# CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL MUMBAI

REGIONAL BENCH - COURT NO. I

**Customs Miscellaneous Application No.85666 of 2024**
(On behalf of respondent)
**in**

**CUSTOMS APPEAL No. 87536 of 2023**

[Arising out of Order-in-Appeal No. 33-35 (Gr. V)/2023(JNCH)/Appeals dated 31.01.2023 passed by the Commissioner of Customs (Appeals), Jawaharlal Nehru Custom House (JNCH), Nhava Sheva.]

**Commissioner of Customs, Nhava Sheva - V** **.... Appellant**
Jawaharlal Nehru Custom House (JNCH),
Nhava Sheva, Taluka Uran, District Raigad
Maharashtra – 400 707.

*VERSUS*

**BenQ India Private Limited** **.... Respondents**
Hissa No. 5, House No. 319A&B
Survey No.95, Vadape Village
Near Vadape Police Chowki
Bhiwandi, Thane – 421 302.

**WITH**

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Hissa No. 5, House No. 319A&B
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Bhiwandi, Thane – 421 302.

APPEARANCE:

Shri A.K. Shrivastava, Authorized Representative for the Appellant

Shri V. Lakshmikumaran, Senior Advocate along with Ms. Anjali Hirawat & Ms. Anjali Bhide, Advocates for the Respondents

**CORAM:**

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

**FINAL ORDER NO. A/86226/2025**

Date of Hearing: 05.02.2025
Date of Decision: 05.02.2025

**Per: M.M. PARTHIBAN**

This appeal has been filed by the Commissioner of Customs, Nhava Sheva-V (herein after, referred to as "the appellant", for short), in pursuance to Review Order No.28/2023-2024 dated 28.04.2023 passed by the Committee of Commissioners of Customs, assailing the Order-in-Appeal No. 33-35/(Gr.V)/2023(JNCH)/Appeals dated 31.01.2023 (herein after, referred to as "the impugned order") passed by the Commissioner of Customs (Appeals), Jawaharlal Nehru Custom House (JNCH), Nhava Sheva in respect of certain imports made by M/s BenQ India Private Limited, Thane (herein after, referred to as "the respondents/respondent importer").

2. Respondent importer has filed this miscellaneous application bearing No.85666 of 2024 on 24.05.2024, seeking for issue of directions by the Tribunal under Rule 41 of the CESTAT (Procedure) Rules, 1982, for provisional assessment of future bills of entries in connection with the import of "Interactive Flat Panel' (IFP) by them under the classification decided by the learned Commissioner of Customs (Appeals) in the impugned order, during the pendency of the appeal before the Tribunal. On careful perusal of the request made in the aforesaid miscellaneous application and the provisions of Rule 41 *ibid,* it transpires that it provides for issue of orders or giving directions by the Tribunal to give effect to its order(s) or in relation to its orders; Since, there is no final order passed by the Tribunal as on the date of hearing, there is no ground for entertaining such miscellaneous application by this Tribunal. Accordingly, the miscellaneous application filed by the respondent-importer is dismissed.

3.1 Brief facts of the case, leading to this appeal, are summarized herein below:

3.2 The respondents herein M/s BenQ India Private Limited, Thane have imported different models of "BENQ Interactive Flat Panel" by classifying the same under Customs Tariff Item (CTI) 8471 4190 of the First Schedule to the Customs Tariff Act, 1975, claiming Basic Customs Duty (BCD) exemption benefits vide Serial No.8 of the Notification No.24/2005-Customs dated 01.03.2005 and applicable Integrated Goods and Services Tax (IGST) at 18%. Self-assessment of the imported goods by filing the import declaration under various Bills of Entries (B/Es) with the above classification and basic customs duty exemption was objected to by the department and the said assessment was referred to the Nhava Sheva Port assessment group for verification of such self-assessment.

3.3 The proper officer of customs at JNCH port assessment group had interpreted that the subject goods i.e., BENQ Interactive Flat Panel are not merely Automatic Data Processing (ADP) machine components and it has many other additional inbuilt features with the main purpose to interact through display as per the intended user i.e., training, conferences, educational purposes, teaching via e-learning etc., As even Cellular phones do incorporate all the functions of an ADP machine, yet the same is classified under cellular phones as the primary function is communication. Applying the same reasoning, the proper officer of customs had revised the self-assessment by classifying the subject goods under CTI 8528 5900 with 10% BCD and IGST at 28%, since the principal function is to display and such classification covers 'other monitors' of a kind solely or principally used in an ADP system of heading 8471 and rejected the classification adopted by the respondents under CTI 8471 4190.

3.4 Being aggrieved with the said adjudication orders, the respondents have filed various appeals before the Commissioner of Customs (Appeals), Mumbai Zone-II. In disposal of these appeals, by a common impugned order, the learned Commissioner of Customs (Appeals) on the basis of Section Note 3 to Section XVI; Chapter Note 5(A) to Chapter 84 and by relying upon various orders passed by the Tribunal, had set aside the orders of the original authority and allowed the appeals filed by the respondents. Feeling aggrieved with the said impugned order and on review by the empowered Committee of Commissioners of Customs in Review Order dated 28.04.2023, Revenue has filed this appeal before the Tribunal.

4. Authorized Representative (AR) appearing for Revenue in reiterating the grounds of appeal had submitted that in terms of Rule 3(a) of the General Rules for Interpretation of the Customs Tariff, the heading which provides most specific description shall be preferred to heading providing a more general description; the main function of the BENQ Interactive Flat Panel is interaction through display having display qualities, touch screen, write or draw screen etc., Therefore he claimed that the subject goods cannot be considered as ADP machine under CTH 8471. Further, he relied upon the decision of the Tribunal in the case of Commissioner of Customs (Import & Export), New Delhi Vs. Integral Computer Ltd. – 2016 (337)

E.L.T. 580 (Tri. Del.) to state that the interactive electronic white board was classified under sub-heading 8528 5100 and therefore the classification adopted by the department is appropriate. Therefore, he prayed that the impugned order is liable to be set aside and the appeal filed by Revenue may be allowed.

5.1 On the other hand, Learned Advocate for the respondents have submitted that the disputed goods viz., BENQ Interactive Flat Panels (IFPs) of various models have common features of in-built quad core Central Processing Unit (CPU), Graphics Processing Unit (GPU), Random Access Memory (RAM) and internal storage of requisite capacity. IFPs have pre-installed operating system (OS) like Android 8.0 and can work on Windows OS; these have various input/output ports such as HDMI display port, RS232, LAN, USB ports. These also have additional features such as multi touch interaction, hand writing recognition, freehand touch, on-screen key board typing etc., along with application such as calculator, stop watch, buzzer etc., The disputed goods under import satisfy the condition of Note 5A to Chapter 84 in order to qualify as an ADPM, as these have the facility of storing processing programme(s) for the execution of programmes with internal storage capacity of 16 to 32 GB; they have pre-installed operating systems, in built slot for connection with Open Pluggable Specification (OPS) slot without requiring any additional power; freely programmable in accordance with the user's needs without human intervention.

5.2 Learned Advocate further submitted that the Ministry of Electronics and Information Technology (Meity) have clarified that IFPs are covered by the Compulsory Registration Order under the category of ADP machine; and IFPs are certified by BIS as 'automatic data processing machine'. The main function of IFPs is not display, but rather data processing and therefore even as per Note 3 to Section XV, these are classifiable under CTH 8471 and not as 'monitor' under CTH 8528.

5.3 He further stated that they have relied upon the following case laws in support of their claim for classification of impugned goods under CTH 8471:

(i) *Cloudwalker Streaming Technologies Private Limited Vs. Commissioner of Customs (NS-V), Raigad* – (2023) 4 Centax 226 (Tri. – Mum.).

(ii) *Ingram Micro India Private Limited Vs. Principal Commissioner of Customs (Import), New Delhi* – 2022 (2) TMI 308 – CESTAT NEW DELHI

6. Heard both sides and carefully examined the case records. The additional submissions made in the form of written paper books in this case by both sides were also perused carefully.

7. The issue involved herein is to decide the classification of impugned goods imported by the respondents during the period 31.03.2021 to 28.07.2021 as to whether, the same merits classification under Customs Tariff Item (CTI) 8471 4190 as claimed by the respondents; or, is it classifiable under Customs Tariff Heading (CTI) 8528 5900 as claimed by the Revenue, for deciding on the appropriate levy of customs duty, in respect of various Bills of Entries filed during the disputed period. Further, it is also required to be decided whether the confirmation of the classification claimed by the respondents by setting aside the orders of original authority by the learned Commissioner (Appeals) in the impugned order is legally sustainable.

8.1 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 for consideration of proper and appropriate classification of the subject goods under dispute.

**Customs Act, 1962**

*"**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."*

**Customs Tariff Act, 1975**

*"**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."*

*xxx xxx xxx xxx*

***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."*

8.2 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.

8.3 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 8471 4190 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 and the respective section/chapter notes are extracted as below:

*SECTION XVI*

***MACHINERY AND MECHANICAL APPLIANCES; ELECTRICAL EQUIPMENT; PARTS THEREOF; SOUND RECORDERS AND REPRODUCERS, TELEVISION IMAGE AND SOUND RECORDERS AND REPRODUCERS; AND PARTS AND ACCESSORIES OF SUCH ARTICLES***

***Notes :***

*1. This Section does not cover :*

*xxx xxx xxx xxx*

*3. Unless the context otherwise requires, composite machines consisting of two or more machines fitted together to form a whole and other machines designed for the purpose of performing two or more complementary or alternative functions are to be classified as if consisting only of that component or as being that machine which performs the principal function.*

**CHAPTER 84**

**Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof**

**Notes** :

xxx xxx xxx xxx

*5. (A) For the purposes of heading 8471, the expression "automatic data processing machine" means machine capable of :*

*(i) storing the processing programme or programmes and at least the data immediately necessary for the execution of the programme;*

*(ii) being freely programmed in accordance with the requirements of the user;*

*(iii) performing arithmetical computations specified by the user; and*

*(iv) executing, without human intervention, a processing programme which requires them to modify their execution, by logical decision during the processing run.*

*(B) Automatic data processing machines may be in the form of systems consisting of a variable number of separate units.*

*(C) Subject to paragraphs (D) and (E), a unit is to be regarded as being part of an automatic data processing system if it meets all of the following conditions :*

*(i) it is of a kind solely or principally used in an automatic data processing system;*

*(ii) it is connectable to the central processing unit either directly or through one or more other units; and*

*(iii) it is able to accept or deliver data in a form (codes or signals) which can be used by the system.*

*Separately presented units of an automatic data processing machine are to be classified in heading 8471.*

*However, keyboards, X-Y co-ordinate input devices and disk storage units which satisfy the conditions of (ii) and (iii) above, are in all cases to be classified as units of heading 8471.*

*(D) Heading 8471 does not cover the following when presented separately, even if they meet all of the conditions set forth in paragraph (C) :*

*(i) printers, copying machines, facsimile machines, whether or not combined;*

*(ii) apparatus for the transmission or reception of voice, images or other data, including apparatus for communication in a wired or wireless network (such as a local or wide area network);*

*(iii) loudspeakers and microphones;*

*(iv) television cameras, digital cameras and video camera recorders;*

*(v) monitors and projectors, not incorporating television reception apparatus*

*(E) Machines incorporating or working in conjunction with an automatic data processing machine and performing a specific function other than data processing are to be classified in the headings appropriate to their respective functions or, failing that, in residual headings.*

xxx xxx xxx xxx

| Tariff Item | Description of goods |
|---|---|
| | |
| (1) | (2) |
| **8471** | **Automatic data processing machines and units thereof; magnetic or optical readers, machines for transcribing data on to data media in coded form and machines for processing such data, not elsewhere specified or included** |
| 8471 30 | *- Portable automatic data processing machines, weighing not more than 10 kg., consisting of at least a central processing unit, a keyboard and a display :* |
| 8471 30 10 | **---** Personal computer |
| 8471 30 90 | **---** Other |
| | *- Other automatic data processing machines :* |
| 8471 41 | *-- Comprising in the same housing at least a central processing unit and an input and output unit, whether or not combined :* |
| 8471 41 10 | **---** Micro computer |
| 8471 41 20 | **---** Large or main frame computer |
| 8471 41 90 | **---** Other |
| 8471 49 00 | **--** Other, presented in the form of systems |
| xxx | xxx xxx xxx xxx |

And

| 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** |
| | *- Cathode-ray tube monitors:* |
| 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 |
| | *- Other monitors:* |
| 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 |
| xxx | xxx xxx xxx xxx |

9.3 From the above, it is thus clear that at the Chapter heading level i.e., CTH 8471 and CTH 8528, there is difference of opinion in classification of impugned goods among the appellant department and the respondents. The dispute in classification therefore lies in the narrow compass of the comparing the two chapter headings, in which the impugned goods are correctly classifiable and then closely examine the scope of the relevant Sub-headings/Tariff Items thereof for determining correct classification of the imported goods.

9.4 It could be seen that by applying the GIR 1 - rule at (i) above, the position is made clear that 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 interactive flat panels, 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 these are related to monitors for television apparatus. While cathode ray tube (CRT) monitors use cathode ray tube to form images on the screen, the other category of the goods i.e., 'other monitors' covered under two sub-headings of 8528 52 or 8528 59 are for 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. Therefore, it clearly transpires that CTH 8528 covers monitors and projectors, not having the features of ADP machine.

9.5 On the other hand, heading 8471 covers within its scope and ambit, all types of Automatic Data Processing machines (ADPs) and its units thereof. Further, other machines for processing of data such as transcribing data on to data media in coded form etc., are also included in this heading. The sub-classification of the goods under this heading is given as follows:

(i) Portable ADPs including personal computers are covered under sub-heading 8471 30;

(ii) Other type of ADPs are covered under sub-heading 8471 40 and the tariff items are provided for sub-classification of goods in detail there under;

(iii) Processing units; input, output units and storage units to ADPs are covered under sub-heading 8471 50, 8471 60 and 8471 70 respectively and different type of goods are itemized under various tariff items given under each of such sub-headings; and

(iv) Other units of ADP machines which are not covered by any of the above, are grouped under the residuary sub-headings of 8471 80 and 8471 90.

9.6 In terms of the specification and components with which the impugned goods are comprised of viz., panel, operating system, processors, RAM memory, Hard disk storage, input/output units such as key board, OS software etc., it clearly points out that these are ADP units of Chapter heading 8471 and not mere monitors classifiable under heading 8528.

10. In terms of the General Rules for Interpretation for arriving at the correct classification of Interactive Flat Panels, besides examination of the 'terms of the headings' as above at paragraphs 9.3 to 9.6, it is also required to be tested for fulfilment of relative Section or Chapter Notes or otherwise. The relevant section notes and chapter notes are Note 3 to Section XVI and Note 5A to Chapter 84. Since, the Interactive Flat Panels are self-contained automatic processing units by itself, even if it is used as display monitors, it cannot be said that such goods should be classified under sub-heading 8528 as the principal function of the impugned goods remain as data processing machines. In order to classify the goods as Automatic Data Processing machine (ADP) the Interactive Flat Panels should be capable of storing the processing programme(s) and at least the data immediately necessary for the execution of the programme. The facts on record show that the impugned goods are having internal storage capacity of 16 GB to 32GB by which it can store the data or programmes for execution of programmes to perform the function of ADP without human intervention. Further, impugned goods support various programming languages such as C++, Java, Python etc. and has physical key board and online editors for performing any programming or logical operations, as per the requirement of users. Furthermore, central processing unit along with operating system software of the IFPs executes the commands given by the user by taking logical decisions, without further intervention by user. Therefore, all the pre-requisites of (i) storing processing programme or programmes, and at least the data immediately necessary for the execution of the programme; (ii) being freely programmed in accordance with the requirements of the user; (iii) performing arithmetical computations specified by the user; and (iv) executing, without human intervention, a processing programme which requires them to modify their execution, by logical decision during the processing run, are fulfilled by the Interactive Flat Panels, which have been imported by the respondents in the present case. From the above analysis, we are of the considered view that the impugned goods are appropriately classifiable under CTI 8471 4190.

11.1 We find that in the identical set of the facts in the case of *Cloudwalker Streaming Technologies Private Limited* (supra), this Tribunal had examined the issue of correct classification of 'Interactive intelligence panel' and the BCD exemption available to such goods, and have held that these are classifiable under Heading 84.71. The relevant paragraphs in the said order is extracted and given below:

> ***"5.*** *The two rival descriptions are:*
> *'automatic data processing machines' 'comprising in the same housing at least a central processing unit and an input and output unit' not being portable machines, micro-computers and large or main frame computers and 'monitors' other than those 'of a kind solely or principally used in an automatic data processing system of heading 8471' which are not 'cathode-ray tube monitors' corresponding to tariff item 8528 5900 of First Schedule to Customs Tariff Act, 1975.*
>
> ***6.*** *There can be no doubt that reiteration of assessment being a function of rate of duty and value may be superfluous but is necessary to satisfy ourselves that we have approached the issue in the manner prescribed by law. Both these aspects stand on different footing; in valuation, rejection of the declared amount is a pre-requisite because the relevant Rules afford consequential alternatives but rejection of declared classification at the outset carries the burden of saddling the exercise with re-classification that may not meet the test of General Rules for the Interpretation of the Import Tariff which prescribes the more apt of any two comparatives for adoption. It has been held by the Hon'ble Supreme Court, in HPL Chemicals Ltd. v. Commissioner of Central Excise, Chandigarh [2006 (197) E.L.T. 324 (SC)], 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, in Hindustan Ferodo Ltd. v. Collector of Central Excise, Bombay [1997 (89) E.L.T. 16 (SC)/1996 taxmann.com 174 (SC), thus*
>
> > *'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 reappreciated. As we have stated, no evidence was led on behalf of the Revenue. There is, therefore, no good reason to remand the matter.'*

*to stipulate that it is for the customs authorities to first establish the appropriateness of the classification proposed by them before substituting that claimed by an importer.*

***7.** Furthermore, it is clear from*

*'1. ….for legal purposes, classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes…'*

*of the General Rules for Interpretation of the Import Tariff that comparison is permissible only between headings at the 'four digit level' with identification, thereafter, of the most specific description of sub-heading and tariff item within.*

***8.** The heading deployed by customs authorities pertains to 'monitors and projector' and, while the impugned goods may appear to have some of the characteristics of 'monitors', it is abundantly clear from the descriptions in the catalogue that these do contain a central processing unit and does operate on software that requires an input device which, though not be different from that for computers and other automatic data processing machines, functions on its own. Therefore, the goods in question cannot be said to be merely projectors or monitor and, thereby, renders recourse to heading 8528 of the First Schedule to the Customs Tariff Act, 1975 to be inconsistent with the General Rules for Interpretation of the Import Tariff. In accordance with the judicial decisions on discharge of the onus devolving on the assessing authority, and without going into the conformity of the description adopted in the bill of entry, it can safely be held that the revised classification does not bear the authority of law. Furthermore, as it is not controverted that the said exemption notification is available to all goods classified under heading 8471 of the First Schedule to the Customs Tariff Act, 1974, we are, without examining the appropriateness of the tariff item, enabled to hold that the duty liability discharged by the appellant suffices for the purpose of levy. Accordingly, the impugned order is set aside and appeal is allowed."*

11.2 The case law relied upon by Revenue in the case of Integral Computer Ltd. (supra), deals with 'electronic white board', which is a PC based input equipment which after connected with projector or PC can function for display, writing, noting, drawing etc. However, the product under the present dispute is entirely different as it contains ADP machine by itself, and the case law cited by Revenue does not apply to the present case.

11.3 We also find that in the case of *Ingram Micro India Private Limited (supra),* the Co-ordinate Bench of the Tribunal have examined the issue regarding classification of "interactive display system", and have held that the imported Interactive Flat Panels having an in-built CPU, internal storage, operating software etc., satisfy the conditions of Chapter Note 5(A) to Chapter 84 and thus are correctly classified under 8471 9000 and not under 8528 5200. The relevant paragraphs in the said order are extracted and given below:

> ***3.*** *The issue in both the appeals is regarding classification of the goods namely (i) (ViewBoard) ViewSonic IFP6550-2/65" Interactive Display System; and (ii) (ViewBoard)-ViewSonic-IFP7550-2/75" Interactive Display System. The appellant claims that the classification would be under Customs Tariff Item[3] 8471 41 90, though, earlier at the time of self-assessment, the appellant had claimed it to be under CTI 8471 90 00. The Department claims that it should be under CTI 8528 52 00. The Deputy Commissioner rejected the self-assessment done by the appellant under CTI 8471 90 00 and ordered for re-assessment of the goods under CTI 8528 52 00. The case set up by the appellant at the time of assessment was that the goods were Automatic Data Processing Machines[4] and not Monitors and, therefore, classifiable under CTI 8471 90 00 and not under CTI 8528 52 00. At the appellate stage, the appellant contended, on a re-consideration of the matter, that the goods were more specifically and correctly classifiable under CTI 8471 41 90.*
>
> ***4.*** *In order to appreciate the issue involved in this appeal, it would be necessary to examine the technical nature of the product. The appellant has stated that the goods are Interactive Flat Panel Display[5], which are used in the classrooms for teaching and in companies for presentations, meetings, etc. These are available in different sizes ranging from 24 inches to 98 inches, depending upon the requirement of the customer. The goods have an in-built Central Processing Unit[6] with specification ARM Cortex A73 dual-core 1.2 GHz?, 2 GB RAM for execution of programs, internal storage capacity of 16 GB and a pre-installed operating system, namely, Android 7.0. The goods also have an Open Pluggable Specification Slot[7], with the use of which the user can download and operate other operating systems such as Windows on the IFP. The goods also have slots for HDMI, VGA, LAN, USB, RS232 and audio. Internet can be accessed on IFP by connecting it to a dongle via USB port or by the use of a LAN cable. These IFP can also be connected to laptops and input can be given either from the IFP to the laptop or vice versa. The goods allow the user to download and install new programmes according to requirements. The goods also permit the user to record lectures and share the lectures/notes/presentations via e-mail or QR codes. Since these IFP are cloud enabled, the user can also upload the notes on pre-set cloud storage.*
>
> *xxx xxx xxx xxx*
>
> ***17.*** *It would be seen from the aforesaid that Chapter Note 5(A) and the HSN Explanatory Notes to CTH 84.71 provide what should constitute an ADPM. According to the aforesaid Chapter Note 5(A), ADPM would be a machine which is capable of storing a processing program; is freely programmable; performs arithmetical computations; and can execute a processing program by logical decision during the processing without human intervention.*
>
> ***18.*** *The impugned goods are IFP having an in-built CPU (ARM Cortex A.73 dual-core 1.2GHz Processor), a 2GB RAM and Android 7.0 Operating software. In addition, they also have an internal storage capacity of 16GB. Thus, goods are machines which are capable of storing*

*data or programmes for the execution of programmes and satisfy condition no. (i) of Chapter Note 5(A) to Chapter 84.*

***19.*** *The goods come with a pre-installed operating system, namely, Android 7.0. The said Android version is a customized operating system for these IFP. Further, the goods also have an OPS slot. With the use of the OPS Slot, additional hardware can be connected to the goods and the OPS Slot can also be used for installing other operating software such as Windows, etc. on the goods. Thus, the goods are machines on which the user is able to load and execute a program. In other words, the goods are capable of executing any application/program which is stored on its memory. A user can, with the use of either Android or other operating systems, download and install new programmes in accordance with their needs and usage. Thus, goods are machines which can be freely programmed in accordance with the need of the user and hence, satisfy condition (ii) of Chapter Note 5(A) to Chapter 84.*

***20.*** *The goods are capable of performing arithmetical computations depending on the input provided by the user. The goods are equipped with a calculator to perform arithmetical computations. It has also been admitted by the Deputy Commissioner in paragraph 5.3 of the Assessment Order that these machines perform general computing tasks. Thus, the goods meet the requirements of condition (iii) of Chapter Note 5(A) to Chapter 84.*

***21.*** *A user can give a command to the goods and the same would be executed without any further intervention of the user. The CPU along with the operating system executes the command so given by the user by taking logical decisions during the processing run. Thus, condition no. (iv) is also satisfied.*

***22.*** *As all the four essential conditions contained in Note 5(A) to Chapter Note 84 are satisfied, the goods qualify as ADPM classifiable under CTH 8471.*

***23.*** *The goods also have an in-built processing unit, an input unit and an output or may have separate processing, input and output unit interconnected with each other and so the requirements set out in the HSN Explanatory Notes to CTH 8471 also stand satisfied.*

***24.*** *The goods are capable of working as an ADPM on a standalone basis and can also be used in conjunction with other ADPM, but this would not mean that the goods would cease to be ADMP in their own right, capable of working on a standalone basis. The large size display (65 inches and 75 inches) is only a feature/specification of the product and this cannot be construed to be its function, much less its principal function. The Deputy Commissioner and the Commissioner (Appeals), therefore, committed an error in holding that the large size of display would mean that the goods are meant for display purpose to a large gathering and, therefore, in terms of Note 5(E) of Chapter Note 84, the goods would merit classification as per the specific use.*

*xxx xxx xxx xxx*

***32.*** *In Salora International Ltd. v. CCE 2012 (284) E.L.T. 3 (SC), the Supreme Court observed as follows:*

> *"20. Therefore, as clearly specified by the above rule, resort must first be had only to the particular tariff entries, along with the relevant Section*

*and Chapter Notes, to see whether a clear picture emerges. It is only in the absence of such a picture emerging, that recourse can be made to the Rules for Interpretation.*

*21. In the matter at hand, the entire case of the Revenue is based on an application of Rule 2(a) of the Rules for Interpretation to the goods produced by the appellant, however, the applicability of this Rule cannot be established unless the classification is first tested against the relevant Section and Chapter Notes."*

***33.*** *In view of the aforesaid, there is no manner of doubt that the goods would merit classification under CTI 8471 41 90 as claimed by the appellant and not under CTI 8528 52 00 as claimed by the Department."*

13. In view of the foregoing discussions and analysis, and on the basis of the orders passed by the Tribunal, we are of the considered view that the impugned order dated 31.01.2023 in classification of the BENQ Interactive Flat Panels under CTI 8471 4190; and by setting aside the orders of original authority wherein he had revised the classification under CTI 8528 5900, does not require interference. As the impugned order has correctly held the classification of the impugned goods, it is legally sustainable.

14. In the result, the impugned order dated 31.01.2023 passed by the learned Commissioner of Customs (Appeals) is upheld and the appeal filed by the Revenue is dismissed.

(Operative portion of the order pronounced in open court)

**(S.K. Mohanty)**
**Member (Judicial)**

**(M.M. Parthiban)**
**Member (Technical)**

Sinha