CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

WEST ZONAL BENCH

CUSTOMS APPEAL NO: 85240 OF 2025

[Arising out of Order-in- Original No: 51/2019-20/Commr/NS-V/CAC/JNCH dated 05th November 2019 passed by the Commissioner of Customs (NS-V), Nhava Sheva.]

Moti Bhatia
122 Maker Tower A, Cuffe Parade, Mumbai - 400005 … ***Appellant***

versus

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

WITH

CUSTOMS APPEAL NO: 85243 OF 2025

[Arising out of Order-in- Original No: 51/2019-20/Commr/NS-V/CAC/JNCH dated 05th November 2019 passed by the Commissioner of Customs (NS-V), Nhava Sheva.]

Moti International
231, Commissariat Bldg., Near Handloom House,
Dr.DN Road, Fort, Mumbai - 400001 … ***Appellant***

versus

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

AND

CUSTOMS APPEAL NO: 85247 OF 2025

[Arising out of Order-in- Original No: 51/2019-20/Commr/NS-V/CAC/JNCH dated 05th November 2019 passed by the Commissioner of Customs (NS-V), Nhava Sheva.]

Sunders International
Room No. 104, Prabhudhan Bldg,
74/76, Bora Bazar street, Fort, Mumbai – 400001 … ***Appellant***

versus

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

APPEARANCE:

Shri Mihir Mehta, Shri Suyog Bhave and Shri Kshitij Kashi, Advocates for the appellants

Shri Manish Mohan, Commissioner (AR) for the respondent

CORAM:

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

FINAL ORDER NO: 85888-85890/2025

DATE OF HEARING: 08/05/2025
DATE OF DECISION: 06/06/2025

PER: C J MATHEW

This is a tale spanning three show cause notices though dispute remains only in the one concluded by Commissioner of Customs (NS – V), Jawaharlal Nehru Customs House (JNCH), Nhava Sheva in order[1] now contested before us and not the other two which, reportedly, have attained finality in an entirely different manner. Yet the disposal of the

[1] [order-in- original no. 51/2019-20/Commr/NS-V/CAC/JNCH dated 05th November 2019]

other two is just what, according to Learned Counsel for appellants, is the crux of objection to the findings herein and which we shall attend to, by the by, after dwelling briefly on the background.

2. The story really goes further back and in it, Shri Moti Bhatia, first of the appellants and partner in M/s Moti International and M/s Komal International, is alleged to be a key figure. The firms were in the business of manufacturing of, and trading in imported, electronic goods and electric appliances and, for themselves, imported, branded and unbranded, parts and panels from manufacturers across the world including many well-known in the market which, since 2002, was stocked in their warehouse at Bhiwandi, Maharashtra and transferred to their factory at Bicholim, Goa to be used in production of television sets that were sold under the name and style of 'CROWN' or cleared unbranded. After closure of production in August 2015, the appellants imported 'LED panels'- 924 nos. for 32" and 40" sets, 542 nos. for 40" and 50" sets, components of LED television sets and one 75" LED television for which three bills of entry no. 3947389/18.01.2016, no. 3947391/18.01.2016 and 3947393/ 18.01.2016, classifying the goods for assessment at rate of duty corresponding to tariff lines in heading 8529 of First Schedule to Customs Tariff Act, 1975 and claiming benefit of notification no. 12/2012-Cus dated 17th March 2012 (at serial no 432), were filed. These were taken up for detailed scrutiny by Directorate of Revenue Intelligence (DRI) on alleged suspicion that

disassembled goods were being imported only to be reassembled as sets and sold branded as SONY and SAMSUNG.

3. Regretfully, and much to our loss, we are unable to look into that 'labour' for the resultant show cause notice[2] issued to M/s Sanders International was carried by the importers to the Settlement Commission and disposed off by order[3] under the appropriate provision. Though the appellants have included the notice and order as exhibits in this appeal, the nature of disposal in accordance with the statute confers not only selective immunity but also, thereby, latches a finality beyond further review on merit that, again, not only renders it devoid of judicial affirmation but also exclusion from the panoply of 'blinding' precedent; literally, a flash that, while giving sight to some, also blinds others. It did not stop there; for another notice[4], proposing recovery of ₹ 2,32,02,581 as differential duty, under section 28 of Customs Act, 1962, along with appropriate interest, and imposition of appropriate penalties under several provisions of Customs Act, issued to M/s Moti International, was marched on the same trodden path to extinguishment. And thus, with apologies to the Bard of Avon, was 'love's labour lost'; it must have been 'love' for, with allegation of branded goods being re-assembled, the most affected would be two leading manufacturers and suppliers of large size 'LED television sets'

[2] [DRI/MZU/NS/Enq-09/2016 dated 15th July 2016]
[3] [no. 118/Final Order/Customs/DRK/2017 dated 11th July 2017]
[4] [DRI/MZU/NS/ENQ-7/2018 dated 9th July 2018]

in India, SONY and SAMSUNG. And, yet, oddly, the two did not appear to have taken recourse to interdiction through customs procedures for protection of intellectual property rights (IPR). Or at least, there is no record of such. Moreover, buying these branded articles in foreign markets for disassembling and only to have them reassembled in India must have entailed irrecoverable costs of sufficient concern as to question the profitability of such pursuit. Most importantly, such sets are not exactly in the lower segments of the market and consumers, discerning as they are, would not, in all likelihood, purchase electronic goods from 'grey market' with hardly any assurances and warranties unless the costs were abysmally low as even to forgo consumer finance. Unless, authorized dealers were, themselves, on it which, not unnaturally, should have been cause of concern to these manufacturers and we perceive not a whiff of that either. That, in any case, was amateur meandering through ordinary consumer behaviour and brand building theories; we shall not be found lagging in conceding that others are better versed in, and knowledgeable of, such weighty matters as marketing and intelligence.

4. We may, however, enunciate that, for us, concern here is about the finding under challenge, the show cause notice that led to the finding and the facts, circumstances, documents and deposition that framed the boundaries of the notice – the established facts, as it were – on which known law – comprising statutory obligations on importers

and stipulations on acceptability of facts - is to be applied. The notice[5] issued to M/s Moti International, M/s Komal International and Shri Moti Bhatia, covering imports against 171 bills of entry filed between March 2014 and January 2016, concluded with impugned order re-assessing the imports as liable to duty at the rate corresponding to sub-heading 8527 72 of First Schedule to Customs Tariff Act, 1975, denying the concession extended to 'LED panels' in the impugned notification, charging differential duty of ₹ 30,72,11,750 under section 28(4) of Customs Act, 1962, along with applicable interest under section 28AA of Customs Act, 1962 and, besides imposition of penalties of like amount under section 114A of Customs Act, 1962 on the noticees severally and jointly and penalty of ₹ 20,00,000 on Shri Moti Bhatia under section 114AA of Customs Act, 1962, also held the goods valued at ₹ 80,06,70,937 to be liable for confiscation under section 111(m) of Customs Act, 1962. Thus it was that goods, admittedly brought into India 'not as whole', were determined as 'whole' by recourse to rule 2 of General Rules for Interpretation of the Tariff appended to Customs Tariff Act, 1975 and subjected to differential duty arising, possibly, from divergence in standard rate of duty and, certainly, from denial of notification available to 'LED panels' even as 'LED panels' were, admittedly, present in ample quantity in the consignments.

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[5] [DRI/MZU/NS/Enq-09/ 2016 dated 6th November 2018]

5. We have heard Learned Counsel for the appellants whose submissions primarily dealt with the lack of evidence, as far as past imports are concerned, of amenability to the template of assembling that was the basis of the first show cause notice and which, as factual foundation, is neither to be transported to a time before and, more especially, as the validity of conclusion and credibility of the experts had not been tested before the Settlement Commission. It was further submitted that the other evidences were similarly poached from earlier investigation with strict curbs on reopening any challenge to their acceptability without compromise to the conclusions in the order of the Settlement Commission. Learned Counsel denied that the goods could, even remotely, be held as parts for assembling of complete television sets let alone that they were disassembled merely for export to India.

6. Learned Authorized Representative took us through several parts of the order to demonstrate that the facts led to no conclusion other than that which prompted the adjudicating authority to charge differential duty and to impose penalties. It was further contended that the evidence available could not be denied from being deployed in the same manner and fashion as it would have been supportive in proceedings against the imports that were proceeded against. He insisted on referring to the evidence considered by the Settlement Commission and which, according to him, was unalloyedly applicable to the present matter too. In response to query from the bench on the peculiarity of joint and

several responsibility for the duty and penalties, he was unable to provide legal basis for that outcome.

7. It may not be mystifying to the protagonists but, to us, men of uncomplicated existence, there is something discordant about a scheme of exemptions, which, admittedly, acknowledges ‘LED panels’ as independently assessable article on import, is held as withholding the privilege therefrom if imported with other articles necessary to make that exempted article functional. We can appreciate concession being afforded to parts because of potential for deployment in activities that contribute more to national income than mere trading in finished articles but that appreciation somehow finds it difficult to accept that the deeming of parts as whole, for the purpose of similitude in treatment for levy of customs duties, also evanesces such article from existence for assessment and, thereby, to assembling that does contribute no less to national income. That sense of ours for perspective maybe disrupted only by express provision in law for the notification says not that such parceling out is possible. That certainly bears examination.

8. We are no less mystified by the fastening of liability to duty as well as of penalty, jointly and severally, on all the noticees. There is no contract assigning proportion of benefits. There is no formulation of immorality, or illegality, as arithmetically contributory in customs law. And yet, it has been left to the device - unknown and unclaimed - of the

noticees to bear the burden of duty and wear the shame of penalty. One may surely wonder as to which one of the three would be the first to be proceeded with under section 142 of Customs Act, 1962 and, if the entire dues were to be found as feasibly recoverable from that unfortunate first, would the monstrous appetite of the agents of the exchequer then allow the others to go scot free? Would prioritizing be in the order in which the names appear in the impugned order and, if so, was there a method in the ordinal denomination or, if not, is the recovery officer to be the lord and master of the call? Or should it be in alphabetical order, age or any other discriminant, all unknown to Customs Act, 1962.

9. To play with the law is to bear the consequences, too. Law enforcement is not unlike a trapeze act; to board it is also to accept that consequence to the very end. The lack of logic, absence of justification and appropriation of process unknown to law, without even grace of method in the madness, suffices to discard the outcome as alien to the provisions invoked. For section 28 of Customs Act, 1962 is replete with references to 'person liable to pay the duty', and only in the singular, in context of duty to be ordered for recovery. The empowerment to order recovery under section 28 of Customs Act, 1962 does not envisage concurrent fastening of particular liability on multiple persons. That was nothing but irresponsible and perverse adjudication. In much the same way was the particular entry in the impugned exemption not

thought fit by the Central Government, the author of its being and not ignorant of the deeming for the purpose of classification, for not making intent of including ‘deemed article’ clear in furtherance of certainty in taxation. For it must certainly be conceded that the alternative, of recourse to rule 2 of General Rules for Interpretation of the Import Tariff appended to the Customs Tariff Act, 1975 is, by the breadth of the limited deployment of expressions, susceptible to individual determination and an exemption that is contingent on such individual determination is discriminatory in application.

10. We may, at this point, pause to reflect on the Schedule to the Tariff and the General Rules for Interpretation of the Tariff appended to Customs Tariff Act, 1975 and observe that its genesis and deployment is not just for charging the duty from the authority in section 12 of Customs Act, 1962. It is a child of the Harmonized Commodity Description and Coding System[6] conceived and gestated by the World Customs Organization (WCO) as standard ‘menu’, so to speak, in which on the right portion, each Member-State gets to graft its ‘gene’ or manifestation of its tax policy. Every rate in the Schedule is thus crafted in the backdrop of tax policy with exemptions emerging therefrom grafted on specific descriptions, tariff items, sub-headings or headings. The exemption in the impugned notification is available for ‘LCD and LED panels for television sets of 20” and above’ of heading

[6] [Harmonized System of Nomenclature (HSN)]

8529 of First Schedule to Customs Tariff Act, 1975 and yet it is contended by Learned Authorized Representative that the goods, which did include 'LED panels', could not conform to the description claimed. The claimed heading was for 'parts' related to specified 'end product' and, if a notification under section 25 of Customs Act, 1962 could accord panels recognition within such heading, there is no scope for misconstruing either the range of goods imported or fitment of a particular article within the heading.

11. On merit, Learned Counsel placed emphasis on the decision of the Hon'ble Supreme Court in *Commissioner of Customs, New Delhi v. Sony India [2008 (231) ELT 385 (SC)]*. We find that the appellants had imported several articles in the impugned consignments that were neither available for examination during the course of adjudication which, however, did not hinder the adjudicating authority from concluding that the goods, put together, constituted fully functional television sets. The appellant, on the other hand, insisted that only 'LED panels' had been imported, along with other parts, in the 171 impugned bills of entry. No one knows because there is no record of the goods having been inventorized and examined. To presume that the present was the past is neither logical nor legal. Furthermore, having arrived at a dead end in the earlier notices, it would appear that, with intent to deny exemption available to 'LED panels' and which was not refuted for presence in the consignment, eligible goods had to be made to

vanish – an impossibility in fact made possible by deeming the 'panels' to be within a television even if the television was not yet a thing.

12. This conundrum was enabled by resort to 'connecting the dots' from statements and certain extractions from seized mobile phones. These were all part of the investigation of the imports against the seizure that ended at the doors of the Settlement Commission and no evidence, attributable to the impugned consignments, undertaken after issue of the first notice, is on record. Respect for a process of immunization afforded by legislative enactment is demonstrated in breach by taking up the same evidence to be tested in adjudication or appeal by authorities to which the Settlement Commission is not subordinate. We have sufficient respect for the law to desist from even venturing to evaluate evidence that was before the Settlement Commission. We are no less aware of the legal obligation to subject statements to the test of section 138B of Customs Act, 1962 and to entail acceptance of electronic origin documents and information to the certification under section 138C of Customs Act, 1962. Both are visibly absent here. They, too, must be discarded from these proceedings for either or both reasons set out above. Either way, the evidence relied upon by the adjudicating authority has no saving grace from law.

13. Rule 2 of General Rules for Interpretation of the Tariff appended to Customs Tariff Act, 1975 is not an absolute rule, of its own, but is

an extension of rule 1 which places emphasis on the description as the test for placement and at each of three levels of enumeration. Thus, there is no bar on merit classification of parts of the whole; there is no illegality there, either. The Rules are a guide to placement of rates for formulation of tax policy and, as well, to fitment of imported goods. The Rules are rate neutral and not intended to be cause of dispute; it is only the presumption on the part of customs officials that importers are, likely and even willy nilly, bound to seek the lowest rate and revenue bias pushing for adoption of the higher rate that is cause of dispute and of resort to unwarranted recourse for denial of benefits of notification which makes for disputes. Rule 2 of General Rules for Interpretation of the Import Tariff appended to Customs Tariff Act, 1962 is not a criminalizing law to test import for misdeclaration; as a guidance principle, it must be read in its totality for adherence to legislative intent. The Explanatory Notes makes no bones about the manner, and circumstances, in which this particular rule was to be applied.

14. Hence it was that the Hon'ble Supreme Court held, in *re Sony India Ltd,* held that

> *'9. It is then only due to Rule 2(a) that these components are being treated as the CTVs and that is the main plank of the argument of Mr. Kas Singh, Ld. ASG. We would, therefore, consider the implication of Rule 2 (a). Rule 2(a) is as under :-*
>
> > *"Any reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished, provide that, as presented, the incomplete or unfinished*

> *article 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."*

The Ld. ASG, therefore, suggests that the articles though were not the CTVs in CKD form and were incomplete or unfinished ones, they had the essential character of complete or finished CTVs and applying this Rule, every such component, would have to be taken as an import of CTV. The Ld. ASG heavily relied on the second part of the Rule, starting from words "It was also to be taken to new reference............" He says that every component whether it is complete or finished and which is presented in unassembled or dis-assembled condition, would have to be taken as the finished article, like CTVs in this case. In our opinion, this argument is completely illogical and again that is not the import of the language of the Rule. If the argument of the Ld. ASG has to be accepted, then we would have to concentrate only on the later part of the Rule, ignoring the first part of the Rule and such dissection, in our opinion, is not possible. The sine qua non for the application of this Rule is that any imported article, which is "as presented", must have the essential character of the complete or finished article." This condition cannot be ignored and we cannot allow the reading only of the second part beginning with words "It was also to be taken to new reference..........." for application of the Rule. The Rule must apply as a whole. Ld. ASG was not able to point out as to how the first condition can be satisfied in the present case. A mere PCB or a CRT, in our opinion, under any circumstances, cannot be held to have essential character of the CTV. It is only when this first condition is satisfied that the remaining clause would have to be read and thereby, the words "that article" used in the later part would have to pass the test of the opening words of the clause "as presented, the incomplete or unfinished article has

> *the essential character of the complete or finished article". Once this condition is satisfied then the further clause is activated, suggesting that even when such article is in disassembled or unassembled condition, it would still be taken to be a complete article. Therefore, essentially the second part would come into play provided the component parts intended to make up the finished product are all presented for customs clearance at the same time which is not the case here.'*

for a clear perspective of legislative intent. We, therefore, cannot but hold that, bereft of any reasonably acceptable evidence, there is no basis for concluding that the impugned goods could, with bare operations, be assembled as television sets. The show cause notice is lacking in tabulation of the goods separately for each consignment of the impugned imports and correlation thereof of each to establish their potential to be assembled as television sets without any other essential part to be sourced.

15. In the decision of the Hon'ble Supreme Court, impugned was the order of a Larger Bench of the Tribunal in *Sony India Ltd v. Commissioner of Customs, New Delhi [2002 (143) ELT 411 (Tri-Del)]* which dealt with rule in great detail thus

> *'16. We thus come to the core dispute in this appeal whether the different parts imported under 94 Bs/E spread over the period from April, 1995 to January, 1997 can be combined together for the purpose of assessment by applying Rule 2(a), of the Interpretative Rules. Going by the language of Rule 2(a) the question whether parts or components are to be treated as*

article complete or finished, has to be considered at the time when they are presented unassembled or disassembled. There is no case for the Revenue in these proceedings that at some point of time before the import the goods were in the form of CTV sets and thereafter they were disassembled and imported as parts or components. The contention is that parts in 94 consignments taken together should be treated as CTV sets presented unassembled. We may first examine the background against which the relevant imports are made. The assessee with the permission of Ministry of Industries, Department of Industrial Development had obtained industrial licence for manufacture of CTV in their factory at Daruhera. It obtained import licence as 'actual user' in respect of the import of CRT and PCB from the office of the DGFT, that too, as per direction given in the communication dated 31-8-94 issued by the Ministry of Industries granting permission for establishment of the company for manufacture of CTV. It is also clear from the above communication that the Govt. of India was fully aware of the proposal of the assessee to import the required components for manufacture of CTV and to gradually increase the use of components locally purchased from India. It is not the case of the Revenue that import of the consignment covered by any of the 94 Bs/E is in contravention of law if the goods comprised therein are to be treated as parts of components. Assessments were also being made under the relevant heading or sub-heading in respect of each component as and when Bs/E were presented during the relevant period. It is in the background of the factual position, as above, we are to consider whether by applying Rule 2(a) of the Interpretative Rules the components imported are to be treated as CTV presented unassembled.

17. In the light of the authoritative pronouncement of the Apex Court, it is beyond challenge that HSN Explanatory

Notes to Rule 2(a) has to be applied while considering the relevant Tariff Entry for each item. In CCE, Shillong v Woodcraft Products Ltd. - 1995 (77) ELT 23 (SC) the contention raised by the Revenue was that the expression 'similar laminated wood' in the Central Excise Tariff Heading 44.08 has to be examined in the light of the Explanatory Notes to HSN. Accepting the above contention the Apex Court held that in case of any doubt regarding tariff classification HSN is a safe guide for ascertaining the true meaning of any expression used in the Central Excise Tariff Act. Even though this decision was placed by the assessee before the Commissioner it was not accepted for the reason that the decision was rendered in a case of assessment under Central Excise Tariff Act. We find that the reason given by the Commissioner to distinguish the decision of the Apex Court is totally unsustainable. Indian Customs Tariff is completely aligned with HSN. In Grasim Industries v. CC, Bombay, 1998 (103) ELT 515 (T) = 1998 (24) RLT 598, a Larger Bench of this Tribunal had applied the decision in Woodcraft Products Ltd. to a proceeding under Customs Tariff Act. Apart from the above, in a later decision in CC, Bombay v. Business Forms Ltd., 2002 (142) ELT 18 (SC), the Supreme Court has reiterated the same legal position in an assessment under the Customs Tariff Act. The orders passed by the Tribunal were set aside and remanded for fresh consideration for the reason that the Tribunal had declined to place reliance on the Explanatory Notes in HSN stating that at the best this can have only persuasive value. After referring to Woodcraft Products Ltd. the Supreme Court observed that HSN Explanatory Notes are entitled to far greater consideration than the Tribunal has given in its orders.

18. In the present case, when a dispute is raised regarding the classification of the components as complete CTV by *applying Rule 2(a), it has to be solved with reference to HSN Explanatory Notes to Rule 2(a). According to HSN Notes, complete or finished articles are presented unassembled for reasons such as requirements or convenience of packing, handling and transport. In Modi Zerox Ltd. the contention raised by the assessee that the items imported by them are Fax Machines in CKD condition and therefore they are to be assessed as complete Fax Machine was not accepted by this Tribunal. Relying on HSN Explanatory Notes it was held that it was an import of individual parts and not Fax Machine in unassembled form as fax machines are not such type of machines which for convenience are required to be transported in an unassembled state. This decision was affirmed by the Supreme Court in 2001 (133) ELT A91. In SAB Electronics Ltd. - 2001 (132) ELT 161 (T) = 2001 (44) RLT in 137 and Phoenix International Ltd. - 2001 (138) ELT 484 also Tribunal has taken recourse to HSN's Explanatory Notes to Rule 2(a) in order to arrive at a conclusion whether the parts imported are unassembled form of final and complete article. In the present case the complete or finished article is CTV. It cannot be for a moment contended that CTV has to be presented unassembled for the convenience of packing, handling and transporting.*

19. It is also explained in HSN Notes that, for the purpose of Rule 2(a), 'articles presented unassembled or disassembled' means articles the components of which are to be assembled either by means of simple fixing devices (screws, nuts, bolts etc.) or by riveting or welding, for example, provided only simple assembly operations are involved.

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26. We will now examine the issue from another angle. Rule 2(a) speaks about a complete article presented (emphasis *supplied) unassembled or disassembled. What is the relevant point of time at which the article is presented unassembled? According to the assessee it is at the time of presenting each Bill of Entry to the proper officer as contemplated under Section 46 of the Customs Act, 1962. On the other hand the Revenue would contend that goods imported under 94 Bills of Entry can be clubbed together for bringing within the term presented unassembled under Rule 2(a). [Emphasis supplied]*

27. In Susha Electronics Industries the assessee imported 90 pieces of 20" colour picture tube and 90 sets of plastic moulded components with cabinet front panel and rear covers. They sought clearance under OGL at Kandla Port. They had also imported 90 sets each of sub-assemblies, speakers, twiters, antenna and 90 sets of remote control, pressed and punched parts and had filed B/E at Air Cargo Complex, Ahmedabad. The above imports were covered by licences. Revenue took the view that the goods imported under three consignments are to be treated together as CTV sets in SKD condition taking recourse to Rule 2(a) of General Rules for Interpretation. The Tribunal took the view that when the import Policy permitted import of components of TV sets some against licences and some under OGL the Collector had no jurisdiction to object to the clearance of the OGL item on the ground that those items if clubbed with items imported at Air Cargo Complex against licence would constitute complete TV set in SKD condition. In SAB Electronics Ltd. components of EPABX/Telephone were imported over a period of 22 months under 37 Bs/E. It was sought to be assessed as complete EPABX/Telephone system in CKD/SKD condition by invoking Rule 2(a) of the Interpretative Rules. The Revenue did not have a case that complete EPABX was brought and clearance was sought at different Customs station by splitting the *consignment. The Tribunal took the view that the assessee had imported components and they are to be classified accordingly. Prayer for combining 37 Bs/E during the period of 22 months was not accepted. A similar view was taken by this Tribunal in Polar Appliances Ltd. v. CC, New Delhi - 2001 (127) ELT 448 (T) = 2001 (43) RLT 32.*

28. In Trident Television Pvt. Ltd. - 1990 (45) ELT 24 (Cal.) a decision of the High Court of Calcutta Customs authorities sought to assess the components of colour TV imported by the assessee as complete TV set in SKD condition. The components were imported under different consignments. The High Court took the view that each consignment has to be separately assessed. It was further observed that even if one importer brings different items which are admittedly spare parts and components the Revenue authorities cannot take the plea that if those are assembled together there would be complete TV set. Ghanshyam Chejra is yet another decision of the Calcutta High Court where a similar view was taken.

29. Learned Member Technical has sought to distinguish Polar Appliances v. CCE - 2001 (127) ELT 448(T) = 2001 (43) RLT 32 for the reason that in Polar Appliances the import was from different foreign suppliers whereas in the present case it was from a single supplier. According to the appellant herein the foreign suppliers are from different countries and Sony International (S) Ltd. is acting only as a consolidating agent for procuring these components and shipping the same from Singapore for convenience. As mentioned earlier the shipping document would go to show that the country of origin in respect of different components are different. Apart from the above, with great respect, we are of the view that even if the 94 consignments had come from one foreign supplier it would not have made any difference in the matter of application of Rule

2(a) in the facts of this case. The reason given by the learned Member Technical for distinguishing the decision of this Tribunal in SAB Electronics v. CC - 2001 (132) ELT 161 is that the Revenue had failed to adduce any evidence in that case to show that the complete EPABX was brought and clearance was sought at different Customs stations by splitting the consignments but in the present case the components have been imported with the intention of only assembling complete CTV. With great respect we are not able to agree with the above view. In the present case the Revenue has no contention that complete CTV sets were brought and clearance was sought at different Customs stations by splitting the consignments. The fact that components are brought under 94 consignments spread-over a period of two years with the intention of manufacturing complete CTV would not bring imports of such components under Rule 2(a). In this connection, it will be relevant to refer to the decision of the Apex Court in Vareli Weaves Pvt. Ltd. v. Union of India, 1996 (83) ELT 255 (SC). The dispute in this case was whether Partially Oriented Yarn (POY) imported by the appellant should be taken to fall within Item (iv) under the head Polyester Yarn relating to POY of 75 deniers and above but below 100 deniers or within item (iii) relating to POY of 100 deniers and above but not above 750 deniers for the purpose of availing the benefit of exemption from countervailing duty. Accepting the contention raised by the appellant, the Supreme Court took the view that countervailing duty must be levied on goods in the state in which they are when they are imported. There was no warrant for the levy of countervailing duty on the basis that, subsequent to the process of texturising, POY that was imported would have the denierage stated under item (iii). Therefore, for the purpose of imposing duty under the Customs Tariff Act the intention of the importer to utilize the component for manufacturing CTV sets is not relevant. Learned Member

Technical distinguished the case CC v. Mitsuny Electronic Works, 1987 (30) ELT 345, a decision of the Calcutta High Court for the reason that in that case the import was by three Export Houses. We find that the very same High Court has taken a view in Trident Television Private Ltd. v. CC, 1990 (45) ELT 24 that even if the imports are made by one importer the Revenue authorities cannot club together different consignments of components to arrive at a conclusion that they would make complete TV sets.

30. In Vishal Electronics Pvt. Ltd. a decision of this Tribunal an elaborate discussion is there on this issue. In the above case the assessee had imported under 5 consignments, components and sub-assemblies of CCT Video Camera. One consignment under REP licence and others under OGL. The Revenue took the view that when these imported goods are put together it formed complete sets of video camera in CKD condition the import of which is restricted as per the terms of Import Policy and required specific licence which the assessee did not possess. The Tribunal took the view that each B/E must be considered with reference to either the licence in case where specific licence is necessary and in other cases the particular tariff item relating to goods which could be imported and the provisions relating to OGL. In the absence of prohibition or any specific restriction as in the case of Girdharilal Bansidhar v. Union of India - AIR 1964 (SC) 1519 and Sharp Business Machine - 1990 (49) E.L.T. 640 it is not open to the Department to contend that the goods imported under all the Bs/E if put together would constitute video camera in CKD condition and the same cannot be permitted without specific licence.

31. The above discussion takes us to the two decisions of the Supreme Court which are sought to be relied upon by the

> *Revenue. Girdharilal Bansidhar case arose under Sea Customs Act. Appellant had a licence for import of iron and steel, bolts, nuts, screws, studs excluding those adapted for use on cycles. He imported certain goods described as 'stove bolts and nuts' on the strength of the licence. The goods were found to be 'parts of nuts and bolts of Jackson Type single bolt oval plate belt fasteners' whose import had been totally prohibited by a notification in force at the time of import. The Collector held that the import was an attempt to evade the prohibition. Upholding the above view, the Apex Court observed as follows:-*
>
> > *"........ We cannot accede to the position that it is the intention of the rule that importers are permitted to do indirectly what they are forbidden to do directly, and that it permits the importation separately of components which have no use other than as components of an article whose importation is prohibited, and that an importer is thereby enabled to assemble them here as a complete article though if they were assembled beyond the Customs Frontiers the importation of the assembled article into India is prohibited."'*

and suffices for discard of the very foundation upon which the impugned order has been erected.

16. There is no evidence that the 171 consignments, as imported and presented on each occasion, was capable of being assembled into specific number of television sets by very basic operations. That three consignments of later occasion could have been was not tested and neither was the evidence gathered during the investigation then subjected to relevancy test and acceptability test for determining the outcome in adjudication as legal and proper. The 'substitute adjudication', implied in order of Settlement Commission, attained

finality and to subject the very same evidence therein to test in the present proceedings would be tantamount to breach of that finality. Therefore, classification as 'television sets' must lie upon evidence of inventory of each individual consignment, as presented, or upon fresh documented or deposed evidence. Both are, palpably, not present.

17. The consignments did contain, *inter alia*, 'LED panels' entitled to be cleared on rate of duty noted in the impugned notification. With the 'parts' meriting appropriate classification, the basis of denial, *viz*., treatment of the goods as finished articles, is no longer available to be pressed into service. The differential duty was not to have been ordered for recovery. There is, also, no misdeclaration of value or any other particular in the impugned bills of entry. The confiscation of goods is not in order and must be aside.

18. For the reasons *supra*, the impugned order is bereft of any legal and factual sustenance and is set aside to allow the appeals.

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

(AJAY SHARMA)
Member (Judicial)

(C J MATHEW)
Member (Technical)

**/as*