

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI**

PRINCIPAL BENCH-COURT NO. 1

Customs Appeal No. 52428 of 2019-DB

(Arising out of Order-in-Original No. 03/NKU(03)ADG (ADJ.)/DRI/New Delhi/2019-20 dated 03.07.2019 passed by the Additional Director General (Adjudication), Directorate of Revenue Intelligence, New Customs House, Near IGI Airport, New Delhi-110037)

M/s BenQ India Pvt. Ltd.

3rd Floor, 9B Building,
DLF Cyber City, DLF Phase III,
Gurugram, Haryana-122002

....Appellant

Versus

Additional Director General (Adjudication),

Directorate of Revenue Intelligence,
New Customs House, Near IGI Airport,
New Delhi-110037

....Respondent

WITH

(FILED BY THE ASSESSEE)

C/52429/2019

C/52430/2019

C/52431/2019

C/52432/2019

C/52433/2019

AND

(FILED BY THE DEPARTMENT)

C/51621/2021

C/51725/2021

C/51726/2021

C/51727/2021

C/51728/2021

C/51729/2021

APPEARANCE:

Shri V. Lakshmikumaran, Shri Anurag Kapoor &
Ms. Sonam Yadav, Advocates for the assessee
Shri Mihir Ranjan, Special Counsel for the Department with
Shri Nagendra Yadav, Authorized Representative of the Department

**CORAM : HON'BLE MR.JUSTICE DILIP GUPTA, PRESIDENT
HON'BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)**

FINAL ORDER No.: 50832-50843/2022

DATE OF HEARING : 29.08.2022

DATE OF DECISION: 12.09.2022

JUSTICE DILIP GUPTA

The show cause notice dated 29.10.2018 has been adjudicated upon by the Additional Director General (Adjudication) Director of Revenue Intelligence, New Delhi¹ by an order dated 03.07.2019 in the following manner:

“ With respect to charges answerable to the Adjudicating Authorities as indicated in column F of the Table -X & Table-XI of the show cause notice and Paras 2.23 & 2.24 of this Order for imports mentioned against each of them, as contained in Annexures - A,B, C, D, E, F, Q, H, I & J of the show cause notice:

(i) The impugned goods i.e. Projectors Imported by M/s. Benq India Pvt. Ltd. **under** the Bills of Entry, as detailed in the Annexures-A, B,C,D,E,F,and G of the show cause notice **are ordered to be re-assessed by classifying them under CTH 85286900;**

(ii) The seized goods mentioned in Table-III of the show cause notice, having total value of Rs. 1,08,52,755/- (Rupees One Crore Eight Lakh Fifty Three Thousand Seven Hundred Fifty Five Only) **are hereby confiscated** under the provisions of Section 111 (m) of the Customs Act, 1962. However, **I give an option to M/s. BenQ India Pvt. Ltd. to redeem** the said goods upon payment of Redemption Fine Commissioneratewise as per chart given below under the provisions of Section 125 of the Customs Act, 1962:

S. No.	Name of Commissionerate	Redemption Fine (in Rs)
1.	Air Cargo Complex, Chennai	45,000/-
2	Sea Port, Chennai	90,000/-
3.	Air Cargo Complex, Mumbai	5,000/-
4.	Air Cargo Complex, Delhi	9,00,000/-
	Total	10,40,000/-

(iii) I hold the impugned goods imported in the past by M/s. BenQ India Pvt. Ltd. under the Bills of Entry, as detailed in the Annexures- A, B, C, D, E, F and G of the show cause notice with a total assessable value of Rs.111,42,17,196/- (Rupees One Hundred Eleven Crore Forty Two Lakh Seventeen Thousand One Hundred Ninety Six Only) (Rs. 112,50,70,951 - Rs. 1,08,53,755) **liable for confiscation under Section 111(m) of the Customs Act, 1962. However, as the goods are not available for confiscation, I refrain from confiscating the same.**

1. The Additional Director

(iv) **The demand of differential Customs duty** as per Table IV of Para 2.23 above for the Bills of Entry as detailed in Annexures- A, B, C, D, E, F and G of the show cause notice of Rs. 11,62,99,578/- (Rupees Eleven Crore Sixty Two Lakh Ninety Nine Thousand Five Hundred Seventy Eight Only) **payable on the impugned goods is hereby confirmed under Section 28(4) of the Customs Act, 1962** along with applicable interest under section 28 AA of the Customs Act, 1962 **and the same are ordered to be recovered from M/s BenQ India Pvt. Ltd.**

(v) **It is ordered that the proper officer should finalize the assessment of the goods imported under the Bills of Entry, as detailed in the Annexure- H, I and J which have been assessed provisionally under section 18 of the customs Act, 1962, in view of the classification of the impugned goods decided hereinabove as CTH 85286900** and decide about recovery of the differential duty amounting to Rs. 9,79,05,224/- (Rupees Nine Crore Seventy Nine Lakh Five Thousand Two Hundred Twenty Four Only) in terms of section 18(2) of the Customs Act, 1962 along with interest thereon under section 18(3) *ibid* and also about confiscation of the said goods and enforcement of the Bonds and Bank Guarantees submitted during the course of provisional assessment as provided under Law.

(vi) **I order for appropriation of Rs. 3,50,00,000/-** (Rupees Three Crore Fifty Lakh Only), paid by M/s. BenQ India Pvt. Ltd. during the course of investigation towards demand of differential Customs duty as confirmed above.

(vii) **I impose a penalty of Rs. 11,62,99,578/-** (Rupees Eleven Crore Sixty Two Lakh Ninety Nine Thousand Five Hundred Seventy Eight Only) which is equivalent to the amount of duty confirmed (port-wise) as per Table IV of Para 2.23 above and also equal to the interest as confirmed at para 6(iv) above upon M/s BenQ India Pvt. Ltd. under section 114A of the Customs Act, 1962 keeping in view discussions and finding contained in foregoing paras 5.8.1 to 5.8.5. Having imposed penalty under section 114A *ibid*, I refrain from imposing any penalty upon M/s. BenQ India Pvt. Ltd. under section 112 (a) of the Customs Act, 1962 in terms of proviso 5 of section 114A of the Customs Act, 1962.

(viii) I however, do not impose penalty upon M/s. BenQ India Pvt. Ltd. under Section 114AA of the Customs Act, 1962.

2.2 I impose penalty of As. 11,00,000/ - (Rupees Eleven Lakh only) under section 112(a) of the Customs Act, 1962 upon each of these i.e.,

(i) Shri Rajeev Singh, Managing Director, M/s BenQ India Pvt. Ltd.

(ii) Shri Vijay Sharma, Business Manager (Projectors) of M/s. BenQ India Pvt. Ltd,

(iii) Shri Hitesh Kumar, Manager (Supply Chain) of M/s. BenQ

India Pvt. Ltd,

(iv) Shri R. Ravichandran, Managing Director of M/s. Blessings Cargo Care Pvt. Ltd, and

(v) M/s. Blessings Cargo Care Pvt. Ltd.

as indicated portwise in the table given below:

S. No.	Port of import	Penalty under section 112 (a) (in Rs)
1.	ACC, Mumbai	5000/-
2.	ACC, Chennai	85,000/-
3.	Chennai Sea Port	5,00,000/-
4.	ACC, Delhi	4,50,000/-
5.	Nhava Sheva	25,000/-
6.	ICD Patparganj	5,000/-
7.	ICD Tughalakabad	30,000/-
Total		11,00,000/-

I however, do not impose any penalty upon them under section 114AA of the Customs Act, 1962. "

(emphasis supplied)

2. It is this order dated 03.07.2019 that has resulted in the filing of Customs Appeal No's. 52428/2019, 52429/2019, 52430/2019, 52431/2019, 52432/2019 and 52433/2019 by BenQ India Pvt. Ltd., Hitesh Kumar, Rajeev Singh, R. Ravichandran, Blessings Cargo Care Pvt. Ltd. and Vijay Kumar Sharma respectively and Customs Appeal No's 51621/2021, 51725/2021, 51726/2021, 51727/2021, 51728/2021 and 51729/2021 by the Additional Director General (Adjudication), Directorate of Revenue Intelligence- New Delhi.

3. The period of dispute is from 07.11.2013 to 09.10.2018 and the issue involved in the appeals is whether 'data projectors'

imported by M/s BenQ India Pvt. Ltd.² are classifiable under Customs Tariff Item³ 8528 61 00/ 8628 62 00 as claimed by the appellant or under CTI 8528 69 00 as claimed by the Department and consequently whether exemption from payment of Basic Customs Duty⁴ under Serial No. 17 of the exemption notification dated 01.03.2005 has been correctly availed by the appellant.

4. The appellant is engaged in the import and sale of projectors in India and has been importing digital projectors from China/ Taiwan by categorizing them as 'data projectors' and 'video projectors' on the basis of their specifications, characteristics and usage. According to the appellant, the data projectors⁵ are primarily meant for use with an Automated Data Processing System⁶ and are designed for projection of data in places like conference rooms, auditorium/lecture halls and classrooms, while Video Projectors are used for entertainment purposes for use in home theatres, for playing games and home cinemas.

5. The appellant has been importing the goods since 2012 by classifying them as 'Projectors for Education' or 'Projector to be connected with ADPS under CTI 8528 61 00 (before 01.01.2017) and CTI 8528 62 00 (post 01.01.2017) under the First Schedule to the Customs Tariff Act, 1975⁷. On such imports, the appellant has been claiming exemption from payment of BCD under the exemption notification. The appellant also claims to have been discharging customs duty on Video Projectors by classifying them under CTI 8528

2. the appellant

3. CTI

4. BCD

5. the goods

6. ADPS

7. the Tariff Act

69 00 of the Tariff Act.

6. The technical specifications of data projectors and video projectors, as imported by the appellant, on the basis of which these are distinguished is given below:

Sl. No.	Particulars	Data Projector	Video Projector
1.	Native Aspect Ratio	4:3 or 16:10	16:9
2.	Brightness (Luminosity)	More than 2500 lumens	Less than 2500 lumens
3.	Native Resolution	1024x768 1280x800 1900x1200	1920x1080 3480x2160 4096x2160
4.	Color Wheel	RGB RGBCYM RGBW	RGBRGB

7. The appellant claims that the goods imported by it satisfy the aforesaid specifications/characteristics of the data projectors and, therefore, exemption from payment of BCD was rightly claimed.

8. The records indicate that the Directorate of Revenue Intelligence⁸ initiated an investigation into the imports of data projectors by the appellant in the year 2017. The DRI formed a view that the goods were ‘multimedia projectors’, capable of being connected to multiple devices/audio-video sources and, therefore, were incorrectly classified by the appellant under CTI 8528 61 00/8528 62 00 in order to avail the benefit of the exemption notification.

9. Accordingly, a show cause notice dated 29.10.2018 was issued to the appellant alleging incorrect classification under CTI 8528 61 00/8528 62 00 and wrongful availment of exemption under the exemption notification. A demand, in the case of provisionally

8 DRI

assessed Bills of Entry, was proposed under section 18(2) of the Customs Act, 1962⁹ along with interest under section 18(3) of the Customs Act. Further, proposals for confiscation under section 111(m) and imposition of penalty under section 112(a) and 114AA of the Customs Act were also made.

10. The appellant filed a detailed reply but the same did not find favour of the Additional Director, who by an order dated 03.07.2019, held that the goods are classifiable under CTI 8528 69 00 and confirmed the demand of duty proposed in the show cause notice with interest and penalty. The Additional Director, however, did not impose any penalty under section 112(a)/114AA of the Customs Act. The Additional Director also imposed penalty of Rs. 11,00,000/- each on all the appellants.

11. The appellants have filed appeals so far as they are aggrieved by that portion of the order of the Additional Director that is against them and the Department has filed appeals against that portion of the order of the Additional Director that does not impose penalty on the appellant under section 114AA of the Customs Act.

12. Shri V. Lakshmikumaran, learned counsel for the appellant assisted by Shri Anurag Kapoor and Ms. Sonam Yadav made the following submissions;

i. The goods are correctly classifiable under CTI 8528 61 00/8528 6200, as has been held by the Tribunal in **Sony India Pvt. Ltd. v/s Commissioner of Customs, Central Excise, New Delhi**¹⁰;

ii. The goods which are 'principally' used with ADPS are those goods which are inherently capable of connecting with

⁹ the Customs Act

¹⁰. 2019 (370) E.L.T. 1774 (Tri.-Del.)

multiple devices but are designed primarily to be used with ADPS. Thus, goods should have functionality and specifications that allow these devices to work optimally with ADPS. In the present case, it is not in dispute that data projectors imported by the appellant are used with an ADPS. Therefore, mere capability of use in both ADPS and non-ADPs environment cannot be the basis for deciding whether projectors are principally to be used with ADPS. The correct test is whether their specification and features are designed in such a way that they generally or primarily are meant for use with ADPS;

iii. The addition of multiple ports in the goods does not take away the basic nature of goods, which is to work in conjunction with ADPS. This still remains to be the principal function of the impugned goods. The presence of such ports is only to ensure their use with laptops and ADPS. Consequently, presence of such ports makes them capable of being connected to ADPS. Therefore, even post 31.12.2016, the goods imported by the appellant are correctly classifiable under CTI 852862 00 and the legal portion classified by the Courts will continue to apply to the projectors imported w.e.f 01.01.2017;

iv. For the period prior to 01.01.2017, all goods falling under CTSH 8528 61 were unconditionally exempt from payment of BCD as per the exemption notification Post 01.01.2017, serial no. 17 of the notification exempts all goods falling under CTSH 8528 62 if they are of a kind solely or principally used in an Automatic Data Processing System of Heading 8471. The goods imported by the appellant satisfy the description of the exemption notification for both the periods and therefore, eligible for exemption;

v. It is a settled principle that while interpreting Tariff entries, due account has to be taken of the technological development or the evolution of products over a period a time;

vi. The extended period of limitation could not have been

invoked in the facts and circumstances of the case; and
vii. Penalty could not have been imposed on the appellant.

13. Shri Mihir Ranjan, learned special counsel appearing for the Department supported the impugned order and submitted that the appellant had conspired and colluded to mis-declare multimedia projectors to classify the same under CTI 8528 61 00/8528 62 00 wrongly with the sole intention of availing customs duty. To support this collusion and mis-declaration, learned special counsel referred to an e-mail sent by Shri Sunil Verma (an employee of the appellant) to Shri R. Ravichandran, Managing Director of Blissing Cargo Care Private Limited (the Customs Broker) wherein the appellant had shown their intent to clear the multimedia projector under CTI 85286 61 00/8528 62 00.
14. The submissions advanced by the learned counsel for the appellant and the learned special counsel appearing for the Department have been considered.
15. To appreciate the contentions, it will be appropriate to refer to the relevant entries contained in Chapter 85 of the First Schedule to the Tariff Act.
16. The relevant entries as they stood prior to 01.01.2017 are as follows:

Tariff Items	Description of goods	Unit	Rate of Duty	
			Standard	Preferential Areas
(1)	(2)	(3)	(4)	(5)
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			

	-Cathod-ray tube monitors:			
8528 41 00	--Of a kind solely or principally used in an automatic data processing system of heading 8471	u	10%	-
8528 49 00	-- Other..... - Other monitors:	u	10%	-
8528 51 00	--Of a kind solely or principally used in an automatic data processing system of Heading 8471	u	10%	-
8528 59 00	--Other..... -Projectors:	u	10%	-
8528 61 00	--Of a kind solely or principally used in an automatic data processing system of Heading 8471	u	10%	-
17. T 8528 69 00	--Other..... -Reception apparatus for television, whether or not incorporating radiobroadcast receivers or sound or video recording or reproducing apparatus:	u	10%	-

he exemption notification dated March 01, 2005 is as follows:

Exemption to goods of specific heading, from Customs Duty (ITA Bound)-

In exercise of the powers conferred by sub-section (1) of the section 25 of the Customs Act, 1962 (52 of 1962), the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby exempts the following goods of the description as specified in coloumn (3) of the Table below and failing under the heading, sub-heading or tariff-item of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) as specified in the corresponding entry in column (2) of the said Table when imported into India, from the whole of the duty of customs leviable thereon under the said First Schedule, namely:-

Sr. No.	Heading sub-heading or tariff item	Description
(1)	(2)	(3)
-	-	-
17	8528 41 or 8528 51 or 8528 61	All goods

18. It needs to be stated that an amendment was made in the Tariff Act and w.e.f. 01.01.2017, the relevant entries are as follows:-

Tariff Items	Description of goods	Unit	Rate of Duty	
			Standard	Preferential Areas
(1)	(2)	(3)	(4)	(5)
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	u	10%	-
8528 49 00	-- Other - Other monitors:	u	10%	-
8528 52 00	--Capable of directly connecting to and designed for use with an automatic data processing machine of heading 8471	u	10%	-
8528 59 00	--Other -Projectors:	u	10%	-
8528 62 00	--Capable of directly connecting to and designed for use with an automatic data processing machine of heading 8471	u	10%	-
8528 69 00	--Other -Reception apparatus for television, whether or not incorporating radiobroadcast receivers or sound or video recording or reproducing apparatus:	u	10%	-

19. Serial No. 17 of the exemption notification was also amended and Serial. No. 17 of the exemption notification is as follows:-

Sr. No.	Heading, sub-heading or tariff item	Description
(1)	(2)	(3)
17.	8528 42,8528 52 or 8528 62	All goods of a kind solely or principally used in an automatic data processing system of heading 8471

20. The issue is about classification of colour data projectors imported by the appellant. According to the appellant, they would be classifiable under CTI 8528 61 00 prior to 01.01.2017 and under CTI 8628 62 00 w.e.f. 01.01.2017. According to the Department, they would classify under the CTI 8528 69 00.

21. It is seen that prior to 01.01.2017, CTI 8528 61 00 uses the phrase "of a kind solely or principally used in an automatic data processing system of heading 8471". Post 01.01.2017, CTI 8528 62 00 uses the phrase "capable of directly connecting to and designed

for use with an automatic data processing machine of heading 8471”

22. For the period prior to 01.01.2017, goods “principally” used with ADPS are those goods which are inherently capable of connecting with multiple devices but are designed primarily to be used with ADPS. The data projectors imported by the appellant are used with ADPS and merely because they have the capability of use in both ADPS or non-ADPS cannot be a basis for deciding whether the projectors are “principally” used with ADPS. The correct test is to find out whether the specification and features are designed in such a way that they are generally or primarily meant for use with ADPS.

23. A Division Bench of the Tribunal in **Sony India**, after referring to the earlier Division Bench decisions of the Tribunal in **Acer India Pvt. Ltd. v. Commissioner of Customs**¹¹, **Aveco Viscomm Pvt. Ltd. v. Commissioner of Customs & Central Excise, Hyderabad-II**¹², **Commissioner of Customs (I) ACC, Mumbai v. Vardhaman Technology P. Ltd.**¹³, held that the colour data projectors imported by the appellant would be classifiable under CTI 8528 61 00. The Division Bench also examined whether the colour data projectors falling under CTI 8528 61 00 were covered by the exemption notification and in this context the Division Bench observed as follows:

“34. A perusal of the aforesaid Exemption Notification clearly indicates that the description of goods specified in Column (3) when imported into India would be exempted from the whole of the duty of Customs leviable thereon. Thus, once the goods are covered by the description in Column (3), they would automatically be exempted from the levy of the whole of the duty of Customs. In the present case, the data colour projectors fall under Heading 8528 61 00 which is at Serial No. 17 of the Notification. They would, therefore, be exempted from the whole of the duty of Customs. ”

11. 2009 (11) TMI 931- CESTAT Ahmedabad

12. 2011 (263) E.L.T. 420 (Tri.-Bang.)

13. 2014 (301) E.L.T. 427 (Tri.- Mumbai)

24. In **Aveco Viscomm Private Ltd.**, the issue was whether the data projectors imported by the appellant were to be classified under CTI 8528 61 00 with benefit of the exemption notification or under CTI 8528 69 00 as 'others', wherein benefit of such exemption notification was not available. The Tribunal held that the classification of the colour data projectors would be under CTI 8528 61 00 and the relevant portion of the decision of the Tribunal is as follows;

"8.4 It is undisputed that the goods imported by the assessee are Projectors. It is also undisputed that the said projectors have to be used in conjunction with ADPS. The only question is whether these projectors can be used solely or principally with the ADPS. We find that the Adjudication Authority has clearly recorded a categorical finding in his Order-in-Original, that the words solely or principally should mean that the projectors should be predominantly used with ADPS though the possibility of other usage is not ruled out. It is seen from the records that no evidence was produced before the lower authorities to indicate that usage of such goods for any other purpose would disqualify them from being classified under the specific Chapter Heading No. i.e. 8528 61 00. It is also seen that the lower authorities have clearly held that for the goods imported by the assessee, to be classified under Heading 8528 69 00, it needs to be demonstrated that the said goods are not compatible with Automatic Data Processing Systems and otherwise serve the desired purpose. In the absence of any evidence before them, the lower authorities were correct in holding that the asesseees have amply demonstrated before them that the goods imported would be and can be used in conjunction with ADPS only."

[emphasis supplied]

25. In **Commissioner of Customs (I), ACC, Mumbai v. Vardhaman Technology P. Ltd.**¹⁴, this issue was again examined and the Tribunal held, after following the aforesaid decision of the Tribunal in **Aveco Viscomm**, that the data projectors would be classified under CTI 8528 61 00. The relevant portion of the decision is reproduced below:

14. 2014 (301) E.L.T, 427 (Tri. -Mumbai)

"6. We have carefully considered the submission and perused the record. The Department has contended that only those kinds of projectors can be classified under CTH 8528 61 00 which are solely or principally for use in an automatic data processing system of heading 8471. Since these projectors are having additional feature like composite Video Port, S-Video Port, HDMI, RCA Audio Stereo besides VGA, DVI, USB ports, they cannot be said to be meant for use solely or principally in an automatic data processing system of Heading 8471. The only dispute is that they are having additional features which make them not classifiable under 8528 61 00. We find from the records of the case that the product combines the computing power of a computer with large screen display provided by an inbuilt projection system to deliver powerful outcomes through the use of technology for large screen projection to a wider audience. The projection system cannot be used in isolation but replace the functionality of a monitor. The projectors merely having additional function cannot be a ground for classifying it other than 852861 00. This issue was before the Tribunal in the case of Aveco Viscomm Pvt. Ltd. (supra) and Celetronics Inda P. Ltd. (supra) wherein the cases were decided in favour of the importer/assessee."

26. The Additional Director has confirmed the demand in the present case on the ground that the presence of multiple connectivity/interface options like USB-B, USB-A, S-Video, HDMI shows that principal function of goods is not to be used with a computer and, therefore, it is not possible to ascertain the primary/principal function of projectors. Consequently, classification under CTI 8528 69 00 was found to be appropriate.

27. The addition of multiple ports in the goods will not take away the basic nature of the goods, which is to work in conjunction with ADPS. This would continue to remain the principal function of the goods. The presence of such ports is only to ensure their use with laptops and ADPS. Therefore, even post 01.07.2017, goods would be classifiable under CTI 8528 62 00 and the decisions of the Tribunal rendered for the period prior to 01.07.2017 will continue to apply to projectors imported w.e.f. 01.01.2007.

28. It is also seen that for the period prior to 01.01.2017, all good falling under CTSN 8528 41, 8528 51 or 8528 61 were unconditionally exempt from payment of BCD under Serial No. 17 of

the exemption notification. Post 01.01.2017, Serial. No. 17 of the notification exempts all goods falling under CTSN 8528 42, 8528 52 or 8528 62 if they are of a kind solely or principally used in an automatic data processing machine of heading 8471. The goods imported by the appellant satisfy the description of the goods in the exemption notification for both the periods and are, therefore, eligible for exemption.

29. The submission advanced by the learned counsel for the appellant that the extended period of limitation could not have been invoked in the facts and circumstances of the case also deserves to be accepted. The appellant claimed that it was under the bona fide belief that the goods being principally used with ADPS, would merit classification under CTN 8528 61 00. Such a belief could have been formed because of the decisions, referred to above, in which the issue of classification was decided. In such a situation the extended period of limitation could not have been invoked as was observed by the Supreme Court in **Commissioner of Customs (Imports) v/s Reliance Industries Ltd.**¹⁵. The relevant portion of the judgment is reproduced below:

" 5. In this behalf, it would be pertinent to mention that the issue of classification, at the relevant time when the goods in question were imported in June, 1994, had been decided by the Tribunal in two judgments, i.e., **Roto Inks Private Limited v. Collector of Customs**¹⁶ and **Tata Consultancy Services v. Collector of Customs**¹⁷ classifying these very articles under tariff item 49.01. Thus, when the declaration was filed by the respondent, in view of the aforesaid position in law that was prevailing at that time, it was a bona fide declaration and cannot be treated as mis-declaration."

30. Thus, when there is no mis-declaration, penalty under section 114A of the Customs Act could also not have been imposed.

15. 2015 (325) E.L.T. 223 (S.C.)

16. 1990 (47) E.L.T. 398

17. 1991 (53) E.L.T. 454

31. The Department has filed appeals as penalties under section 114AA of the Customs Act have not been imposed. As the appellant has correctly availed the benefit of the exemption notification, the appeals filed by the Department deserve to be dismissed.

32. Thus, for all the reasons stated above, Customs Appeal No's 52428/2019, 52429/2019, 52430/2019, 52431/2019, 52432/2019 and 52433/2019 filed by BenQ India Pvt. Ltd., Hitesh Kumar, Rajeev Singh, R. Ravichandran, Blessings Cargo Care Pvt. Ltd. and Vijay Kumar Sharma respectively are allowed and Customs Appeal No.'s 51621/2021, 51725/2021, 51726/2021, 51727/2021, 51728/2021 and 51729/2021 filed by the Additional Director General (Adjudication), Directorate of Revenue Intelligence- New Delhi are dismissed.

(Order pronounced in the open Court on 12.09.2022)

(JUSTICE DILIP GUPTA)
PRESIDENT

(P.V. SUBBA RAO)
MEMBER (TECHNICAL)

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HON'BLE MR. C.J. MATHEW, MEMBER (TECHNICAL)**

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ORDER SHEET

Order pronounced on **12.09.2022.**

**(JUSTICE DILIP GUPTA)
PRESIDENT**

**(C.J. MATHEW)
MEMBER (TECHNICAL)**

Rekha