CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

WEST ZONAL BENCH

CUSTOMS APPEAL NO: 86578 OF 2024

[Arising out of Order-in-Appeal No: 517(Gr.V)/2024(JNCH)/Appeals dated 2nd April 2024 passed by the Commissioner of Customs (Appeals), Mumbai – II.]

Brio Interactive Technologies Pvt Ltd
A-12 FIEE Okhla Industrial Area, Phase II
New Delhi - 110020 … ***Appellant***

versus

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

APPEARANCE:

Shri Prashant Patankar, Consultant for the appellant

Shri A K Shrivastava, 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: 86397/2025

DATE OF HEARING: 02/04/2025
DATE OF DECISION: 01/10/2025

PER: C J MATHEW

This appeal of M/s Brio Interactive Technologies Pvt Ltd rests on the proposal for charging differential duty liability on 94 nos. of

'Brio mobile touch 75' valued at ₹ 1,00,50,655, imported *vide* bill of entry no. 40973222/27.05.2019, owing to discard of rate of duty corresponding to 8471 4190 of First Schedule to Customs Tariff Act, 1975 and re-assessment at rate of duty corresponding to tariff item 8528 5900 of First Schedule to Customs Tariff Act, 1975 that, duly confirmed by the original authority, was upheld by Commissioner of Customs (Appeals), Mumbai – II *vide* order[1] impugned here.

2. Assailing the finding, Learned Consultant for the applicant submitted that controversy over classification of imported 'interactive flat panel display' is no longer *res integra* inasmuch as the Tribunal, in *Cloudwalker Streaming Technologies Pvt Ltd v. Commissioner of Customs (NS-V) [(2023) 4 Centax 226 (Tri.-Bom)]*, had set aside the order fastening liability at the rate of duty corresponding to tariff item 8528 5900 of First Schedule to Customs Tariff Act, 1975 with consequential retention of assessment at rate of duty corresponding to tariff item 8471 4190 of First Schedule to Customs Tariff Act, 1975 in identical circumstances.

3. Learned Authorized Representative who submitted that the classification proposed in the show cause notice was the most appropriate in view of note 3 to section XVII of First Schedule to Customs Tariff Act, 1975. It was also submitted that the ruling of the

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[1] [order-in-appeal no. 517(Gr.V)/2024(JNCH)/Appeals dated 2nd April 2024]

Customs Advance Authority on affirmation of classification against tariff item 8471 4190 of First Schedule to Customs Tariff Act, 1975 had not been accepted and appeals had been preferred before the Hon'ble High Court of Bombay. Attention also drawn to note[2] issued on 4th August 2023 by Chennai Customs directing assessment of such goods by recourse to rate of duty corresponding to tariff item 8528 5900 of First Schedule to Customs Tariff Act, 1975.

4. The Tribunal, in *re Cloudwalker Streaming Technologies Pvt Ltd,* has held that

> *'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) ELT 324 (SC)], that*
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> > *'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*

[2] [issued from F.No. Cus/AR/ARD/2912 of 2023 Gr.V of Chennai Customs]

> *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) ELT 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.*
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> *xxxxxx*
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> *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.'*

leaving no room for doubt that the proposed revision of classification against tariff item tariff item 8528 5900 of First Schedule to Customs Tariff Act, 1975 did not meet the test prescribed by the Hon'ble Supreme Court and that assessment to rate of duty corresponding to tariff item 8471 4190 of First Schedule to Customs Tariff Act, 1975 remained undisturbed. The decision was impugned in appeal before the

Hon'ble Supreme Court but dismissed for low tax effect. The reasons relied upon in the assessment upheld by the order impugned here are much the same as in *re Cloudwalker Streaming Technologies Pvt Ltd*. The test of usage, predominating or principal, among machines incorporating two or more articles presented together is, as far ICE technology[3] goes, an outdated approach inapplicable to classification of goods that are, independently, endowed with 'automatic data processing' capability. To suggest that such articles are throwback to the days of 'visual output' devices, necessary for functioning of 'central processing unit (CPU)', is to indulge in luddite protestation, metaphorically speaking; in those times, monitors and keyboards were commonly referred to as 'I/O' signifying mutual exclusivity of the two functions and deployed for computer operation. The impugned goods, combining all three, are neither monitors nor projects. Furthermore, the Tribunal, in *Ingram Micro India Pvt Ltd v. Principal Commissioner of Customs (Import), New Delhi [(2023) 2 Centax 62 (Tri-Del)],* found no reason to affirm the classification pressed by customs authorities which played down the interactive features of 'interactive flat panel display' elevating it, in terms of technology, above 'monitors and projectors' that did not possess attributes of 'automatic data processing' machines.

5. In view of the above settled position in law, it was not open to the lower authorities to insist on retention of classification that had been

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[3] [Information Communication Entertainment]

judicially 'unsettled', preference of assessing authorities notwithstanding; to suggest that the decision in *re Cloudwalker Streaming Technologies Pvt Ltd* and in *re Ingram Micro India Pvt Ltd* did not settle the law and to press for affirmation of the contrary in the interests of uniform assessment practice as instructed by Chennai Customs does not behove judicial decorum. In this connection, we draw attention to the observations of Hon'ble Supreme Court

> *'6……. It cannot be too vehemently emphasised that it is of utmost importance that, in disposing of the quasi-judicial issues before them, revenue officers are bound by the decisions of the appellate authorities. The order of the Appellate Collector is binding on the Assistant Collectors working within his jurisdiction and the order of the Tribunal is binding upon the Assistant Collectors and the Appellate Collectors who function under the jurisdiction of the Tribunal. The principles of judicial discipline require that the orders of the higher appellate authorities should be followed unreservedly by the subordinate authorities. The mere fact that the order of the appellate authority is not "acceptable" to the department - in itself an objectionable phrase - and is the subject-matter of an appeal can furnish no ground for not following it unless its operation has been suspended by a competent Court. If this healthy rule is not followed, the result will only be undue harassment to assessees and chaos in administration of tax laws.'*

in *Union of India v. Kamalakshi Finance Corporation Ltd [1991 (55) ELT 433 (SC)]* that leave no room for doubt on finality of judicial determination and judicial discipline that binds coordinate benches of the

Tribunal and lower authorities to judicial precedent.

6. We consider ourselves bound by the precedent decision of the Tribunal in the absence of discard by the Hon'ble Supreme Court or even stay of operation of existing judicial determination. The proposition of non-maintainability of challenge before the designated court of appeal to derail dispute settled by statutory appellate authority is tantamount to suggesting that there are only two authorities, the proper officer and the highest court of the land, which is anathema to rule of law. Accordingly, the said order binds owing to which we set aside the impugned order and allow the appeal.

(Order Pronounced in the Open Court on 01/10/2025)

(AJAY SHARMA)
Member (Judicial)

(C J MATHEW)
Member (Technical)

**/as*