

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

WEST ZONAL BENCH

**CUSTOMS APPEAL NO: 86896 OF 2021
WITH
MISCELLAENOUS APPLICATION NO. 85830 OF 2021**

[Arising out of Order-in-Appeal No: 851(Gr.V)/2021(JNCH)/2021 dated 8th October 2021 passed by the Commissioner of Customs (Appeals), Nhava Sheva, Mumbai – II.]

Cloudwalker Streaming Technologies Pvt Ltd
CPE Plot, BSD Marg, Station Road, Govandi East
Mumbai - 400088

... Appellant

versus

Commissioner of Customs (NS-V)
Jawaharlal Nehru Custom House, Nhava Sheva
Tal: Uran, Dist: Raigad - 4000707

...Respondent

APPEARANCE:

Shri Sujay Kantawala, Advocate for the appellant
Shri Ramesh Kumar, Assistant Commissioner (AR) for the respondent

CORAM:

**HON'BLE MR ASHOK JINDAL, MEMBER (JUDICIAL)
HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)**

FINAL ORDER NO: A / 87407 /2021

DATE OF HEARING:	03/12/2021
DATE OF DECISION:	03/12/2021

PER: C J MATHEW

Miscellaneous application is disposed off as infructuous. The dispute in this appeal of M/s Cloudwalker Streaming Technologies Pvt Ltd is on the appropriate classification of 'interactive intelligent

panel (automatic data processing machine) model – cloudtouch’ imported by the appellant from M/s Shenzhen Konika E-Display Co Ltd, China. Bill of entry no. 3843844/ 06.05.2021, for 90 nos of this item comprising varying configurations with value of ₹76,24,692/-, and bill of entry no. 3846255/06.05.2021, for 6 nos of the item in knocked down (SKD) condition with declared value ₹ 6,13,482/-, were claimed for assessment at the rate of duty corresponding to tariff item 8471 4190 of First Schedule to Customs Tariff Act, 1975 with attendant exemption from basic customs duty, under notification no. 24/2005-Cus dated 1st March 2005, available to all goods covered by heading 8471 of First Schedule to Customs Tariff Act, 1975. The original authority ordered assessment to duty at 10% *ad valorem* corresponding to tariff item 8528 5900 of First Schedule to Customs Tariff Act, 1975. The impugned proceedings, *vide* order-in-appeal no. 851(Gr.V)/2021(JNCH)/2021 dated 8th October 2021 of Commissioner of Customs (Appeals), Nhava Sheva, Mumbai – II, upheld the re-classification leading to this appeal.

2. It was held in the impugned order that the classification claimed by the appellant applies only to ‘automatic data processing machines’ and not for ‘monitors/projectors’ which the brochure and catalogue accompanying the consignment indicated the goods to be. It was further held that ‘monitors other than those capable of directly connecting to and designed for use with automatic data processing

machines’ was the sole alternative description.

3. Learned Counsel for the appellant submits that certification by the Bureau of Indian Standards (BIS) as ‘automatic data processing machine’ should have sufficed to support their claim. It was also pointed out that the technical features of the impugned goods is consistent with the description corresponding to the classification claimed by them and that the decision of the Tribunal in *Commissioner of Customs (Import & General), New Delhi v. Integral Computer Ltd [2016 (337) ELT 580 (Tri.Del.)]*, arising from claim for classification as tariff item 8472 9090 of the First Schedule to Customs Tariff Act, 1975 corresponding to ‘interactive white board’, was entirely about the dependency on or control over articles to be used solely or principally with goods under heading 8471 of First Schedule to Customs Tariff Act, 1975. It was also pointed that the functions of ‘automatic data processing machine’ enumerated in note 5(A) in chapter 84 of First Schedule to Customs Tariff Act, 1975 are performed by the impugned goods. He further contended that, but for this particular consignment, in all imports of theirs, as well as of others, classification under heading 8471 of First Schedule to the Customs Tariff Act, 1975 had not been disputed by customs authorities.

4. According to Learned Authorized Representative, the classification approved in the impugned order conforms to General

Rules for the Interpretation of Import Tariff as the Explanatory Notes of the Harmonized System of Nomenclature (HSN) excludes machines which operate only on fixed programs from coverage under heading 8471 of First Schedule to Customs Tariff Act, 1975. He further contends that the Explanatory Notes to the Harmonized System of Nomenclature (HSN) pertaining to 'monitors' aptly describes the goods imported by the appellant. Reliance was placed by him on the decision of the Tribunal in *Wipro Ltd v. Commissioner of Central Excise, Bangalore* [2001 (136) ELT 885 (Tri. - Chennai)] to contend that certification by Bureau of Indian Standards (BIS) does not assist in determining classification. He also relied upon the decision of the Hon'ble Supreme Court in *Oswal Agro Mills Ltd v. Collector of Central Excise* [1993 (66) ELT 37 (SC)] holding that, insofar as classification is concerned,

'3. The provisions of the Tariff do not determine the relevant entity of the goods. They deal whether and under what entry, the identified entity attracts duty. The goods are to be identified and then to find the appropriate heading, sub-heading under which the identified goods/products would be classified. To find the appropriate classification description employed in the tariff nomenclature should be appreciated having regard to the terms of the headings read with the relevant provisions or statutory rules of interpretation put up thereon. For exigibility to excise duty the entity must be specified in positive terms under a particular tariff entry. In its absence be deduced from a proper construction of the tariff entry. There is neither intendment nor equity in a taxing statute. Nothing is implied. Neither can we insert nor anything can we delete but it should be interpreted and construed as per the words the legislature has chosen to employ in the Act or Rules. There is no room for assumption or presumptions. The object of the Parliament has to be

*gathered from the language used in the statute. The contention that toilet soap is commercially different from household and laundry soaps, as could be seen from the opening words of Entry 15, needs careful analysis. It is well, at the outset, to guard against confusion between the meaning and the legal effect of an expression used in a statute. Where the words of the statute are plain and clear, there is no room for applying any of the principles of interpretation which are merely presumption in cases of ambiguity in the statute. The court would interpret them as they stand. The object and purpose has to be gathered from such words themselves. Words should not be regarded as being surplus nor be rendered otiose. Strictly speaking there is no place in such cases for interpretation or construction except where the words of statute admit of two meanings. The safer and more correct course to deal with a question of construction of statute is to take the words themselves and arrive, if possible, at their meaning, without, in the first place, reference to cases or theories of construction. Let us, therefore, consider the meaning of the word soap "household". The word household signifies a family living together. In the simplistic language toilet soap being used by the family as household soap is too simplification to reach a conclusion. Therefore, one has to gather its meaning in the legal setting to discover the object which the Act seeks to serve and the purpose of the amendment brought about. The task of interpretation of the statute is not a mechanical one. It is more than mere reading of mathematical formula. It is an attempt to discover the intention of the legislature from the language used by it, keeping always in mind, that the language is at best an imperfect instrument for the expression of actual human thoughts. It is also idle to expect that the draftsman drafted it with divine prescience and perfect and unequivocal clarity. Therefore, court would endeavour to eschew literal construction if it produces manifest absurdity or unjust result. In *Manmohan Das v. Vishnu Das* [AIR 1967 SC 643] a Constitution bench held as follows :*

"The ordinary rule of construction is the provision of a statute must be construed in accordance with the language used therein unless there are compelling reasons, such as, where a literal construction would reduce the provision to absurdity or prevent manifest intention of the legislature from being carried out."

and on the decision of the Tribunal in *re Integral Computer Ltd* that

was relied upon by the lower authorities

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) ELT 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) ELT 16 (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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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.

(Operative Part of the Order Pronounced in the open Court on 3rd December 2021)

(ASHOK JINDAL)
Member (Judicial)

(C J MATHEW)
Member (Technical)

**/as*