

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

WEST ZONAL BENCH

CUSTOMS APPEAL NO: 86479 OF 2014

[Arising out of Order-in-Appeal No: 317 (Gr.V A&B)/2014(JNCH)/IMP-298 dated 10th February 2014 passed by the Commissioner of Customs (Appeals), Mumbai – II.]

Friends Color Images Pvt Ltd
Plot No. A-182, TTC Bhairance, MIDC Area
Navi Mumbai - 400703

... Appellant

versus

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

...Respondent

APPEARANCE:

Shri T Viswanathan, Shri Akhilesh Kangzia and Ms Apoorva Parihar, Advocates
for the appellant

Shri Krishna M Azad, Assistant Commissioner (AR) for the respondent

CORAM:

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

FINAL ORDER NO: 85854/2025

DATE OF HEARING:	02/12/2024
DATE OF DECISION:	02/06/2025

PER: C J MATHEW

M/s Friends Color Images Pvt Ltd is aggrieved by differential
duty of ₹ 47,48,303 fastened on them under section 28 of Customs Act,

1962, by rejecting assessment at rate of duty corresponding to tariff item 844 3250 of First Schedule to Customs Tariff Act, 1975 and substitution with rate corresponding to tariff item 8443 3910 of First Schedule to Customs Tariff Act, 1975, along with applicable interest under section 28AB of Customs Act, 1962 on import of 'OCE Jetstream Printer 1000' and 'parts' valued at ₹ 3,66,29,670 that were self-assessed to duties of customs of ₹ 58,17,525 in bill of entry no. 8823316/20.12.2012 which, before clearance for home consumption, but upon objection of 'proper officer' empowered under section 47 of Customs Act, 1962 was withheld and, subsequently, confiscated under section 111(m) of Customs Act, 1962 to be redeemed on payment of fine of ₹ 20,00,000 under section 125 of Customs Act, 1962 while imposed with penalty of ₹ 10,00,000 under section 112 of Customs Act, 1962.

2. It is common ground that both the rival entries are about 'printing solutions' with the claim of

'inkjet printer capable of connecting to an automatic data processing machine or to a network'

corresponding to tariff item 8443 3250 of First Schedule to Customs Tariff Act, 1975 as best description of impugned goods countered by

'ink jet printing machine'

corresponding to tariff item 8443 3910 of First Schedule to Customs Tariff Act, 1975 elaborated in the finding of original authority that

'27. From the above, I conclude that the impugned goods are a printing machine (printing system). I find that unlike printers which gets the data inputs from external Automatic Data Processing (ADP) Systems, the impugned item has inbuilt ADP System (SRA MP Controller) supported by 'PRISMA' software. From the list of items covered under the impugned B.E. I find that the imported goods cover.....All these items together constitute an inbuilt ADP system. Thus, by virtue of having a inbuilt ADP system which can itself process the data, the impugned printing machine do not require data input from external ADP source. I also find that the printing speed of the impugned item has been given in meters per minute and not in pages per minute as is the case with printers. I also find that the impugned item is suitable for book and newspaper printing which makes it clear that it is a printing machine and not a printer. Last but not the least, I find that the 'OCE Jetstream Printer' also has a pre and post production processing capabilities like folding the paper, perforating the paper and also punching holes in the paper. I find that these features are integrated in the impugned goods. In my opinion, no printer can have these features but the printing machine do have these features. This leaves no doubt about the impugned item being a printing machine and not a printer. This view is also supported by the explanatory notes, chapter notes, CBEC circular and the case law (sic) cited above.

which was endorsed, without demur, as *ditto* finding in order¹ of Commissioner of Customs (Appeals), Mumbai-II dismissing the challenge mounted by M/s Friends Colour Images Pvt Ltd that, however, appeared to lose some assurance of certainty thereafter with the additional finding

'10.....There is no difference between Ink jet printers of heading

¹ [order-in-appeal no: 317 (Gr.V A&B)/2014(JNCH)/IMP-298 dated 10th February 2014]

8443250 and Ink Jet Printing Machine heading of 84433910 except the fact of connectivity to the ADP machine or network. Further, as per Rule 2 (a) and Rule 3(c) of General Rules of Interpretation of the Import Tariff the printer along with its components is rightly classifiable under CTH the 8443 3910...'

while discarding their claim of coverage by circular² of Central Board of Excise & Customs (CBEC) on the ground that the particular clarification was intended for 'large format printers' lacking in 'automatic data processing' capability. We may note this peculiarity at this stage itself though we may turn to it later for evaluating alternative pleas made on behalf of appellant

3. The impugned approach to classification on the part of the original authority, and which we dare say is refreshing for its perspicacity, simplicity and intelligibility, appears to have been prompted as much by the relative positioning of the rival tariff lines with limited assistance to be found in the tools designed to aid distinguishment - whether it be the Explanatory Notes to the Harmonized System of Nomenclature (HSN) or the circular *supra* - as the plebianization of technology from 'information, communication and entertainment (ICE)' having been synergized. The submission of Learned Counsel for appellant was, in contrast, straitjacketed in stressing the significance, such as they are, of the Explanatory Notes to sub-heading 8443 32 in the Harmonized System of Nomenclature

² [circular no. 11/2008-Customs dated 1st July 2008]

(HSN) and case law in support. The defence of the impugned order by Learned Authorized Representative urged delineation of machinery and peripherals while harping upon the circular of Central Board of Excise & Customs (CBEC) as authority on legislative intent. Indeed, there was hardly scope for stretch of arguments beyond the technical aspects unless both sides were willing to revert to ‘first principle’ resolution which they were not. For this is one of those disputes gestated from placement, by design and circumstances, playing second fiddle to tax policy instead of tax policy being formulated around the constancy of tariff lines. We shall elaborate upon this by and by.

4. Learned Counsel was emphatic that customs authorities could not be correct in their determination as the product was ‘capable of connecting to ‘automatic data processing (ADP)’ machine through network cable, viz., Gigabit Ethernet’, for which he drew attention to the brochure that, though placed before the first appellate authority, did not appear to have made any impression. Analyzing structuring below, and

‘Printing machinery used for printing by means of plates, cylinders and other printing components of heading 8442; other printers, copying machines and facsimile machines, whether or not combined; parts and accessories thereof’

as description in heading 8443 in First Schedule to Customs Tariff Act, 1975, he disaggregated these to be distinguishable by use of particular technology or process, other reproduction equipment and parts and

accessories of which the second, according to him, was amenable to distinguishment as multi-functional printers capable of connecting to ‘automatic data processing (ADP)’ machine, printers capable of connecting to ‘automatic data processing (ADP)’ machine or network and printers not capable of connecting to ‘automatic data processing (ADP)’ machine or network. Thus, the primary submission is anchored in the proposition that the latter tariff line is a ‘vestigial relic on ventilator support’ and that, to bring that tariff back to life, excepting printers, even if capable of connecting to ‘automatic data processing (ADP)’ machine or network, merely from being enabled to work independently is perverse feel for legislative intent. Essentially, he contends that tax policy, especially in relation to ‘inkjet printers’, should have had clarity enough and that frailty should not be brought to bear on the appellant going on about their normal business.

5. Learned Counsel also contended that the issue in dispute stands resolved by decisions of the Tribunal in *Monotech Systems Limited v. Commissioner of Customs* [2020 (373) ELT 718 (Tri-Chennai)], pertaining to goods imported at Chennai, that was followed in *Monotech Systems Limited v. Commissioner of Customs* [2022 (6) TMI 320 (CESTAT Mumbai)]. Reliance was also placed on that decisions of the Tribunal in *Aztec Fluids v. Commissioner of Customs* [2023 (11) TMI 175 (CESTAT Ahmedabad)] and in *Hewlett Packard India Sales v. Commissioner of Customs* [2018 (4) TMI 1345 – CESTAT Mumbai]. He

was categorical that, while some traits of ‘automatic data processing’ machines may have been present in the impugned goods, those could, by no means, be presumed as capable of autonomous function as printers.

6. According to Learned Authorized Representative, the claimed tariff line is limited to such printers as are only intended for fitment with ‘automatic data processing (ADP)’ machines which the impugned goods were not. He relied upon the finding in the order of the original authority that the hardware for the printers under import included provisioning for ‘PRISMA software’ that offered autonomous functioning besides pre-print and post-print mechanization not normally associated with normal printers. He relied upon note 4 in chapter 84 of First Schedule to Customs Tariff Act, 1975 to counter the pleading that the articles, comprising, as they were, of parts and components, were not amenable to such finer distinctions as the rival tariff lines required.

7. We must, despite having dealt with legality and propriety of adjudication and appellate orders of several genres – impugned before us, confess to befuddlement in interpreting the distinguishment of the two, viz., printers and printing machines, in separate tariff lines that, virtually, not only overlap in description but also lie entirely within heading 8443 of First Schedule to Customs Tariff Act, 1975 – a heading that did, but only at sub-heading³ level without any suggestion of such

³ sub-heading 8443 32 and 8443 39 of First Schedule to Customs Tariff Act, 1975

dichotomy in that portion of the description, qualify a distinction for printers, facsimile machines and copying machines. Surprisingly, in both the sub-headings, as well as in the relevant portion of the heading, the other two, enumerated with ‘printers’, are described as machines with evocation of their functions, viz., copying and facsimile, without such description for ‘printers’ despite which, in the residual sub-heading, ‘printing machines’ was attached to ‘ink jet’ to cause conflict. That the entirety of chapter 84 of First Schedule to Customs Tariff Act, 1975 is intended for ‘machinery and mechanical appliances’, besides ‘nuclear reactors’ and ‘boilers’, goes a long way in concluding that ‘printers’ are machinery, too, and, thereby, we are, by the placement within the heading, confronted by a difference with distinction despite the similarity of description as well as functioning. It would, thus, appear that this particular resolution is warranted by the article deploying ‘inkjet’ technology and, no less either, from being ‘ITA bound’ – that peculiar instance of acknowledgement that, for this at least, ‘free trade’ is consummation devoutly to be wished for. These, then, must influence a resolution should binding precedent of case law not offer refuge.

8. The decision, in *re Monotech Systems Ltd*, to set aside the classification adopted by the original authority at Nhava Sheva was founded on

‘8. In view of the classification of the same product by the

Tribunal in a dispute of the very same importer referred to supra, the classification adopted by the original authorities and sustained in the impugned order does not survive...'

necessitating evaluation of applicability of the decision in *re Monotech Systems Ltd*, on clearances effected at Chennai, to the factual matrix in imports by M/s Friends Color Images Pvt Ltd. The parent decision was, essentially, based on the binding nature of circular of Central Board of Excise & Customs (CBEC) and that, in another dispute, the first appellate authority had allowed the more favourable classification. An allusion, and only in passing, to the *Explanatory Notes* does not render the cited order as binding precedent. The decision in *re Aztec Fluids and Machinery Pvt Ltd* was erected on the decision allowing the classification claimed at Chennai in *re Monotech Systems Ltd* while, in *re Hewlett Packard India Sales (P) Ltd*, the Tribunal was called upon to decide the correctness of classification *vis-à-vis* 'usage specific purpose' in chapter 90 of First Schedule to Customs Tariff Act, 1975. The cross-rulings, under appropriate procedure of customs statute in the United States of America, were on the specific finding of usage with personal computers.

9. Such varied, and variegated, spectrum of disputes over 'printers' is not surprising; printing is an ancient technology that, having originated in from Asia, evolved into the industry that we know of today with Gutenberg and Caxton, in mediaeval times, acknowledged as the 'inventive' genealogy preceding Ichiro Endo and John Vaught. From

stand-alone presses to the ubiquitous office equipment is an unbroken chain of technological genius spanning millennia with the purpose remaining unchanged; all that has changed is speedier and economical means of populating media. The First Schedule to the Customs Tariff Act, 1975 is standing testimony to the versatility of printing evident in note 2, note 6 and sub-heading note 2 owing to which neither of the rival tariff lines offer exclusive fitment for ‘printers’ and nor do judicial rulings, particularized for contexts, offer binding precedent. We find ourselves unable to resolve the dispute basis case law and, thereby, are left with ‘first principle’ determination.

10. There is a historical context, even if of recent vintage, that has bearing on the dispute. These are all disputes spawned from the ITA-1 Agreement under the aegis of the World Trade Organization (WTO) traceable to ‘free trade’ in technology products that came into being in 1996. Ink jet printers in commercial use may be traced to the fading years of the last millennium. It altered the paradigm of the printing industry and influenced the computer revolution too; it was vastly different from the technology of ‘word formation’ on medium and, as advancement from the existing ‘pinpoint combination’ of planting its mark that was just a variant of print technology extant till then, required sophistication in release of ink. The articles in heading 8471 of First Schedule to Customs Tariff Act, 1975 served the purpose of data processing through machines tuned to binary switches but without the

peripherals for input and output; these varied with fast changing technology and today we acknowledge printers and monitors as adjunct to computers – at times even fused. ‘Automatic data processing (ADP)’ machines were natural beneficiaries of this technology; not unnaturally, uncontemplated way back in 1975, its adaptation to ‘binary switch’ was but inevitable with miniaturization. Adoption of this technology in the traditional printing industry was also but natural. In the circumstances, the First Schedule to Customs Tariff Act, 1975 was not only required to acknowledge existence of the product but also the distinctions, at least for the nonce, in policy formulation.

11. In the Harmonized System of Nomenclature (HSN), printers intended for computers were, by notes in chapter 84, attached to ‘automatic data processing machines’ as these were solely intended for such use and not elsewhere. Inkjet technology changed all that and such acknowledgment in Harmonized System of Nomenclature (HSN) of 2002 was carried into Harmonized System of Nomenclature (HSN) of 2007 as tariff line for ‘inkjet printing machines’; at the same time, the same product – used with computers as ‘output’ or printers – was placed in the preceding sub-heading. The wisdom of that placement is best appreciated from note 5 in chapter 84 of First Schedule to Customs Tariff Act, 1975 which engages when imported as ‘system’ and not independently. The problem in such independent importation is that the ‘end use’ remained uncertain and hence the ‘fall back’ on Explanatory

Notes to chapter 84 of Harmonized System of Nomenclature (HSN); that the impugned goods are yet to assume form that may fall within sub-heading 8443 32 of First Schedule to Customs Tariff Act, 1975 is certainly bedevilment but with the appellant opting for classification by reference to rule 2 of General Rules for Interpretation of the Tariff appended to Customs Tariff Act, 1975, the consequent determination of heading in First Schedule to Customs Tariff Act, 1975 is not controverted here. We are, thus, to proceed with the premise that ‘inkjet printers’ were under import but, in the absence of applicability of note 5 in chapter 84 of Customs Tariff Act, 1975, the conflict over those being ‘machines’ instead of ‘printers’ needs to be resolved.

12. This line of argument of Learned Counsel may well align with the ‘capability’ aspect but not ‘autonomy’ aspect of the printer; use, including potential use, over the locus of the product in enumeration spanning from live animals to manufactures that themselves are prioritized by specialization and, it must be gainsaid, we use ‘prioritization’ advisedly from the intent apparent from the ultimate ‘tie breaker’ in rule 3 of General Rules for Interpretation of the Tariff appended to Customs Tariff Act, 1975. Such a proposition is purposive and the arguments on behalf of appellant, punctuated by self-interest, virtually eclipses the latter tariff line from the First Schedule to Customs Tariff Act, 1975. In this day and age of multitasking and in a product that there is hardly any incremental cost to enabling connection

to a network with all the advantage emanating from that endowment. All printers with such minor tweaking would, then, fall within the prior description. That argument of Learned Counsel must be disfavoured as no tariff line may be treated as superfluous.

13. The placement of 'inkjet printers' in tariff item 8443 3910 of First Schedule to Customs Tariff Act, 1975 cannot be faulted. The placement of impugned goods in tariff item 844 3250 of First Schedule to Customs Tariff Act, 1975 is also not devoid of merit. This we can safely say in the absence of distinction afforded by the Explanatory Notes. In such circumstances, the 'tie breaker' of later entry comes into play; accordingly, the tariff item declared in the bill of entry must be disfavoured.

14. As the distinction is drawn on the 'tie breaker' of happenstance, it cannot be asserted that appellant had misdeclared the goods. Consequently, confiscation under section 111 of Customs Act, 1962 and penalty under section 112 of Customs Act, 1962 does not merit confirmation. Appeal is allowed to the extent of setting aside of redemption fine and penalty while upholding the demand of differential duty.

(Order pronounced in the open court on 02/06/2025)

(AJAY SHARMA)
Member (Judicial)

(C J MATHEW)
Member (Technical)