariff Issues - Regarding.

I am directed to say that divergence of practice regarding various Tariff related issues has been brought to the notice of the Board. A number of such matters were discussed at the Tariff Conferences of Chief Commissioners of Customs held at Kolkata on 22nd and 23rd January, 2004 and Shillong from 13th to 15th May, 2004. On the basis of the recommendations of these Tariff Conferences, draft circulars were prepared and put up on the Deptt.'s web-site (www.cbec.gov.in) and also circulated to various trade bodies for giving it wider publicity. Various parties were asked to give their comments and feedback on the draft circulars within 3 weeks. Board has taken decisions on these issues after considering the feedback received.

- (A) Briefs of such issues and the decisions taken by the Board on the same are enclosed herewith.
- (B) Field formations may finalise the pending assessments, if any, accordingly.
- (C) Suitable Public Notices may be issued for the benefit of the Trade.
- (D) Hindi version will follow.

Enclosure

(iii) Subject : Eligibility of general purpose Labelling Machine under Notification No. 21/2002-Cus., dated 1-3-2002 for use in Textile Industry.

Issue in Brief : This matter was discussed in the Tariff Conference of Chief Commissioners of Customs held at Kolkata on 22nd and 23rd January, 2004 [Agenda Point N-8]. Concessional rate of duty of 5% is extended to specified machinery/equipment which are meant for use in textile industry vide S. No. 250 of Notification No. 21/2002-Cus., dated 1-3-2002. List 30 of the said Notification specifies labeling machine at Sl. No. 84 therein. The intention of the Notification is to allow concessional duty for labeling machines which are **for use in textile industry**. The field formations have

noticed import of Labeling machines of general purpose which can be used not only in textile industry but also in other industries. Labeling machines, imported by trading firms are normally used for general purposes and not in textile industry alone. But importers of such machines are claiming concessional rate of duty under the said notification by declaring them as machinery/equipment for use in textile industry. Rejection of the claim of the importers may not be found sustainable as the imported labeling machines can be used also in textile industries. Labeling machines being an omni-bus term, the Notification gives room for unscrupulous importers to avail of unintended benefit.

Decision : *The Board deliberated upon the language of the notification. The expression used in the notification is ".....goods for use in the textile industry". The notification, therefore, does not appear to restrict the concession to only those machinery or equipment which was 'specifically designed for use' in the textile industry. The notification allows the import of general purpose machinery also as listed in List 30 so long as they are capable of use in textile industry. It has accordingly been decided that 'general purpose labelling machine' was eligible for exemption under S.No. 250 of Notification No. 21/2002-Cus., dated 1-3-2002, if it could also be used in the textile industry."*

13.2 We also find that classification decisions taken by HS Committee of World Customs Organization (WCO) over the years during 2001 to 2010, from its 27th to 16th session, on monitors consistently have held it under heading 852852. We find that these classification opinions given by WCO have been relied upon by the appellants, and it duly support and are in favour of the appellants. The extract of the same is given below:

**CLASSIFICATION DECISIONS TAKEN
BY THE HARMONIZED SYSTEM COMMITTEE
FROM THE 27TH TO 46TH SESSIONS**

(2001 - 2010)



WORLD CUSTOMS ORGANIZATION

Rue du Marché 30
B-1210 Brussels
Belgium

November 2011

#	DESCRIPTION OF GOODS	HS CODES UNDER CONSIDERATION	CLASSIFICA- TION DECISION	CLASSIFICATION RATIONALE AND OBSERVATIONS	RELEVANT DOCUMENTS	DECISION TAKEN	CLASSIFI- CATION OPINION	FILE
225.	Colour monitor comprising a 22 inch (55.88 cm) TFT LCD (thin film transistor liquid crystal display) panel combined in the same housing with control circuitry, DVI-D (digital visual interface – for digital signal only) and VGA (Video Graphics Array) input connectors and adjustment LED (light emitting diode) touch-sensor controls. The monitor includes the following components and features : - Colour saturation 72 % (NTSC); - True resolution 1680 x 1050 pixels, pixel pitch 0.282 mm, display colour 16.7 million colours; - Brightness (max) 250 cd / m²; - Contrast ratio 50000:1; - Viewing angle 170° (H) / 160° (V); - Response time 2 ms (Gray-to-Gray); - Video features : Trace Free Technology, Splendid Video Intelligence Technology, Splendid Video Preset Modes (5 modes), Skin-Tone Selection (3 modes), HDCP (High-bandwidth Digital Content Protection) support, Colour Temperature Selection (5 modes); - Touch-sensor controls for Splendid Video Preset Mode selection, auto adjustment, brightness and contrast adjustment and input selection; - Analogue and Digital Signal Frequencies : 30 – 83 KHz (H) / 50 – 75 Hz (V).	8528.51 / 8528.59	8528.51	The Committee agreed to classify the monitor in question in heading 85.28 (subheading 8528.51), by application of GIRs 1 and 6. Application of GIRs 1 and 6.	NC1604 G/6 NC1649 G/5 + R/6 NC1584 NC1553 IJ/6 NC1544	HSC/46	8528.51/1	3170

Classification Rulings – HS Committee 60th Session

No	Product description	Classification	HS codes considered	Classification rationale
32.	Future book set", consisting of four components, packaged together in a paperboard box for retail sale : - Two "Future Books"(a Reading and a "Play Book"), which essentially are printed books of paper material without any electric elements such as the electric circuit inside. - A "Future Book Pad" which actually is a book-shaped plastic pad made to fit the size and shape of "the Future Book". The Pad incorporates a loudspeaker, an electronic film which represents coordinates, a printed circuit assembly, a socket for sound pack and a battery. Users unfold the pad. - A "sound pack" which is a storage device having a capacity of 128 MB. It stores audio content of the book. The sound pack is to be inserted into the socket of the "Future Book Pad", which reproduces the audio content stored in the sound pack. --An Emission Pen used for pointing and indicating a specific spot on the book.	8519.81	49.01, 85.19, 85.23 and 95.03	GIRs 1, 3 (b) and 6.
33.	Colour monitor, comprising of a 27-inch flat-panel display. It is capable of directly connecting to an ADP machine via one VGA or two HDMI connectors. This monitor does not include a channel selector, a video tuner or speakers.	8528.52	85.28	GIRs 1 and 6
34.	Colour monitor, comprising of a 32-inch flat-panel display. It is capable of directly connecting to an ADP machine via two HDMI, three USB 2.0, or one Display Port 1.2 connector. This monitor does not include a channel selector, a video tuner or speakers	8528.52	8528.52 and 8528.59	GIRs 1 and 6
35.	Colour monitor, comprising of a 55-inch (138.78 cm) flat-panel display. It is capable of directly connecting to an ADP machine via the following connectors : one HDMI, one DVI-D, one VGA, one YPbPr, one USB 2.0, one RJ-45 (Ethernet), an infrared (IR) input/output jack and an audio input/output jack.	8528.52	8528.52 and 8528.59	GIRs 1 and 6

14.1 In the impugned order at paragraph 32.7, by referring the judgement of Dilip Kumar (Supra), the learned Commissioner had gone by strict interpretation of the entries in exemption notification to deny the 18% IGST rate and to propose higher IGST rate at 28%. In this regard, we find that on a similar set of facts, in the case of *Ortho Clinical Diagnostics India Pvt. Ltd.* (supra), the Co-ordinate Bench of the Tribunal has dealt with the similar issue of levy of additional duty of customs as per the entries in the IGST notification No.01/2007-Integrated Tax (Rate) dated 28.06.2017 and have held that there is no scope of perceiving the said notification as an exemption notification. The relevant paragraphs of the said order are extracted and given below:

11. *Despite the incorporation in Customs Tariff Act, 1975 of the parallel world corresponding to the new regime, the legality of*

'7) Any article which is imported into India shall, in addition, be liable to integrated tax at such rate, not exceeding forty per cent. as is leviable under section 5 of the Integrated Goods and Services Tax Act, 2017 on a like article on its supply in India, on the value of the imported article as determined under sub-section (8).

'in section 3 appears to need the simultaneous support of

'Provided that the integrated tax on goods imported into India shall be levied and collected in accordance with the provisions of section 3 of the Customs Tariff Act, 1975 on the value as determined under the said Act at the point when duties of customs are levied on the said goods under section 12 of the Customs Act, 1962.'

in section 5 of the Integrated Goods and Services Tax (IGST) Act, 2017- not considered essential for the erstwhile authority to charge either of the additional duties. The legislative intent in placement of the said proviso, as a particular departure from

'5. (1) Subject to the provisions of sub-section (2), there shall be levied a tax called the integrated goods and services tax on all inter-State supplies of goods or services or both, except on the supply of alcoholic liquor for human consumption, on the value determined under section 15 of the Central Goods and Services Tax Act and at such rates, not exceeding forty per cent., as may be notified by the Government on the recommendations of the Council and collected in such manner as may be prescribed and shall be paid by the taxable person:'

of Integrated Goods and Services Tax (GST) Act, 2017, indicates that section 3(7) of Customs Tariff Act, 1975 needs to be carefully examined for its scope. Doubtlessly, it charges a liability on the goods under import but circumscribed by section 5 of Integrated Goods and Services Act, 2017 which, ordinarily, applies to 'inter state supply' for levy at a notified rate on value determined in accordance with section 15 of Central Goods and Services Tax (CGST) Act, 2017. Supply of goods from outside India, envisaged to be at par with 'inter state supply' of goods, is treated differently under the authority of the proviso to be levied and collected in accordance with section 3 of Customs Tariff Act, 1975 with its own attendant valuation mechanism supplementing the valuation of such goods in accordance with section 14 of Customs Act, 1962 and treating the levy of duties under Customs Act, 1962 as the point at which the 'integrated tax' liability is fastened on imported goods. It is not collected as a duty of

customs and the authority conferred by section 3(7) of Customs Tariff Act, 1975 requires charging at the rate as is leviable under section 5 of Integrated Goods and Services Tax (IGST) Act, 2017. The legislated bundle for implementation of the scheme of goods and services tax (GST) is founded on self-assessment by adopting the value envisaged in section 15 of Central Goods and Services Tax (CGST) Act, 2017 to which the rate as notified under the relevant statutes is applied by the assessee for discharge of liability that is reflected in the return which, in turn, is scrutinized by the 'central tax officer' for correctness.

12. *The scheme of rule 3(7) of Customs Tariff Act, 1975, therefore, imposes 'integrated tax' on imported goods, at a rate as prescribed under the authority of section 5 of Integrated Goods and Services Tax (IGST) Act, 2017, on value as prescribed in section 3(8) therein which is the arithmetical addition of duties of customs to value for assessment of imported goods and posing no discretionary authority therein. In the light of this being a distinct 'integrated tax', and not an additional duty of customs equal to another duty charged and collected under a scheme of assessment, the adoption of rate claimed by an importer can be disputed only by such officers conferred with authority to do so. Such officers with jurisdiction to intrude into self-assessment are central tax officers. The enabling of levy of 'integrated tax' in Customs Tariff Act, 1975 does not confer any power to intrude upon rate claimed in the bill of entry and 'proper officer', invoking power of assessment or power of recovery under Customs Act, 1962, would be in excess of jurisdiction to venture into determination of rate of duty under a law that is outside jurisdictional competence. This perspective on the enabling provision is not prejudicial to revenue for reasons discussed supra and it is only such prejudice that may prompt an alternative perspective. Learned Authorized Representative has not been able to demonstrate so.*

13. *The rate of duty for levy of 'integrated tax' is prescribed under the authority of section 5 of Integrated Goods and Services Tax (IGST) Act, 2017. Our appellate jurisdiction is limited, as far as 'rate of duty' is concerned, to those prescribed in Customs Tariff Act, 1975, Central Excise Tariff Act, 1985 or in Finance Act, 1994. This appellate jurisdiction originates with exercise of adjudicatory authority under Customs Act, 1962, Central Excise Act, 1944 and Finance Act, 1944 thereby binding the original, and first appellate, authorities therein to such jurisdictional circumscribing. 'Central tax officers' appointed under Central Goods and Services Tax (CGST) Act, 2017 are subject to a different appellate structure. We would consider it inappropriate for us to venture into the exercise of classification under a law that is beyond our jurisdiction and the adjudicating authority should also have been similarly cautious. The arguments of Learned Senior Counsel and of Learned Authorized Representative on the merit of their respective stands on the classification of the impugned goods are, thus, deliberately not being taken up for decision on correctness or otherwise. In adverting so, we desist also from elaborating upon the obvious inadequacy of domain knowledge of a tax law that is extra jurisdictional. However, the legal framework for re-classification is not beyond such appellate jurisdiction and we may subject the impugned order to that test.*

14. *We find that, for assessment to basic duties of customs, the declared heading has not been disputed in the notice. The adjudicating authority has subjected all goods in the impugned bills of entry to revision by adoption of the ultimate residuary description; the absence of specific and detailed discussion on each of the articles separately is a grave want in the impugned order. The impugned goods are 'ELISA kits', 'CLIA kits',*

'diagnostic reagents on a backing', 'calibrators', 'controls' and others such as 'wash solutions', 'wash buffers', 'reference fluid', 'diluent packs', 'maintenance packs' and 'marker kits' with claim for coverage under serial no. 180 of Schedule I in the 'integrated tax' rate notification owing to specific enumeration in List 1 for the first two items and under serial no. 80 of Schedule II in the 'integrated tax' rate notification owing to description corresponding to it. It is seen that the columnar reference to First Schedule to Customs Tariff Act, 1975 is to 'Chapter 30 or any other chapter', insofar as the former is concerned, and to 'heading 3822' as far as the latter is concerned; considering the specifics therein, the claim for application of these rates of 'integrated tax' respectively is not to be brushed aside.

15. *The effect of the proposition of Revenue, in support of the adjudication order, on the part of Learned Authorized Representative is that the impugned goods are not specifically emplaced in the claimed Schedules or in Schedule IV, V and V of the 'integrated tax' rate notification with consequent application of the residuary serial no. 453 corresponding to 'goods which are not specified in Schedule I, II, IV, V and VI' with columnar reference to any Chapter of the First Schedule to Customs Tariff Act, 1975. The question that begs an answer, and in the context of the rules for interpretation of the Customs Tariff Act, 1975 as well as the Explanations therein being applicable to the placement of goods in the Schedules to the 'integrated tax' rate notification combined with absence of such residuary entry in the First Schedule to Customs Tariff Act, 1975, is the significance of the very resort that Revenue seeks shelter within. From the scheme of the 'integrated tax' rate notification, it appears that the rates enumerated therein are to be read as corresponding to the tariff items in the First Schedule to Customs Tariff Act, 1975 and with the default rate or residuary rate of 18% to be read as corresponding to any tariff item lacking in such rates. This follows from the mandate of Article 269A of the Constitution and the provisions of section 5 of Central Goods and Services Tax (CGST) Act, 2017 that eliminates any scope for perceiving the rates as an exemption notification - which the adjudicating authority appears to have adopted as the guiding prism.*

16. *It is not the case of Revenue that any or all of the impugned goods do not find fitment in heading 3822 of the First Schedule to Customs Tariff Act, 1975 or that the 'integrated tax' rate at serial no. 80 of Schedule II is, by the corresponding description, unquestionably excluded from every tariff item comprising heading 3822 of the First Schedule to Customs Tariff Act, 1975. Nor is it the case of Revenue that the 'kits' at serial no. 180 of Schedule I of the 'integrated tax' rate notification do not find placement in chapter 38 of First Schedule to Customs Tariff Act, 1975.*

17. *The Hon'ble Supreme Court, in HPL Chemicals Ltd v. Commissioner of Central Excise, Chandigarh [[2006 \(197\) E.L.T. 324 \(S.C.\)](#)], has held that*

'29. 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. On the one hand, from the trade and market enquiries made by the Department, from the report of the Chemical Examiner, CRCL and from HSN, it is' quite clear that the goods are classifiable as "Denatured Salt" falling under Chapter Heading No. 25.01. The Department has not shown that the subject product is not bought or sold or is not known or is dealt with in the market as Denatured Salt. Department's own Chemical

Examiner after examining the chemical composition has not said that it is not denatured salt. On the other hand, after examining the chemical composition has opined that the subject matter is to be treated as Sodium Chloride.'

and further in Hindustan Ferodo Ltd v. Collector of Central Excise, Bombay [1997 (89) E.L.T. 16 (S.C.)] that

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

7. Learned Counsel for the Revenue submitted that the matter be remanded to the Tribunal so that the evidence on record may be reappraised. As we have stated, no evidence was led on behalf of the Revenue. There is, therefore, no good reason to remand the matter.'

stipulating the rules of engagement in adversarial contentions on classification of goods for assessment. Hence, the classification proposed, and adopted, in the impugned proceedings must first pass muster as an appropriate description of the impugned goods before revision can be approved.

18. *The exercise in classification undertaken in adjudicating the proposal to take recourse to an alternate entry should have adhered to the judicially established rules of engagement. Instead of deliberating on the validity, and appropriateness, of a tariff item in the First Schedule to Customs Tariff Act, 1975 other than that claimed in the bills of entry after due notice to the importer, the adjudicating authority adopted a process of elimination of the enumeration of descriptions in the Schedules to the 'integrated tax' rate notification, and ignoring the scheme of its presentation, with the erroneous assumption of jurisdiction to place goods within the ambit of the residuary entry in Schedule III of the 'integrated tax' rate notification.*

19. *We, therefore, hold that, insofar as the imported goods are concerned in the light of statutory circumscribing of levy of 'integrated tax' as discussed supra and there being no prejudice to interests of revenue thereby, the declared classification of the imported goods prevails. Legislative intent is not imposition of burden of 'integrated tax' on the person importing goods and the onus for altering classification has not been discharged. The charge of misdeclaration of goods does not sustain and hence confiscation and penalty are also set aside."*

14.2 We further find that the Hon'ble High Court of Bombay in the case of Mahindra & Mahindra Ltd., (supra) have held that there is no substantive provision in Section 3 of the Customs Tariff Act, 1975 requiring payment of penalty or interest; in the absence of specific provisions for levy of interest or penalty, it was held that the adjudged demands are not sustainable. The relevant paragraphs of the said judgement are extracted and given below:

25..... *Therefore, it is again made clear that in the absence of specific provisions for levying of interest or penalty due to delayed payment of tax*

unless the statute makes a substantive provision in this behalf, the same cannot be levied/charged.

26. *Sub-section (6) of Section 3 and sub-section (4) of Section 3A of the Customs Tariff Act, 1975 does not provide for any interest or penalty. Neither Section 90 of the Finance Act, 2000 provides for the same. Therefore, no interest and penalty can be levied on the portion of payment pertaining to surcharge, CVD and SAD.*

We must also note that sub-section (8) of Section 9A of the Customs Tariff Act, 1975, prior to the 2004 amendment, did not include interest and penalties. By Section 76 of Finance (No.2) Act, 2004, the words in sub-section (8) of Section 9 of the Customs Tariff Act, 1975 "relating to non levy, short levy, refunds and appeals" were replaced with "relating to, the date for determination of rate of duty, non levy, short levy, refunds, interest, appeals, offences and penalties". No such amendment to include interest and penalty was inserted in sub-section (6) of Section 3 or sub-section (4) of Section 3A of the Customs Tariff Act, 1975. Therefore, the intention of the legislature was very clear that it wanted to include interest and penalties only with regard to anti-dumping duty on dumped articles and not for CVD, i.e., levy of additional duty equal to excise duty and SAD, i.e., special additional duty. No such insertion or amendment was made in Section 90 of the Finance Act, 2000 relating to surcharge. Therefore, interest and penalty cannot be levied on the portion of demand pertaining to surcharge under section 90 of the Finance Act, 2000 or additional duty of customs under section 3 or special additional duty of customs under the Customs Tariff Act, 1975.

27. *Sub-section (6) of Section 3 and sub-section (4) of Section 3A of the Customs Tariff Act, 1975 makes applicable to the duty chargeable under section 3 and Section 3A the provisions of the Customs Act, 1962 and the rules and regulations made thereunder including those relating to drawbacks, refunds, exemptions from duties so far as it applies to Section 3 and so far as Section 3A is concerned, it is relating to non levy, short levy, refunds and appeals. Similarly, sub-section (4) of the Finance Act, 2000 makes applicable the provisions of the Customs Act and the rules and regulations thereunder in relation to the levy and collection of surcharge. Both sub-section (6) of Section 3 and sub-section (4) of Section 3A of the Customs Tariff Act, 1975 or sub-section (4) of the Finance Act, 2000 make no reference to interest or penalty. There is no substantive provision in Section 3 or Section 3A under the Customs Tariff Act, 1975 or Section 90 of the Finance Act, 2000 requiring payment of penalty or interest. There is, therefore, no substantive provision which obliges a party to pay interest or penalty on CVD, i.e., the additional duty equal to excise duty or SAD, i.e., special additional duty to be levied at a rate having regard to the maximum sales tax or local tax or any other charges leviable on a like article or surcharge to be levied under the Finance Act, 2000.*

28. *A perusal of sub-section (6) of Section 3 and sub-section (4) of Section 3A of the Customs Tariff Act, 1975 or Section 90 of the Finance Act, 2000 show that the breach of the provisions has not been made penal or an offence. It only provides for application of the procedural provisions of the Customs Act, 1962 and the rules and regulations made thereunder so far as it apply to the duty chargeable under section 3 or Section 3A of the Customs Tariff Act, 1975 or levy and collection under section 90 of the Finance Act, 2000. As stated earlier, if penalty or interest has to be levied on CVD or SAD or surcharge, the authority has to be specific and explicit and expressly provided. The Customs Tariff Act, 1975 provides for*

additional customs duty and special additional duty but creates no liability for penalty or interest for additional duty or special additional duty. Likewise the Finance Act, 2000 under section 90. That being so imposing penalty or interest on additional duty and special additional duty or surcharge which is not connected to the basic customs duty is unwarranted or without authority of law.

29. *Further the Customs Act, 1962 under section 28 provides for recovery of dues and under section 28AB provides for interest on delayed payment of duty. Both are separate provisions and in our view, the incorporating provisions would apply only to the duty leviable under the Customs Act and not interest on delayed payment of duty or penalty because as time and again Courts have held that taxing statute have to be incorporated strictly and tax can be imposed only when the language of the statute expressly provided for it. The authority has to be provided specifically, explicitly and expressly. Moreover, CVD, SAD and surcharge are in addition to the basic customs duty. Sub-section (5) of Section 3 and sub-section (3) of Section 3A of Customs Tariff Act, 1975 provide that the duty chargeable under the said sections will be in addition to any other duty imposed under the Customs Tariff Act, 1975 or any other law for the time being in force. Sub-section (3) of Section 90 of the Finance Act, 2000 say the surcharge shall be in addition to any duties of customs under the Customs Act or under any other law for the time being in force.*

30. *As stated earlier, sub-section (6) of Section 3 and sub-section (8) of Section 3A of the Customs Tariff Act, 1975 referred to the procedural aspect and machinery provisions under the Customs Act, 1975 and not the charging provisions. So also Section 90 of the Finance Act, 2000. As held by the Apex Court in Jain Brothers v. Union of India AIR 1970 SC 778, which was also cited by Mr. Sridharan, penalty was not a continuation of assessment proceedings and penalty partook all the character of the additional tax. There is no provision under section 3 for additional duty or Section 3A for special additional duty under the Customs Tariff Act, 1975 or Section 90 of the Finance Act, 2000 that creates a charge in the nature of penalty or interest.*

31. *Our attention has been drawn by Mr. Sridharan to two judgments of this Court in Union of India v. Valecha Engineering Ltd. [2010 \(249\) E.L.T. 167 \(Bom.\)](#) and Indo Swiss Embroidery Industries Ltd. v. Commissioner of Central Excise, Vapi [2017 \(356\) E.L.T. 226/\[2017\] 84 taxmann.com 128 \(Bom.\)](#). In Valecha Engineering (supra), the Court was dealing with the levy of interest on additional duty of customs under section 3 of the Customs Tariff Act and on special additional duty of customs under Section 3A of the Customs Tariff Act. In Indo Swiss Embroidery Industries (supra), the Court was dealing with the levy of interest and penalty on the additional duties of excise leviable under section 3 of the Additional Duties of Excise (Textiles & Textile Articles) Act, 1978 ('ADE (T&TA) Act'). Section 3(3) of the ADE (T&TA) Act is pari-materia to Section 3(6) and Section 3A(4) of the Customs Tariff Act. The ADE (T&TA) Act did not contain any provision for the imposition of interest and penalty. This Court in Indo Swiss Embroidery Industries (supra) followed the decision of the Apex Court in Orient Fabrics (supra) and held that, in the absence of specific provisions in the ADE (T&TA) Act for the imposition of interest and penalty, there could be no levy of interest or penalty on the additional duties of excise payable under section 3 of the said Act. It was held that taxing statutes must be construed strictly and that Section 11AC (for penalty) and Section 11AB (for interest) of the Central Excise Act were inapplicable.*

32. In *Valecha Engineering (supra)*, the judgments of the Hon'ble Apex Court in *Orient Fabrics (supra)*, *India Carbon (supra)* and *J.K. Synthetics (supra)* were referred to. It was held in paragraphs 14-16 and 27 that interest and penalty can be only leviable if there be substantive provisions in the statute imposing interest and penalty. However, in paragraph 30, it was then held that provisions for interest form part of machinery provisions. This observation in *Valecha Engineering (supra)* is purportedly based on the ratio of *India Carbon (supra)* and *J.K. Synthetics (supra)*. In the decisions of the Apex Court in *India Carbon (supra)* and *J.K. Synthetics (supra)* interest and penalty were held to be substantive in nature. In *J.K. Synthetics (supra)* it was held as follows:

"Therefore, any provision made in a statute for charging or levying interest on delayed payment of tax must be construed as substantive law and not adjectival law."

In *India Carbon (supra)* it was held as follows:

"7. This proposition may be derived from the above: interest can be levied and charged on delayed payment of tax only if the statute that levies and charges the tax makes a substantive provision in this behalf."

In *Khemka & Co. (supra)* it was held as follows:

"25. Penalty is not merely sanction. It is not merely adjunct to assessment. It is not merely consequential to assessment. It is not merely machinery. Penalty is in addition to tax and is a liability under the Act."

It is, therefore, clear from these judgments of the Supreme Court that the liability to interest and penalty is substantive and that provisions imposing interest and penalty are substantive (and not machinery).

In *Orient Fabrics (supra)*, the Apex Court interpreted Section 3(3) of Additional Duties of Excise (Goods of Special Importance) Act, 1957 which is *pari-materia* to Section 3, 3A of the Customs Tariff Act, 1975 and Section 90(4) of the Finance Act, 2000. Hence, the decision of the Hon'ble Apex Court in *Orient Fabrics (supra)* would directly apply.

33. We are also unable to accept Mr. Mishra's contentions that the charging section for imposition of CVD and SAD or surcharge is Section 12 of the Customs Act, 1962. In our view, the charging sections for imposition of surcharge, CVD and SAD are Section 90(1) of the Finance Act, 2000, Section 3(1) and Section 3A(1) of the Customs Tariff Act, 1975, respectively. Mr. Mishra's contention that Section 12 is the charging section is incorrect. Section 12 of the Customs Act, 1962 reads as under:

12. Dutiable goods -

(1) Except as otherwise provided in this Act, or any other law for the time being in force, duties of customs shall be levied at such rates as may be specified under [the Customs Tariff Act, 1975 (51 of 1975)], or any other law for the time being in force, on goods imported into, or exported from, India.

(2) The provisions of sub-section (1) shall apply in respect of all goods belonging to Government as they apply in respect of goods not belonging to Government.

Mr. Mishra submitted that the words "except as otherwise provided in this Act or any other law for the time being in force" employed in Section 12 of the Customs Act, 1962, surcharge on customs duty under section 90 of the Finance Act and CVD and SAD under the Customs Tariff Act, 1975 would all be covered under any law for the time being in force. Therefore,

according to Mr. Mishra CVD under section 3 and SAD under section 3A of the Customs Tariff Act, 1975 and surcharge under section 90 of the Finance Act, 2000 are all levied under section 12 of the Customs Act, 1962. Therefore, imposing interest under section 28AB on surcharge, CVD and SAD would be correct in law.

34. Section 9A(8) of the Customs Tariff Act, 1975 which borrowed provisions from Customs Act, 1962 did not borrow provisions relating to interest and penalty. The Hon'ble Courts, in judgments cited supra, held that in view of no specific borrowing, no interest and penalty can be imposed on anti-dumping duty. Later on, Finance (No.2) Act, 2004 amended sub-section (8) of Section 9A suitably to include interest and penalty. However, similar amendments have not been made to Section 3(6) of the Customs Tariff Act, 1975 relating to CVD, i.e., additional duty equal to excise duty or Section 3A(4) of Customs Tariff Act, 1975 relating to SAD, i.e., special additional duty or surcharge under section 9(3) of the Finance Act, 2000.

35. Further, Section 12 of the Customs Act, 1962 levies duty on goods imported into India at such rates as may be specified in the Customs Tariff Act, 1975. In Customs Tariff Act, 1975, Section 2 provides the rates at which duties of customs are to be levied under the Customs Act, 1962 are as specified in the first and second schedules of the Customs Tariff Act, 1975. In Section 12 of the Customs Act, 1962 there is no reference to any specific provision of Customs Tariff Act, 1975.

On the other hand levy of CVD or SAD under section 3 or Section 3A of the Customs Tariff Act, 1975 or surcharge under section 90 of the Finance Act, 2000 is not relatable to the first or second schedule but the rate is prescribed in those three sections itself. This itself shows the charging section for surcharge or CVD and SAD is not Section 12 of the Customs Act, 1962 but Section 90 of the Finance Act, 2000 and Section 3 and Section 3A of the Customs Tariff Act, 1975, respectively.

36. We find support for our view in *Hyderabad Industries Ltd. v. Union of India* [1999 \(108\) E.L.T. 321 \(SC\)](#) relied upon by Mr. Sridharan. The Apex Court considered Section 12 of the Customs Act, 1962 and went on to hold that the charging section to impose CVD is Section 3 of the Customs Tariff Act, 1975. Paragraphs 12, 13 and 14 of *Hyderabad Industries Ltd.* (supra) read as under:

12. Section 12 of the Customs Act levies duty on goods imported into India at such rates as may be specified in the Customs Tariff Act, 1975. When we turn to Customs Tariff Act 1975, it is Section 2 which states that the rates at which duties of customs are to be levied under Customs Act 1962 are those which are specified in the First and Second Schedules of the Customs Tariff Act, 1975. In Section 12 of the Customs Act there is no reference to any specific provision of the Customs Tariff Act 1975. In other words for the purpose of determining the levy of customs duty on goods imported into India what is relevant is Section 12 of the Customs Act read with Section 2.

13. On the other hand levy of additional duty under section 3 is equal to the excise duty for the time being leviable on the like article which is imported into India if produced or manufactured in India. The rate of additional duty under section 3(1) on an article imported into India is not relatable to the First and the Second Schedule of the Customs Act but the additional duty if leviable has to be equal to the excise duty which is leviable under the Excise Act. This itself shows that the charging section for the levy of additional duty is not Section 12 of the

Customs Act but is Section 3 of the Customs Tariff Act, 1975. This apart sub-sections (3), (5) and (6) of Section 3 refer to additional duty as being leviable under sub-section (1). In sub-section (5), for instance, it is clearly stated that the duty chargeable under section 3 shall be in addition to any other duty imposed under this Act or under any other law for the time being in force.

*14. There are different types of customs duty levied under different acts or rules. Some of them are; (a) a duty of customs chargeable under section 12 of the Customs Act, 1962; (b) the duty in question, namely, under section 3 (1) of the Customs Tariff Act; (c) additional duty levied on raw-materials, components and ingredients under section 3 (3) of the Customs Tariff Act; and (d) duty chargeable under section 9A of the Customs Tariff Act, 1975. Customs Act 1962 and the Customs Tariff Act, 1975 are two separate independent statutes. Merely because the incidence of tax under section 3 of the Customs Tariff Act, 1975 arises on the import of the articles into India it does not necessarily mean that the Customs Tariff Act cannot provide for the charging of a duty which is independent of the customs duty leviable under the Customs Act.
(Emphasis Supplied)*

37. *In view of the above, imposing interest and penalty on the portion of demand pertaining to surcharge or additional duty of customs or special additional duty of customs is incorrect and without jurisdiction.*

38. *We have to note that in the present case, it is not disputed that petitioner has paid a sum of Rs. 11.84 Crores much prior to the issuance of show cause notice. There is no determination of duty under section 28(2) of the Customs Act, 1962 and, therefore, Section 28AB of the Customs Act, 1962 is also not applicable. Petitioner has also paid the difference between the admitted duty liability and the amount settled by respondent no. 2. We do not agree with respondent no. 2 that CVD, SAD and surcharge are being recovered under section 28 of the Customs Act, 1962. Consequently Section 28AB of the Customs Act, 1962 also will also not be applicable. In the absence of specific provision relating to levy of interest in the respective legislation, interest cannot be recovered by taking recourse to machinery relating to recovery of duty.*

39. *The finding of respondent no. 2 that it has the inherent authority or power to determine the terms of settlement covering not only the amount of duty but also interest and penalty as well is ex-facie untenable. Reliance by respondent no. 2 upon Section 127C of the Customs Act, 1962 to direct payment of interest is totally misplaced in the case at hand. Section 127C of the Customs Act, 1962 itself provides that the order of the Settlement Commission has to be in accordance with the provisions of the Customs Act, 1962. Respondent no. 2 certainly cannot pass an order beyond the provisions of the Customs Act, 1962. The provisions relating to interest contained in Section 28AB of the Customs Act, 1962 are not borrowed in the legislation imposing levy of surcharge or CVD or SAD. Respondent no. 2 cannot include interest in the settlement arrived at by it on the ground that petitioner has derived financial benefits by not paying the correct rate of duty when it was due. Deriving financial benefits itself cannot be a ground to order payment of interest in the absence of any statutory provisions for payment of interest.*

40. *Therefore, the order of the Commission to the extent of requiring petitioner's to pay interest at the rate of 10% against the four show cause notices and penalty (Rs.1,00,000/- in the case of first show cause notice, Rs. 10,00,000/- in the case of second show cause notice and Rs.*

5,00,000/- in the case of third show cause notice) is liable to be and are hereby quashed and set aside.

41. *The Rule issued on 21st April 2009 is made absolute."*

14.3 We also find that the Special Leave Petition (Civil) Diary No.18824/2023 preferred by the department in the above case of Mahindra & Mahindra Ltd., (supra) was dismissed by the Hon'ble Supreme Court by holding that they do not find any merit in the SLP in its judgement dated 28.07.2023.

14.4 Further, we also note that Sub-section (12) of Section 3 of the Customs Tariff Act, 1975 have been amended vide Finance (No.2) Act, 2024 approved by the Parliament w.e.f. 16-8-2024, in specifically providing for assessment, non-levy, short-levy, recovery etc. in order to overcome the lacunae pointed out in the above said judgement of the Hon'ble High Court and Hon'ble Supreme Court.

(12) The provisions of the Customs Act, 1962 (52 of 1962) and all rules and regulations made thereunder, including but not limited to those relating to the date for determination of rate of duty, assessment, non-levy, short-levy, refunds, exemptions, interest, recovery, appeals, offences and penalties shall, as far as may be, apply to the duty or tax or cess, as the case may be, chargeable under this section as they apply in relation to duties leviable under that Act or all rules or regulations made thereunder, as the case may be.]"

Since, the dispute in the present case relate to levy of additional duty of Customs (IGST) on imports during the period 29.07.2017 to 26.02.2022, such amended provisions do not have any application on the demand of differential additional duty of customs adjudged by the impugned order. Therefore, we are of the considered opinion that on this ground alone the impugned order does not stand the scrutiny of law and thus we do not hesitate in holding that it is liable to be set aside.

15. In view of the foregoing discussions and analysis, we are of the considered opinion that the product under consideration i.e., "monitors" of various models imported by the appellants would be classifiable under Customs Tariff Item/ CTH 8528 52 00 and are appropriately leviable to Integrated Goods and Services Tax at the rate of 18% in terms of entry at serial No. 384 or 383C of the Notification No. 01/2017-IT(Rate) dated 28.06.2017.

16. Therefore, we are of the considered view that the impugned order dated 21.07.2023 passed by the learned Commissioner of Customs (Import) cannot stand the scrutiny of law. Accordingly, the impugned order is set aside and the appeal is allowed in favour of the appellants.

(Order pronounced in the open court on 18.11.2024.)

(S.K. Mohanty)
Member (Judicial)

(M.M. Parthiban)
Member (Technical)